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Local Right-to-Work Ordinances: Why § 14(b) of the National Labor Relations Act Preempts Political Subdivisions from Regulating Union-Security Agreements

Michael Soder
University of Cincinnati, soderml@mail.uc.edu

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LOCAL RIGHT-TO-WORK ORDINANCES: WHY § 14(B) OF THE
NATIONAL LABOR RELATIONS ACT PREEMPTS POLITICAL
SUBDIVISIONS FROM REGULATING UNION-SECURITY
AGREEMENTS

Michael Soder

I. INTRODUCTION

“Right-to-work laws” are a bit of a misnomer. Rather than referring to laws that seek to expand the number of individuals eligible to work in a state, right-to-work laws refer to union-security legislation that prohibit employers and unions from agreeing that workers have to join, or not join, a union as a condition of employment.¹ The ability of states to pass such laws originated in Congress’ adoption of the National Labor Relations Act (“NLRA”) of 1935, which was amended in 1947 by the Taft-Hartley Act.² This 1947 amendment added § 14(b) to the NLRA, which is the foundation for states’ authority to enact right-to-work laws.³

As of April 2019, twenty-seven states have enacted right-to-work laws.⁴ Passage of these laws occurred in the context of major policy debates founded on ideas of “liberty, freedom and a state’s economic development.”⁵ Proponents of right-to-work laws argue that they protect the rights of individual workers to choose whether to support labor unions, and that companies are more likely to do business in right-to-work states.⁶ Labor groups, on the other hand, argue that right-to-work laws are merely an effort to undermine labor unions as employees can refuse to pay dues but still enjoy all the benefits derived from union negotiations with employers.⁷

Despite right-to-work laws having existed for more than half a century pursuant to § 14(b), the exact scope of § 14(b) is still unclear. This is because § 14(b) expressly allows “States” to pass right-to-work laws but

1. 48 AM. JUR. 2D *Labor and Labor Relations* § 527 (2019).

2. James C. Thomas, *Right-To-Work: Settled Law or Unfinished Journey*, 8 LOY. J. PUB. INT. L. 163, 163-65 (2007).

3. *Id.* Although § 14(b) of the Taft-Hartley Act has been codified as 29 U.S.C. § 164(b), this section will continue to be referred to as § 14(b) throughout this Article.

4. *See Right To Work Is ...*, NAT’L RIGHT TO WORK COMMITTEE, <https://nrtwc.org/facts/right-work-mean/> (last visited Apr. 12, 2019). These states include Alabama, Arkansas, Kansas, Florida, Georgia, Idaho, Indiana, Iowa, Kentucky, Louisiana, Michigan, Mississippi, Nebraska, Nevada, North Carolina, North Dakota, Oklahoma, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, West Virginia, Wisconsin, and Wyoming.

5. Thomas, *supra* note 2 at 165.

6. Connor Beatty, *Right To Work: Right for Maine?*, 20 NO. 10 ME. EMP. L. LETTER 3 (2015), Westlaw 20 No. 10 SMMEEMPLL 3.

7. *Id.*

is silent regarding whether political subdivisions of a state, such as cities, municipalities, counties, or townships, have the authority to pass similar laws. The issue has recently gained increasing attention as Kentucky, Illinois, and New Mexico localities have all passed local right-to-work ordinances.⁸ New Mexico is the recent frontrunner in the debate with ten different counties having adopted such local ordinances.⁹ The New Mexico Senate, however, recently passed a bill that could ban these local ordinances.¹⁰

Prior to June 10, 2019, a circuit split existed between the Sixth and Seventh Circuits regarding the proper interpretation of the term “States” in § 14(b).¹¹ In 2016, the Sixth Circuit held that the word “State” includes political subdivisions of a state, and therefore § 14(b) exempts local right-to-work ordinances from NLRA preemption.¹² In 2018, the Seventh Circuit disagreed, holding that § 14(b)’s exception to preemption only confers authority to states to pass right-to-work laws.¹³ The Supreme Court granted certiorari in *International Union of Operating Engineers Local 399 v. Village of Lincolnshire* and was poised to address this difficult issue of statutory interpretation. In the meantime, however, Illinois enacted the Collective Bargaining Freedom Act that bans a local government or political subdivision from creating or enforcing an ordinance that prohibits, restricts, or regulates union security agreements, nullifying Lincolnshire’s lawsuit.¹⁴ Thus, the Supreme Court summarily dismissed the case as moot and resolved the circuit split.¹⁵

Although the Seventh Circuit’s opinion has been vacated and the

8. See Brenna Goth, *Local Right-to-Work Rules Sweep New Mexico Counties*, BLOOMBERG (Sept. 20, 2018, 6:40 AM), <https://news.bloomberglaw.com/daily-labor-report/local-right-to-work-rules-sweep-new-mexico-counties>.

9. See Nicholas Chan, *New Mexico Senate Passes Bill to Ban Local ‘Right-to-Work’ Ordinances*, JURIST LEGAL NEWS & RESEARCH SERVS., <https://www.jurist.org/news/2019/03/new-mexico-senate-passes-bill-to-ban-local-right-to-work-ordinances/> [<https://perma.cc/3L4A-SDFK>].

10. *Id.*

11. See *United Auto., Aerospace & Agric. Implement Workers of Am. Local 3047 v. Hardin Cty., Kentucky (United Auto.)*, 842 F.3d 407 (6th Cir. 2016); *Int’l Union of Operating Eng’rs Local 399 v. Vill. of Lincolnshire*, 905 F.3d 995 (7th Cir. 2018), *cert. granted, judgment vacated sub nom. Vill. of Lincolnshire, Ill. v. Int’l Union of Operating Eng’rs Local 399*, 139 S. Ct. 2692 (2019).

12. *United Auto.*, 842 F.3d at 420.

13. See *Int’l Union of Operating Eng’rs Local 399 v. Vill. of Lincolnshire*, 905 F.3d 995 (7th Cir. 2018), *cert. granted, judgment vacated sub nom. Vill. of Lincolnshire, Ill. v. Int’l Union of Operating Eng’rs Local 399*, 139 S. Ct. 2692 (2019).

14. 820 ILL. COMP. STAT. ANN. § 12/20; see *After Illinois Ban on Local “Right-To-Work” Laws, Supreme Court Boots Union Busters*, INT’L UNION OF OPERATING ENG’RS LOCAL 150 (June 2019), <http://local150.org/after-illinois-ban-on-local-right-to-work-laws-supreme-court-boots-union-busters/> [<https://perma.cc/GK5L-8XYD>]. As this recent legislation demonstrates, states are free to expressly prohibit political subdivisions from passing right-to-work ordinances. Therefore, the issue of interpreting § 14(b) exists *only if* the state has not done so.

15. *Village of Lincolnshire, Ill. v. Int’l Union of Operating Eng’rs Local 399*, 139 S. Ct. 2692 (2019).

circuit split resolved, the Supreme Court did not address the merits of the case. Therefore, the underlying substantive issue of interpretation of § 14(b) remains. Thus, this Article will analyze the differing statutory interpretation approaches utilized by both the Sixth and Seventh Circuits to determine the proper approach. This Article argues that the Seventh Circuit arrived at the correct result, albeit its' analysis was flawed in failing to specifically address the issue within the Supreme Court's preemption jurisprudence which requires "clear and manifest indication that Congress sought to supplant local authority."¹⁶ Given the specific statutory framework of the NLRA, along with the NLRA's overarching purpose and spirit, § 14(b) must be construed narrowly to only encompass states. Section II introduces the NLRA and potentially applicable Supreme Court precedent regarding statutory interpretation in the field of preemption. Section III demonstrates that, taken as whole, based on the statutory language of the NLRA, the NLRA's legislative history and overall purpose, and Supreme Court precedent regarding statutory interpretation in the context of preemption, § 14(b) should be construed as excluding political subdivisions of a state.

II. BACKGROUND

Both *United Automobile, Aerospace & Agricultural Implement Workers of America Local 3047 v. Hardin County, Kentucky* and *International Union of Operating Engineers Local 399 v. Village of Lincolnshire* concern whether the NLRA permits political subdivisions of the state to regulate union-security agreements. In order to dissect this issue, Section II(A) will first discuss the history of the NLRA, and then the general law surrounding NLRA preemption specifically regarding § 14(b). Next, Section II(B) briefly examines potentially applicable Supreme Court precedent regarding other statutory schemes. Finally, Section II(C) outlines the reasoning employed in both *United Automobile* and *Village of Lincolnshire*.

A. The NLRA and Union Security Agreements

In 1935, Congress enacted the National Labor Relations Act ("NLRA"),¹⁷ a broad federal law that established federal labor relations

16. *City of Columbus v. Ours Garage and Wrecker Serv., Inc.*, 536 U.S. 424, 434 (2002) (citing *Wis. Pub. Intervenor v. Mortier*, 501 U.S. 597, 611 (1991)).

17. Act of July 5, 1935, 49 Stat. 449 (codified as amended at 29 U.S.C. §§ 151-169). The NLRA was first introduced in 1934 by Senator Wagner as the "Wagner Act," and sought to "clarify and fortify" the National Industrial Recovery Act. See Joan E. Baker, *NLRA Section 8(a)(3) and the Search for a National Labor Policy*, 7 HOFSTRA LAB. L.J. 71, 76 (1989); see also National Labor Relations Board, LEGISLATIVE HISTORY OF THE NATIONAL LABOR RELATIONS ACT 1935, at 15 (1949),

standards regulating the relationships between private-sector employees and labor unions.¹⁸ The NLRA provides that employees “shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection[.]”¹⁹ By inscribing these rights in law, Congress sought to “eliminate the causes of certain substantial obstructions to the free flow of commerce” by addressing the inequality of bargaining power between employers and employees while simultaneously upholding the freedom of association and liberty of contract.²⁰ Through protecting the rights of both employees and employers, the NLRA seeks to promote the general welfare of workers, businesses, and the United States economy as a whole.²¹

A main focus of the NLRA is regulation of union security agreements. A union security agreement is a negotiated “agreement between a union and an employer that the employer will require all employees to undertake some specified level of union support as a condition of employment.”²² Union security agreements generally consist of three varieties: closed-shop agreements, union-shop agreements, and agency-shop agreements. A union-shop agreement provides that “no one will be employed who does not join the union within a short time after being hired.”²³ An agency-shop agreement generally provides “that while employees do not have to join the union, they are required usually after 30 days to pay the union a sum equal to the union initiation fees and are obligated as well to make periodic payments to the union equal to the union dues.”²⁴ If an employer has a closed-shop agreement “the employer may hire only union members and must require all employees to maintain their union

<https://babel.hathitrust.org/cgi/pt?id=mdp.39015014754413;view=1up;seq=201>.

18. See *United Auto., Aerospace & Agric. Implement Workers of Am. v. Hardin Cty.*, 160 F. Supp. 3d 1004, 1006-07 (W.D. Ky. 2016), *aff'd in part as modified, rev'd in part sub nom*, *United Auto., Aerospace & Agric. Implement Workers of Am. Local 3047 v. Hardin Cty.*, Kentucky, 842 F.3d 407 (6th Cir. 2016). The NLRA was subsequently amended by the Labor Management Relations Act of 1947, the “Taft-Hartley Act.” See *Int’l Union of Operating Engineers Local 399 v. Vill. of Lincolnshire*, 905 F.3d 995, 999 (7th Cir. 2018).

19. 29 U.S.C. § 157.

20. 29 U.S.C. § 151. In introducing the NLRA, Senator Wagner expressed his belief that “[g]enuine collective bargaining is the only way to attain equality of bargaining power” in light of modern industrialism,” particularly given the then perceived “sham of equal bargaining power” resulting from employer-dominated unions. NLRB, *supra* note 17 at 15; see also *Baker*, *supra* note 17 at 76-77.

21. 29 U.S.C. § 151.

22. Kenneth G. Dau-Schmidt, *Union Security Agreements Under the National Labor Relations Act: The Statute, the Constitution, and the Court’s Opinion in Beck*, 27 HARV. J. ON LEGIS. 51, 57 (1990) (citing R. Gorman, *Labor Law* 639 (1976)).

23. *Oil, Chem., & Atomic Workers Int’l Union, AFL-CIO v. Mobil Oil Corp.*, 426 U.S. 407, 409, n.1 (1976).

24. *Id.*

membership and pay union dues.”²⁵

Union security agreements are governed by § 158(a)(3) (“8(a)(3)”) of the NLRA.²⁶ As originally enacted, § 8(a)(3) permitted closed-shop agreements, union-shop agreements, and agency-shop agreements.²⁷ Nevertheless, in 1947 Congress amended the NLRA through the Taft-Hartley Act²⁸ and banned closed-shop agreements due to widespread abuse.²⁹ Both union-shop and agency-shop agreements, however, are still permitted. § 8(a)(3), in pertinent part, provides

It shall be an unfair labor practice for an employer . . . 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 Act, 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 thirteenth day following the beginning of such employment or the effective date of such agreement, whichever is later[.]³⁰

In essence, § 8(a)(3) provides that no federal statute shall preclude union-security agreements, as certain agreements are valid as a matter of federal law.³¹ However, notwithstanding § 8(a)(3), the NLRA continues to reflect congressional concern with compulsory unionism,³² as demonstrated in the following section’s examination of § 14(b).

B. The Doctrine of Preemption Applied to the NLRA

The doctrine of preemption states that in cases where federal law conflicts with state law, federal law is supreme and preempts the state

25. Dau-Schmidt, *supra* note 22 at 57 (citing R. GORMAN, LABOR LAW 639, 641-42 (1976)).

26. 29 U.S.C. § 158(a)(3).

27. *Mobil Oil Corp.*, 426 U.S. at 414.

28. The Taft-Hartley Act was codified as the Labor Management Relations Act, 29 U.S.C. §§ 141-197.

29. *Mobil Oil Corp.*, 426 U.S. at 414 (internal citations omitted).

30. 29 U.S.C. § 158(a)(3). (declaring that it is not an unfair labor practice for a union and employer to require membership in a union as a condition of employment, provided specified conditions in the NLRA are met. *See* Retail Clerks Int’l Ass’n, Local 1625, AFL-CIO v. Schermerhorn, 375 U.S. 96, 98-99 (1963)).

31. *Mobil Oil Corp.*, 426 U.S. at 416.

32. *Id.* at 415.

law.³³ Generally speaking, there are three forms of preemption.³⁴ Under “express” preemption Congress can explicitly define, through a preemption provision included in the legislation, the extent to which the enactment preempts state law.³⁵ “Conflict” preemption occurs where, even in the absence of an express preemption provision, there is an implicit conflict between federal and state law.³⁶ The last variation, “field” preemption, is an implicit preemption³⁷ that occurs when Congress has regulated a “field” of activity “so comprehensively that ... [Congress] has left no room for supplementary state legislation.”³⁸ In this last situation, Congress has determined that the field in question must be regulated by Congress’ exclusive governance.³⁹

The NLRA does not contain any express preemption provision.⁴⁰ And given that the NLRA regulates an area of traditional state concern, an NLRA preemption analysis starts with the basic proposition that

33. U.S. CONST. art. VI, cl. 2; *Murphy v. Nat’l Collegiate Athletic Ass’n*, 138 S.Ct. 1461, 1479 (2015). The doctrine finds its basis in the Supremacy Clause, which is itself not a source of any federal rights but rather creates a “rule of decision.” *Armstrong v. Exceptional Child Ctr., Inc.*, 575 U.S. 320, 324 (2015); *see also* *Gibbons v. Ogden*, 22 U.S. 1 (1824); *Golden State Transit Corp. v. Los Angeles*, 493 U.S. 103 (1989); *Chapman v. Houston Welfare Rights Organization*, 441 U.S. 600 (1979); *Gade v. National Solid Waste Management Ass’n*, 505 U.S. 88, 108 (1992) (“[U]nder the Supremacy clause, from which our pre-emption doctrine is derived, any state law, however clearly within a State’s acknowledged power, which interferes with or is contrary to federal law, must yield[.]”) (internal quotation marks omitted).

34. *See* 81A C.J.S. *States* §49 (Jan. 2019); *see also* *Wis. Pub. Intervenor v. Mortier*, 501 U.S. 597, 604-05 (1991) (“The ways in which federal law may pre-empt state law are well established and in the first instance turn on congressional intent.”). Despite the variations, all forms essentially work in the same manner: “Congress enacts a law that imposes restrictions or confers rights on private actors; a state law confers rights or imposes restrictions that conflict with the federal law; and therefore the federal law takes precedence and the state law is preempted.” *Murphy*, 138 S.Ct. at 1480.

35. *See* *English v. Gen. Elec. Co.*, 496 U.S. 72, 78-79 (1990) (citing *Shaw v. Delta Air Lines, Inc.*, 463 U.S. 85, 95-98 (1983)). Express preemption is fundamentally a question of congressional intent and statutory construction, as the phrasing of preemption provisions is often obscure. *See* *Murphy*, 138 S.Ct. at 1480.

36. State law will be impliedly preempted where it is “impossible for a private party to comply with both state and federal requirements.” *Mut. Pharm. Co. v. Bartlett*, 570 U.S. 472, 480 (2013) (internal citation omitted); *see also* *Hines v. Davidowitz*, 312 U.S. 52, 67 (1941) (holding that state law is preempted where it “stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress”).

37. Substantively, field preemption, unlike express of conflict preemption, does not involve congressional commands to states; rather, Congress *intends* to foreclose state regulation in the area. *See* *Murphy*, 138 S.Ct. at 1480; *see also* *Oneok, Inc. v. Learjet, Inc.*, 575 U.S. 373, 377 (2015) (“Congress has forbidden the State to take action in the *field* that the federal statute pre-empts.”) (emphasis in original).

38. *R.J. Reynolds Tobacco Co. v. Durham County*, 479 U.S. 130, 140 (1986) (internal citation omitted); *see also* *Arizona v. United States*, 567 U.S. 387, 399 (2012) (noting that congressional intent can also be inferred where there is a “federal interest . . . so dominant that the federal system will be assumed to preclude enforcement of state laws on the same subject.”) (citing *Rice v. Santana Fe Elevator Corp.*, 331 U.S. 218, 230 (1947)).

39. *Arizona*, 567 U.S. at 399.

40. 2003 A.L.R. Fed. 1 (originally published in 2003).

“Congress did not intend to displace state labor law.”⁴¹ The Supreme Court has, however, articulated two preemption doctrines, under the umbrella of field preemption, distinct to the NLRA to determine whether state regulations or causes of action are preempted.⁴² The *Garmon* preemption doctrine prohibits states from regulating activity that the NLRA prohibits or protects, or arguably prohibits or protects.⁴³ Thus, the Supreme Court has confirmed that § 8(a)(3), via field preemption and *Garmon*, preempts state laws purporting to regulate any activities that fall within the ambit of the NLRA.⁴⁴ In contrast, the *Machinist* preemption doctrine concerns whether Congress intended for conduct not covered by the NLRA to nonetheless be preempted.⁴⁵ The doctrine answers this question by proscribing state or municipal regulation of areas that have been left “to be controlled by the free play of economic forces.”⁴⁶

Under *Garmon* preemption, any state law purporting to regulate the activities covered by § 8(a)(3) could be deemed implicitly preempted. The Supreme Court relied on *Garmon* preemption when it ruled that union-security agreements, being a matter as to which “federal concern is pervasive and its regulation complex,” is an activity that falls within the scope of § 8(a)(3) and is thus implicitly preempted.⁴⁷

41. *Bldg. & Const. Trades Council of Metro. Dist. v. Associated Builders & Contractors of Massachusetts/Rhode Island, Inc.*, 507 U.S. 218, 224 (1993) (internal citation omitted); *see* 188 A.L.R. Fed. 543 (originally published in 2003).

42. *See Metro. Life Ins. Co. v. Massachusetts*, 471 U.S. 724, 748-49 (1985).

43. *See, e.g., San Diego Bldg. Trades Council, Millmen’s Union, Local 2020 v. Garmon*, 359 U.S. 236, 244 (1959); *Metro*, 471 U.S. at 748; *Wis. Dep’t of Indus., Labor & Relations v. Gould Inc.*, 475 U.S. 282, 286 (1986); 108 A.L.R. 5th 253 (originally published in 2003). Initially, the doctrine was limited only to what the NLRA prohibited or protected, but the doctrine was subsequently expanded to cover what the NLRA “arguably” prohibits or protects. *See, e.g., Gould*, 475 U.S. at 286.

44. *See Int’l Union of Operating Eng’rs Local 399 v. Vill. of Lincolnshire*, 905 F.3d 995, 1000 (7th Cir. 2018), *cert. granted, judgment vacated sub nom. Vill. of Lincolnshire, Ill. v. Int’l Union of Operating Eng’rs Local 399*, 138 S. Ct. 2692 (2019) (citing *San Diego Bldg. Trades Council, Millmen’s Union, Local 2020 v. Garmon*, 359 U.S. 236, 244 (1959)). In *Garmon*, the Court began with the proposition that “where the regulated conduct touched interests so deeply rooted in local feeling and responsibility that, in the absence of compelling congressional direction, we could not infer that Congress had deprived the States of the power to act.” 359 U.S. at 244. Although labor legislation regarding union activity falls within the area of traditional state concerns, the Court found that leaving the states “free to regulate conduct so plainly within the central aim of . . . [the NLRA] involves too great a danger of conflict between the power asserted by Congress and requirements imposed by state law.” *Id.* Doing so “would create potential frustration of national purposes.” *Id.*

45. *See Lodge 76, Int’l Ass’n of Machinists & Aerospace Workers, AFL-CIO v. Wis. Emp’t Relations Comm’n*, 427 U.S. 132, 140 (1976); *see also* 188 A.L.R. Fed. 543 (originally published in 2003).

46. *Bldg. & Const. Trades Council*, 507 U.S. at 225 (quoting *Machinists*, 427 U.S. at 140). This doctrine preserves Congress’ intentional balance “between the uncontrolled power of management and labor to further their respective interests.” *Golden State Transit Corp. v. City of Los Angeles*, 475 U.S. 608, 614 (1986) (internal citation omitted).

47. *Amalgamated Ass’n of St., Elec. Ry. & Motor Coach Emp. Of Am. v. Lockridge*, 403 U.S. 274, 296 (1971).

Although § 8(a)(3) provides that certain union security agreements are valid as a matter of federal law, shall not be precluded, and are preempted by federal law, Congress recognized that states may wish to exempt themselves from this policy.⁴⁸ As originally enacted, the NLRA, and more specifically § 8(a)(3), created confusion among scholars and the courts as to whether Congress preempted this field.⁴⁹ Therefore, in 1947 the Taft-Hartley Act added § 14(b) to the NLRA, which states:

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[.]⁵⁰

As the Supreme Court has noted, this language “was designed to make clear that . . . [§8(a)(3)] left the States free to pursue their own more restrictive policies in the matter of union-security agreements.”⁵¹ Thus, although state laws banning union-security agreements conflict with § 8(a)(3), such regulations can be saved if they fall within the purview of § 14(b).⁵² As a result of § 14(b), states are permitted to pass right-to-work laws, which are regulations prohibiting collective bargaining agreements between employers and trade unions from including union-security agreements that require union membership as a condition of employment.⁵³

Despite this language, the Sixth and Seventh Circuits reached contrary

48. *Oil, Chem., & Atomic Workers Int’l Union, AFL-CIO v. Mobil Oil Corp.*, 426 U.S. 407, 416-17 (1976). This is particularly so given that union activity has traditionally been a local matter.

49. *See Retail Clerks Int’l Ass’n, Local 1625, AFL-CIO v. Schermerhorn*, 375 U.S. at 100-02; *see also* 174 A.L.R. 1051 (originally published in 1948) (analyzing the extent to which the enactment of the NLRA precludes states from enacting labor relations legislation).

50. 29 U.S.C. § 164(b).

51. *Mobil Oil Corp.*, 426 U.S. at 417 (citing *Retail Clerks v. Schermerhorn*, 375 U.S. 96, 103 (1963)); *see also* *N.L.R.B. v. Houston Chapter, Associated Gen. Contractors of Am., Inc.*, 349 F.2d 449, 453 (5th Cir. 1965) (“the terms of § 14(b) as well as the legislative history suggests the intent on the part of Congress to save to the states the right to prohibit compulsory unionism,” but “contemplates only those forms of union security which are the practical equivalent of compulsory unionism.”). Legislative history reveals that the original Senate Committee was of the view that the NLRA as originally enacted already allowed for such state regulation, and therefore the addition of § 14(b) was to clarify this position. *Schermerhorn*, 375 U.S. at 101, n.9 (“[m]any states have enacted laws or adopted constitutional provisions to make all forms of compulsory unionism in those States illegal. It was never the intention of the . . . [NLRA] to preempt the field in this regard so as to deprive the States of their powers to prevent compulsory unionism.” (citing H.R. Rep. 510, 80th Cong., 1st Sess., p. 60)).

52. “While . . . [§] 8(a)(3) articulates a national policy that certain union-security agreements are valid as a matter of federal law . . . [§] 14(b) allows a State or Territory to ban agreements requiring membership in a labor organization as a condition of employment. We have recognized that with respect to those state laws which . . . [§] 14(b) permits to be exempted from . . . [§] 8(a)(3)’s national policy there is . . . conflict between state and federal law; but it is a conflict sanctioned by Congress with directions to give the right of way to state laws[.]” *Mobil Oil Corp.*, 426 U.S. at 416-17 (internal citations and quotations omitted).

53. Fed. Lab. Law: NLRB Prac. § 15:3.

decisions as to whether “State or Territory” contained in § 14(b) covers political subdivisions of the state, such as municipalities, counties, or cities.

C. Statutory Construction Generally and Regarding Preemption of Political Subdivisions of States

The Supreme Court has yet to decide whether § 14(b) encompasses political subdivisions of states. The Court has, however, addressed this issue in the context of other statutory schemes. In *Wisconsin Public Intervenor v. Mortier* the Court decided whether the Federal Insecticide, Fungicide, and Rodenticide Act (“FIFRA”)⁵⁴ preempted local governmental regulations of pesticide use.⁵⁵ Although FIFRA specifies several roles for both state and local authorities, the provision at issue, § 136v(a), permitted a “State” to regulate the sale or use of pesticide.⁵⁶ In concluding that FIFRA does not preempt local government regulations, the Court relied on two intertwined lines of reasoning⁵⁷ to conclude that FIFRA “fails to provide any clear and manifest indication that Congress sought to supplant local authority.”⁵⁸ First, the Court concluded that FIFRA’s textual language and legislative history were ambiguous: FIFRA does not expressly define “State” as including political subdivisions, other provisions allow delegation to local officials for enforcement, and the Members of Congress disagreed on the issue.⁵⁹ Second, in analyzing the relationship among states and their political subdivisions, the Court first noted that “the constitutionality of local ordinances is analyzed in the same way as that of statewide laws,”⁶⁰ as political subdivisions are merely “subordinate components” of the state.⁶¹ Focusing on the issue of delegation, the Court reasoned that reading § 136v(a) as excluding political subdivisions would have the “anomalous result” of preempting delegation from the state to local authorities provided by other FIFRA

54. 7 U.S.C. § 136 *et seq.*

55. *Wis. Pub. Intervenor v. Mortier*, 501 U.S. 597 (1991).

56. “A State may regulate the sale or use of any federally registered pesticide or devise in the State[.]” 7 U.S.C. § 136v(a). FIFRA does not expressly supersede local regulation of pesticide use. *Mortier*, 501 U.S. at 606.

57. *Mortier*, 501 U.S. at 616.

58. *Id.* at 611.

59. *Id.* at 606-10.

60. *Id.* at 605 (citing *Hillsborough Cty., Fla. v. Automated Med. Labs., Inc.*, 471 U.S. 707, 713 (1985)).

61. *Id.* at 612.

provisions.⁶² Thus, “State” in § 136v(a) included political subdivisions.⁶³

Similarly, in *City of Columbus v. Ours Garage & Wrecker Service*, the Supreme Court considered whether a provision of the Interstate Commerce Act (“ICA”) that specifically saved the “States” power to regulate the safety of vehicles also extended to political subdivisions of the state.⁶⁴ Other provisions of the ICA explicitly included both “State” and political subdivisions, and had this not been the case, the Court stated that *Mortier* would have been dispositive.⁶⁵ Citing *Mortier* for the proposition that “clear and manifest indication” was required to conclude that Congress intended to supplant local authority, the majority concluded that such indication was lacking;⁶⁶ therefore, local regulation was also saved from preemption.⁶⁷

*D. Circuit Split: United Automobile, Aerospace & Agricultural
Implement Workers of America Local 3047 v. Hardin County,
Kentucky and International Union of Operating Engineers, Local 399,
AFL-CIO v. Village of Lincolnshire*⁶⁸

As noted above, union-security agreements occupy an interesting

62. *Id.* at 608. For example, 7 U.S.C. § 136u(a)(1) allows the Administrator to delegate to any state the authority to cooperate in the enforcement of FIFRA. If the term “State” impliedly excluded political subdivisions, the Court found it “unclear why the one provision would allow the designation of local officials for enforcement purposes while the other would prohibit local enforcement authority altogether.” *Id.* at 608-09

63. “[T]he more plausible reading of FIFRA’s authorization to the States leaves the allocation of regulatory authority to the ‘absolute discretion’ of the States themselves, including the option of leaving local regulation of pesticides in the hands of local authorities.” *Mortier*, 541 U.S. at 608.

64. *City of Columbus v. Ours Garage & Wrecker Serv., Inc.*, 536 U.S. 424, 428 (2002). The general preemption provision of the ICA explicitly preempts regulation by both “a State” and by a “political subdivision of a State,” 49 U.S.C. § 14501(c)(1), and almost every other provision in the statute references both states and political subdivisions. *Id.* at (a), (b)(1), (c)(3)(B), (c)(3)(C). However, the specific provision at issue was a carve out from the general preemption, and only explicitly references “a State[.]” *Id.* at (c)(2)(A).

65. *Ours Garage*, 536 U.S. at 432.

66. The Court’s reasoning was based on several considerations, one being that safety regulations of motor vehicles is a traditional state police power. *Id.* at 439-440. Additionally, the legislative history revealed Congress’ focus was on “state economic regulation,” whereas the provision in question dealt with “state safety regulation.” *Id.* at 440-41. Thus, the Court clarified that the provision only saved local “safety regulatory authority” from preemption. *Id.* at 442.

67. *Id.* The Court specifically held that “[a]bsent a clear statement to the contrary, Congress’ reference to the ‘regulatory authority of a State’ should be read to preserve, not preempt, the traditional prerogative of the States to delegate their authority to their constituent parts.” *Id.* at 429.

68. Although this Article is limited to the discussion of whether § 14(b) preempts political subdivisions from enacting right-to-work ordinances, it is worth noting that several scholars have questioned courts interpretation of § 14(b) as to the power of states to regulate union-security agreements. See, e.g., Ian M. Seruelo, Note, *Harmonizing Section 14(b) With the Policy Goals of the NLRA on the Heels of Michigan’s Enactment of Right-to-Work Laws*, 36 T. JEFFERSON L. REV. 427 (2014); Benjamin Sachs and Catherine Fisk, *Restoring Equity in Right to Work*, 4 UC IRVINE L. REV. 857 (2014); Thomas,

position within the NLRA—§ 8(a)(3) prohibits federal law from precluding certain union-security agreements, and per *Garmon* preemption, state regulation of union-security agreements are implicitly preempted. Yet § 14(b) provides a specific carve-out, trumping *Garmon* preemption and permitting “State[s] or Territor[ies]” to pass regulations pertaining to union-security agreements.⁶⁹ Most every court that has addressed whether local right to work ordinances are preempted by the NLRA has concluded in the affirmative.⁷⁰

Prior to June 2019, a circuit split existed between the Sixth and Seventh Circuits as to whether “State or Territory” in § 14(b) encompasses political subdivisions of the state. Specifically, the dispute centered around whether § 14 (b) permits states to delegate⁷¹ power to their subdivisions to regulate union-security agreements.⁷² In 2016, the Sixth Circuit in *United Automobile, Aerospace & Agricultural Implement Workers of America Local 3047 v. Hardin County, Kentucky* concluded that a county’s right-to-work ordinance⁷³ is considered “State law” under § 14(b) and thus is not preempted.⁷⁴ The court first disagreed with the District Court’s statutory construction of the term “State” in § 14(b), concluding that interpreting this term as including the laws of political subdivisions “absolutely is a logical reading.”⁷⁵

supra note 2; David G. Summers, *Plumbers and Pipefitters: The Need to Reinterpret the Scope of Compulsory Unionism*, 33 AM. U. L. REV. 493 (1984).

69. *See supra* Section II(A)-(B).

70. *See* Ariana R. Levinson, et. al., *Federal Preemption of Local Right-to-Work Ordinances*, 54 HARV. J. ON LEGIS. 457, 476-80 (2017); *see also* New Mexico Fed’n of Labor, United Food & Commercial Workers Union Local 1564 v. City of Clovis, N.M., 735 F. Supp. 999, 1003-04 (D.N.M. 1990) (concluding that local right-to-work enactments do not constitute “state” law within the meaning of § 14(b)); Kentucky State AFL-CIO v. Puckett, 391 S.W.2d 360, 362 (Ky. 1965).

71. As noted above, the more proper description would be whether states can redelegate this authority to political subdivisions since § 14(b) grants authority back to states to regulate union-security agreements.

72. *See* *United Auto., Aerospace & Agric. Implement Workers of Am. Local 3047 v. Hardin Cty., Kentucky*, 842 F.3d 407 (6th Cir. 2016); *see also* Int’l Union of Operating Engineers Local 399 v. Vill. of Lincolnshire, 905 F.3d 995 (7th Cir. 2018), *cert. granted, judgment vacated sub nom.* Vill. of Lincolnshire, Ill. v. Int’l Union of Operating Eng’rs Local 399, 139 S. Ct. 2692 (2019).

73. Hardin Fiscal Court passed a county ordinance, Ordinance 300, in January 2015, providing that no person covered by the NLRA “shall be required as a condition of employment or continuation of employment: to become or remain a member or a labor organization; to pay any dues, fees, assessments, or other charges of any kind or amount to a labor organization[.]” *United Auto.*, 842 F.3d at 410.

74. *Id.* at 420. The District Court had previously ruled that “State law does not include county or municipal law for purposes of § 14(b)[.]” *United Auto., Aerospace & Agric. Implement Workers of Am. v. Hardin Cty.*, 160 F. Supp. 3d 1004, 1010 (W.D. Ky. 2016), *aff’d in part as modified, rev’d in part sub nom.* *Hardin County*, 842 F.3d 407. Relying on “standard principle[s] of statutory construction” the District Court concluded that the two uses of “State” in § 14 (b) “refer[] to the same thing,” i.e. the term only encompasses state law. *Id.* at 1008-10.

75. *United Auto.*, 842 F.3d at 413 (emphasis in original). Based on this interpretation, § 14(b) would read as “[n]othing in this Act shall be construed as authorizing the execution or application of agreements requiring membership in a labor organization as a condition of

The court then moved on to consider conflicting lines of cases. *Mortier*, the court reasoned, strongly supports including political subdivisions in § 14(b)'s exception to preemption.⁷⁶ From a more general perspective, *Mortier* establishes that express authorization to "States" does not infer exclusion of political subdivisions, as these subdivisions are merely components of the state.⁷⁷ In more closely analyzing *Mortier*, the court concluded that although the Supreme Court was examining a different regulatory scheme, there was no discernable material distinction between "the operative principles in the *Mortier* analysis and the instant case."⁷⁸ The court then extensively analyzed *Ours Garage*, which "represent[ed] even stronger authority" for the inclusion of political subdivisions in § 14(b) since the NLRA is completely silent as to political subdivisions.⁷⁹ Overall, the court concluded that the NLRA provided neither a persuasive basis to distinguish *Mortier* or *Ours Garage* nor the "clear and manifest purpose" required to supplant local authority.⁸⁰

The Seventh Circuit addressed this same issue in *International Union of Operating Engineers Local 399 v. Village of Lincolnshire* in September 2018, holding that "the authority conferred by . . . [§] 14(b) does not extend to political subdivisions," and thus the Village's right-to-work ordinance was preempted.⁸¹ Crucial to this decision was the proposition

employment in any State [or political subdivision thereof] or Territory in which such execution or application is prohibited by State [or political subdivision's] or Territorial laws." The lower court focused specifically on the second reference to "State" in § 14(b), but the Court noted that interpreting the first reference to "State" even further supported this conclusion: "the county's position is even stronger when we turn the formulation around. That is, if the *first* reference to 'State' . . . includes political subdivisions of the State (which is plainly must, as political subdivisions are components of the State, within the State, that exercise governmental power of the State, that exercise governmental power of the State), then the second reference to state must also be read to include political subdivisions, thereby necessarily excepting the law of political subdivisions from preemption as well." *Id.* at 413.

76. *Id.* at 414.

77. *Id.* at 414 (citing *Wis. Pub. Intervenor v. Mortier*, 501 U.S. 597, 607-08 (1991)).

78. *Id.*

79. "Per *Ours Garage*, this silence is to be construed as preserving state authority to delegate its governmental powers to its political subdivisions as it sees fit." *Id.* at 415 (referencing *Ours Garage*, 536 U.S. at 429).

80. *Id.* at 417. The Court also cited several cases that stood for contrary propositions, including Sixth Circuit precedent, but concluded these cases carried no persuasive weight given that they predated *Ours Garage* and/or *Motier*. *Id.* at 416-17 (citing *CSX Transportation v. City of Plymouth*, 86 F.3d 626 (6th Cir. 1996); *Petrey v. City of Toledo*, 246 F.3d 548 (6th Cir. 2001); *Kentucky State AFL-CIO v. Puckett*, 391 S.W.2d 360 (Ky. 1965); *New Mexico Fed'n of Labor v. City of Clovis*, 735 F. Supp. 999 (D.N.M. 1990)).

81. *Int'l Union of Operating Eng'rs Local 399 v. Vill. of Lincolnshire*, 905 F.3d 995, 999 (7th Cir. 2018), *cert. granted, judgment vacated sub nom. Vill. of Lincolnshire, Ill. v. Int'l Union of Operating Eng'rs Local 399*, 139 S. Ct. 2692 (2019). Section 4 of the ordinance banned union-security agreements by prohibiting "any requirement that workers join a union, compensate a union financially, or make payments to third parties in lieu of such contributions." *Id.* The District Court had previously reached the same conclusion. *See Int'l Union of Operating Eng'rs, Local 399, AFL-CIO v. Vill. of Lincolnshire*,

that interpreting § 14(b) as permitting delegation to political subdivisions of the state would do “violence to the broad structure of labor law[.]”⁸² First, the court noted that the Supreme Court has carefully monitored the state’s authority under § 14(b), as any state regulation executed under § 14(b) undermines Congress’ purported goal in passing the NLRA.⁸³ The court then focused on how delegation stands in stark contrast to the NLRA’s goal of creating national uniformity in labor law and minimizing industrial strife.⁸⁴ As such, the court did not address the issue within the “clear and manifest” framework presented by *Mortier* and *Ours Garage* since “[t]he federal labor laws ... are a different matter altogether.”⁸⁵ Interpreting § 14(b) as permitting states to redelegate the power the section cedes back to them makes little sense, the court reasoned, as such an interpretation would create “a crazy-quilt of regulations” that would place employers in “impossible positions.”⁸⁶ Moreover, re delegation would create a frenzy of administrative nightmares.⁸⁷

Based on the foregoing proposition, the court distinguished both *Mortier* and *Ours Garage* based upon the differing statutory schemes.⁸⁸ Whereas *Mortier* found clues in FIFRA’s regulatory language indicating that exclusion of political subdivisions would have created inherent tensions in FIFRA, no such clues are present in the NLRA.⁸⁹ Likewise, *Ours Garage* concerned an express preemption provision of the ICA,

Illinois, 228 F. Supp. 3d 824, 837-38 (N.D. Ill. 2017), *aff’d sub nom*, *Vill. of Lincolnshire*, 905 F.3d 995.

82. *Vill. of Lincolnshire*, 905 F.3d at 1005.

83. *Id.* at 1001 (“[the NLRA] favors permitting [union-security] agreements unless a State or Territory with a sufficient interest in the relationship expresses a contrary policy via right-to-work laws.”) (citing *Mobil Oil Corp.*, 426 U.S. at 420)).

84. *Id.* at 1005-06 (citing *NLRB v. Nash-Finch Co.*, 404 U.S. 138, 144 (1971); *NLRB v. Jones & Laughlin Steel Corp.*, 301 U.S. 1, 41, 45 (1937)).

85. *Id.* at 1007.

86. *Id.* at 1004-05. The concern for employers stems from *Mobil Oil*, where the Supreme Court held that an employee’s “predominant job situs” is the triggering factor for § 14(b). 426 U.S. 407, 414 (1976). As the Court stated, “right-to-work laws cannot void agreements permitted by . . . § 8(a)(3) when the situs at which all the employees covered by the agreement perform most of their work is located outside of a State having such laws.” *Id.* Therefore, if § 14(b) extends to political subdivisions, the employer’s duty to bargain or prohibition on bargaining could shift from day to day or job to job. *Vill. of Lincolnshire*, 905 F.3d at 1004. For example, imagine an employer in State X which had no state-wide right-to-work law, but Village Y had enacted a valid and enforceable right-to-work law. Further, imagine that nearby Village Z did not have a right-to-work ordinance. If the employer had offices in Village Y, but its workers’ predominant job situs was in Village Z, the employer would risk committing an unfair labor practice by refusing to bargain over an agency-shop provision. *See Id.*

87. There are more than 90,000 general and special-purpose governments in the United States compared to just 50 states. *Id.* As workers of many trades or industries often operate in several municipalities, even in the same week, employees and employers could potentially be subject to extensive conflicting collective bargaining regulations if § 14(b) included political subdivisions of states. *Id.*

88. *Id.* at 1006-08.

89. *Id.* at 1006 (citing *Wis. Pub. Intervenor v. Mortier*, 501 U.S. 597, 608-09 (1991)).

while redelegation in the context of § 14(b) does not.⁹⁰ Furthermore, the court emphasized that union regulations, although once falling under states' police power, have been under the control of the federal government for nearly a century.⁹¹

III. ARGUMENT

This Section argues that the Seventh Circuit is correct that “State” as employed in § 14(b) of the NLRA does not include political subdivisions of the state, and therefore political subdivisions of the state are preempted from passing local right-to-work ordinances prohibiting union-security agreements. The Seventh Circuit’s reasoning was somewhat flawed, however, in that it did not analyze § 14(b) under *Mortier*’s and *Ours Garage*’s requirement of “clear and manifest” congressional intent to supplant local authority.⁹² Yet as the proceeding analysis demonstrates, even analyzing § 14(b) under the principles announced in *Mortier* and *Ours Garage*, § 14(b) should be narrowly construed to exclude political subdivisions.

Section III(A) will first briefly analyze the statutory language of the NLRA to conclude that from a purely textual analysis, the statute’s language insufficiently provides the requisite congressional intent to preempt local right-to-work ordinances. Section III(B) sheds light on why, given the legislative history and purpose of the NLRA, a purely textual analysis is not dispositive, and thus the Seventh Circuit correctly dispensed with an in-depth textual analysis. Lastly, Section III(C) analyzes *Mortier* and *Ours Garage* to reveal that these opinions are not as dispositive of the issue as articulated by the Sixth Circuit. Overall, the analysis demonstrates that the NLRA is a unique, complex statutory framework that, when understood as a whole, necessitates a strict and narrow reading of § 14(b) to abide by congressional intent and preserve the spirit and purpose of the NLRA.

90. “Section 14(b) plays a different function. It is not the source of NLRA preemption; rather, it is an exception to the general preemption established by the Act for the field of labor relations. The question is only how much subnational authority does section 14(b) restore.” *Id.* at 1008.

91. *Id.*

92. In order to avoid this requirement, the Court reasoned that *Mortier* and *Ours Garage* involved the scope of an express preemption provision, whereas § 14(b) is an exception to the general preemption of the NLRA. *Vill. of Lincolnshire*, 905 F.3d at 1008. While such a distinction is important, it is the author’s opinion that this difference is more properly considered as evidence of a “clear and manifest” indication that Congress sought to exclude political subdivisions from § 14(b), as opposed to a distinction warranting departure from *Mortier*’s and *Ours Garage*’s teachings.

A. A Purely Textual Analysis of the NLRA Supports the Sixth Circuit's Conclusion but is Inadequate

With an issue of statutory construction, the starting point is always the statutory language. Some scholars have argued that the language of the NLRA only allows states to pass right-to-work laws.⁹³ This Section, however, argues that when focusing solely on the statutory language, “State” as used in § 14(b) does except political subdivisions from the NLRA’s general preemption. Under this rationale, the Sixth Circuit reached the proper conclusion based solely on the text of the NLRA. Nevertheless as the proceeding Sections III(B) and III(C) will explain, the Seventh Circuit was correct in holding that due to the unique nature of the NLRA, political subdivisions are not included in § 14(b)’s exception from preemption.

As some scholars, as well as the Seventh Circuit, have noted, construing the term “State” in § 14(b) to encompass political subdivisions creates some issue when analyzing the rest of the statute, as there are instances in which other statutory provisions clearly differentiate between state and local power.⁹⁴ First and most compelling, § 14(a) of the Taft-Hartley Act states that supervisors are not required to be defined “as employees for the purpose of any law, either national or local[.]”⁹⁵ As this provision is included in the same section as § 14(b), it is telling that Congress uses the word “local” instead of the word “State.” “Local” in this provision is understood as referring to both state and local law, and thus reading “State” in § 14(b) to encompass local law would render “local” in § 14(a) meaningless.⁹⁶ Differentiating between state and local law in these two adjacent provisions provides one piece of evidence that Congress did not intend for “State” in § 14(b) to encompass political subdivisions.

The NLRA’s definitional section, § 152(2), further supports the Seventh Circuit’s construction of § 14(b). The NLRA defines an employer

93. For a thoughtful, more in-depth textual analysis, albeit a differing outcome, see Levinson, et al., *supra* note 70 at 480-85.

94. See *Int’l Union of Operating Eng’rs Local 399 v. Vill. of Lincolnshire*, 905 F.3d 995, 1003-04 (7th Cir. 2018), *cert. granted, judgment vacated sub nom. Vill. of Lincolnshire, Ill. v. Int’l Union of Operating Eng’rs Local 299*, 139 S. Ct. 2692 (2019); see also Levinson, et al., *supra* note 70 at 480-85; *United Auto., Aerospace & Agric. Implement Workers of Am. v. Hardin Cty.*, 160 F. Supp. 3d 1004, 1006-07 (W.D. Ky. 2016), *aff’d in part as modified, rev’d in part sub nom. United Auto., Aerospace & Agric. Implement Workers of Am. Local 3047 v. Hardin Cty.*, 842 F.3d 407 (6th Cir. 2016) (citing *Day v. James Marine, Inc.*, 518 F.3d 411, 416 (6th Cir. 2008) (“If words are known by the surrounding company they keep, they are surely known by how they are used in the surrounding sections of the same statute.”)).

95. 29 U.S.C. § 164(a).

96. Levinson, et al., *supra* note 70 at 481.

as excluding “any State or political subdivision thereof[.]”⁹⁷ If “State” in § 14(b) encompasses political subdivisions, then the inclusion of this phrase in § 152(2) would be rendered superfluous.⁹⁸ When § 14(b) is compared to this section of the NLRA, the more natural reading of “State” is to limit § 14(b)’s exception from preemption to state law only. This serves as further evidence that the general reference to “State” does not include political subdivisions.

Likewise, pertinent language in § 158 is illuminating. This section allows a party to a collective bargain contract to terminate or modify such contract if said party notifies the Federal Mediation and Conciliation Service and simultaneously notifies “any State or Territorial agency” established to mediate and conciliate disputes within the “State or Territory” where the dispute occurred.⁹⁹ If this reference to “State or Territory” is read to include political subdivisions, then such notification requirements become much more complex.¹⁰⁰ A party would be required to also notify any local mediation agency, which seems to be a peculiar result considering the party already has to notify Federal and state agencies.¹⁰¹

Finally, § 160(a) empowers the National Labor Relations Board to cede agency jurisdiction regarding certain industries to “any agency of any State or Territory[.]”¹⁰² As the NLRA created a framework of federal regulations regarding labor law that was historically reserved to the states, this provision naturally makes sense if “State” only includes states. Allowing the NLRB to cede agency jurisdiction to a local agency, however, would seem to be an unusual outcome given that the NLRA seeks to create uniformity in labor law.

Notwithstanding the preceding analysis, and similar conclusions drawn by other scholars,¹⁰³ based solely on the NLRA’s language, the Sixth Circuit correctly concluded that § 14(b)’s use of the term “State” encompasses political subdivisions.¹⁰⁴ As the Supreme Court has noted, “[t]he exclusion of political subdivisions cannot be inferred from the express authorization to the ‘State[s]’ because political subdivisions are

97. 29 U.S.C. § 152(2).

98. Levinson, et al., *supra* note 70 at 481-82.

99. 29 U.S.C. § 158(d)(3).

100. *See* Levinson, et al., *supra* note 70 at 482-83.

101. *Id.* at 482-83.

102. 29 U.S.C. § 160(a).

103. *See* Levinson, et al., *supra* note 70 at 480-85.

104. *United Auto., Aerospace & Agric. Implement Workers of Am. Local 3047 v. Hardin Cty.*, 842 F.3d 407, 413 (6th Cir. 2016). This maxim states that “identical words and phrases within the same statute should normally be given the same meaning.” *Id.* (citing *Powerex Corp. v. Reliant Energy Servs., Inc.*, 551 U.S. 224, 232 (2007)).

components of the very entity the statute empowers.”¹⁰⁵ Political subdivisions are merely “convenient agencies” for states to exercise the use of their governmental powers through delegation.¹⁰⁶ Thus, construing the term “State” narrowly to exclude political subdivisions requires a “clear and manifest purpose” to preempt local authority,¹⁰⁷ a purpose that is lacking from the text of the NLRA.

NLRA § 14(b) contains no reference to “political subdivisions” and therefore, standing alone, the term “State” does include political subdivisions.¹⁰⁸ And even considering the scattered differentiations between state and local power found elsewhere in the statute, such language is insufficient to establish the necessary congressional intent to preempt local authority.¹⁰⁹ The Sixth Circuit correctly noted that the “presumption-of-consistent-usage” maxim supports the result that § 14(b)’s use of “State” encompasses political subdivisions.¹¹⁰ The NLRA’s language, standing alone, does not provide the necessary congressional intent to limit the construction of the term “State.” Therefore, the term “State” in § 14(b) can plausibly be read to contemplate redelegation of the state’s authority to regulate union-security agreements to its political subdivisions.

However, interpreting a statute might also require examining the statute’s legislative history to determine congressional intent.¹¹¹ As the following Sections demonstrate, the Seventh Circuit correctly decided not to place controlling weight on the NLRA’s statutory language in construing § 14(b).

B. The Legislative History and Purpose of the NLRA

As explained in the prior Section, a purely textual analysis of the NLRA in light of Supreme Court jurisprudence regarding delegation between states and their political subdivisions supports the Sixth Circuit’s position. However, the Seventh Circuit correctly chose not to rely solely on the literal terms of the NLRA and instead focused more on the statute’s

105. *Wis. Pub. Intervenor v. Mortier*, 501 U.S. 597, 608 (1991).

106. *Id.* at 607-08.

107. *City of Columbus v. Ours Garage and Wrecker Serv., Inc.*, 536 U.S. 424, 432 (2002).

108. *See Id.* (“Had 49 U.S.C. § 14501(c) contained no reference at all to ‘political subdivision[s] of a State,’ the preemption provision’s exception for exercises of the ‘safety regulatory authority of a State,’ §14501(c)(2)(A), undoubtedly would have embraced both state and local regulation.”).

109. *See Mortier*, 501 U.S. at 612 (“The scattered mention of political subdivisions elsewhere in FIFRA does not require their exclusion [in 7 U.S.C. § 136v(a).]”).

110. *United Auto.*, 842 F.3d at 413.

111. *See, e.g., United Auto.*, 842 F.3d 407; *Int’l Union of Operating Eng’rs Local 399 v. Vill. of Lincolnshire*, 905 F.3d 995 (7th Cir. 2018), *cert. granted, judgment vacated sub nom. Vill. of Lincolnshire, Ill. v. Int’l Union of Operating Eng’rs Local 399*, 139 S. Ct. 2692 (2019). This is not always the case, but courts often do so whenever the language itself is ambiguous.

legislative history and overall purpose.¹¹² The following analysis reveals that the NLRA indeed occupies a unique position that, when joined with the preceding analysis, warrants construing § 14(b) strictly and narrowly such that local right-to-work ordinances are preempted.¹¹³

First and foremost, the Sixth Circuit failed to place sufficient weight on the NLRA's overall purpose of "creating a national, uniform body of labor law and policy[.]"¹¹⁴ Given the pervasive regulatory framework of the NLRA, the Supreme Court has noted that if not for § 14(b), the NLRA would have a full preemptive effect.¹¹⁵ Recognizing the overall spirit and purpose of the NLRA, the Seventh Circuit correctly claims that construing § 14(b) to permit delegation to political subdivisions of the state would "do violence to the broad structure of labor law[.]"¹¹⁶ Although allowing states to enact or prohibit right-to-work laws undoubtedly undermines Congress' goal in achieving national uniformity in labor law, exempting states from preemption is a rational decision given historical state control over labor relations and the basic tenants of the United States' federal system of government. And although the Supreme Court has stated in dicta that specific exceptions that run contrary to a particular congressional goal do not invariably call for the narrowest possible construction,¹¹⁷ such a narrow construction is warranted in this instance.¹¹⁸

Construing § 14(b) to permit delegation to political subdivisions of the state would create an "administrative nightmare" that would not merely tend against the spirit of the NLRA, but essentially eradicate it.¹¹⁹ In a state that has yet to enact laws regulating union-security agreements, the hundreds of cities, villages, and municipalities within the state could enact varying union-security agreement regulations that would hinder

112. *Vill. of Lincolnshire*, 905 F.3d at 1004.

113. *See Id.*; *see also* *Kentucky State AFL-CIO v. Puckett*, 391 S.W.2d 360, 362 (KY 1965); *Retail Clerks Intl. Ass'n v. Schermerhorn*, 375 U.S. 96, 102-03 (1963).

114. *United Auto.*, 842 F.3d at 412; *see Vill. of Lincolnshire*, 905 F.3d at 1005-06.

115. *See Schermerhorn*, 375 U.S. at 102; *see also Puckett*, 391 S.W.2d at 362.

116. *Int'l Union of Operating Eng'rs Local 399 v. Vill. of Lincolnshire*, 905 F.3d 995, 1005 (7th Cir. 2018), *cert. granted, judgment vacated sub nom. Vill. of Lincolnshire, Ill. v. Int'l Union of Operating Eng'rs Local 399*, 139 S. Ct. 2692 (2019).

117. *City of Columbus v. Ours Garage & Wrecker Serv., Inc.*, 536 U.S. 424, 440 (2002); *but see Vill. of Lincolnshire*, 905 F.3d at 1006 ("While section 14(b) represents a decision that some variation at the state and territorial level is acceptable, that does not mean that national uniformity itself has been abandoned as a goal.")

118. As the Kentucky Supreme Court stated, "We think it is not reasonable to believe that Congress would have intended to waive other than to *major policy-making units* such as *states and territories*, the determination of policy in such a controversial areas as that of union-security agreements." *Puckett*, 391 S.W.2d at 362. It is worth noting that the Supreme Court subsequently favorably cited the aforementioned case, although not for this specific proposition. *Oil, Chem. & Atomic Workers Int'l Union, AFL-CIO v. Mobil Oil Corp.*, 426 U.S. 407, 413, n.7 (1976).

119. *See Vill. of Lincolnshire*, 905 F.3d at 1004-05.

employers, employees, and unions.¹²⁰ Thus, the NLRA's goal of creating uniformity in labor law and reducing industrial strife¹²¹ would effectively be extinguished if localities were able to regulate union-security agreements.¹²² A state could theoretically have a web of conflicting regulations surrounding union-security agreements, creating intra-state tension among employers, employees, and labor unions. Given this potential reality and the controversial nature of union-security agreements, it is unreasonable to conclude that Congress intended for §14(b) to exempt political subdivisions from preemption.¹²³

While not specifically mentioned in the Seventh Circuit's opinion, the legislative history of the Taft-Hartley Act of 1947 provides strong support for narrowly construing the term "State" in § 14(b). By the time the Taft-Hartley Act was passed into law—and § 14(b) was added to the NLRA—twelve states had provisions in effect that outlawed or restricted closed-shop or similar agreements.¹²⁴ Congress was seemingly well aware of these laws in the 1947 debates regarding the Taft-Hartley Act,¹²⁵ and added § 14(b) to "make clear and unambiguous the purpose of Congress" not to preempt the field of union-security agreements as to state control.¹²⁶ Additionally, local right-to-work ordinances did not exist at the time the Taft-Hartley Act was before Congress.¹²⁷ Given this context of the Taft-Hartley Act, it can properly be inferred that in passing § 14(b) Congress specifically intended to exempt only state regulations.¹²⁸

Additionally, Congress was clear that in enacting § 14(b), the purpose was to "continue the policy of the Wagner Act and avoid federal interference with state laws[.]"¹²⁹ In the House Conference Report, Senator Taft stated that § 8(a)(3), as originally enacted, "did not in any way prohibit the enforcement of State laws which already prohibited closed-shops."¹³⁰ Therefore, § 14(b) simply made clear that states are able

120. *See Id.*

121. *See Id.* at 1005-06 (citing *NLRB v. Nash-Finch Co.*, 404 U.S. 138, 144 (1971); *NLRB Jones & Laughlin Steel Corp.*, 201 U.S. 1, 41, 45 (1937)).

122. *See supra* section II.D.

123. *See Puckett*, 391 S.W.2d at 362.

124. *See Retail Clerks Int'l Ass'n, Local 1625, AFL-CIO v. Schermerhorn*, 375 U.S. 96, 100, n.4 (1963) (citing *State Laws Regulating Union-Security Contracts*, 21 L.L.R.M. 66 (1948)).

125. *Id.* at n.5 (citing H.R. REP. NO. 245, at 34 (1947); S. REP. NO. 105, at 6 (1947)).

126. *Id.* at 100-01, n.8 (citing H.R. REP. NO. 245, at 44 (1947)).

127. A few scholars have noted that local right-to-work ordinances were not in existence at the time the Taft-Hartley Act was passed. *See Levinson, et al.*, *supra* note 70 at 485, n.157. These same scholars note that state right-to-work ordinances did exist at the time. *Id.* at 485.

128. This inference is further supported by a Supreme Court decision in 1945 that raised genuine concern as to whether state regulation of union-security agreements were preempted by § 8(a)(3). *See Hill v. State of Fla. ex rel. Watson*, 325 U.S. 538 (1945); *see also Schermerhorn*, 375 U.S. at 100-01.

129. *Schermerhorn*, 375 U.S. at 101-02.

130. *Id.* at 102 (citing Cong. Rec. 6520, 2 Leg. Hist. of the Labor Management Relations Act, 1947,

to regulate union-security agreements. Although the Kentucky Supreme Court held that this particular piece of legislative history could mean the use of “State or Territory” has “no particular significance,”¹³¹ the better construction is to read the use of “State” as deliberate. Even interpreting this legislative history as a special exception of Congress’ general intention to preempt the field entirely,¹³² there is still a strong argument for construing the term “State” narrowly given Congress’ awareness of the then existing state right-to-work laws.¹³³

As the Supreme Court has stated, Congress enacted the NLRA to create national uniformity in labor law and to minimize industrial strife.¹³⁴ Construing § 14(b) as permitting redelegation to political subdivisions would directly oppose the objectives of the NLRA in any state that has not enacted a right-to-work law.¹³⁵ While the NLRA does favor permitting union security agreements, Congress recognized that “a State or Territory with a sufficient interest in the relationship” could “expresses a contrary policy via right-to-work laws.”¹³⁶ Yet it makes little sense to believe that with these intended goals, Congress meant for § 14(b) to save to the states the ability to confer authority on political subdivisions to enact right-to-work laws.

C. *The Seventh Circuit Correctly Distinguished Mortier and Ours Garage*

Despite the foregoing analysis, the crux of the split between the Sixth and Seventh Circuits largely turns on what effect, if any, *Mortier* and *Ours Garage* should have regarding the interpretation of § 14(b). The Sixth Circuit concluded that both Supreme Court decisions are analogous as they rejected “the very kinds of arguments” raised by the petitioner-labor organizations.¹³⁷ In contrast, the Seventh Circuit distinguished the decisions based upon the differing statutory frameworks at issue.¹³⁸ As

1597).

131. Kentucky State AFL-CIO v. Puckett, 391 S.W.2d 360, 362 (Ky. 1965).

132. *Id.*

133. See *Schermerhorn*, 375 U.S. at 100, n.5 (citing H.R. Rep. No. 245, 80th Cong., 1st Sess., p. 34; S. Rep. No. 105, 80th Cong., 1st Sess., p.6).

134. Int’l Union of Operating Eng’rs Local 399 v. Vill. of Lincolnshire, 905 F.3d 995, 1005-06 (7th Cir. 2018), *cert. granted, judgment vacated sub nom.* Vill. of Lincolnshire, Ill. v. Int’l Union of Operating Eng’rs Local 399, 139 S. Ct. 2692 (2019) (citing NLRB v. Nash-Finch Co., 404 U.S. 138, 144 (1971); NLRB Jones & Laughlin Steel Corp., 301 U.S. 1, 41 (1937)).

135. See *Id.*

136. Oil, Chem., & Atomic Workers Int’l Union, AFL-CIO v. Mobil Oil Corp., 426 U.S. 407, 420 (1976).

137. United Auto., Aerospace & Agric. Implement Workers of Am. Local 3047 v. Hardin Cty., 842 F.3d 407, 414, 420 (6th Cir. 2016).

138. *Vill. of Lincolnshire*, 905 F.3d at 1006-07.

previously mentioned in this Article, given the NLRA's broad preemptive effect and pervasiveness, *Mortier* and *Ours Garage* neither require nor suggest that § 14(b) should be construed broadly to encompass political subdivisions within the term, "State." Adhering to the principle that "the meaning of words in a statute depend upon the character and aim of the specific provision involved," the Seventh Circuit properly distinguished the Supreme Court decisions based on the differing statutory frameworks.¹³⁹ The following two Sections demonstrate that *Mortier* and *Ours Garage* do not provide support for construing "State" in § 14(b) as including political subdivisions of the state.

1. *Wisconsin Public Intervenor v. Mortier*

In analyzing *Mortier*, the Sixth Circuit did not find "any material distinction" between *Mortier*'s operative principles and analysis of § 14(b).¹⁴⁰ While conceding that *Mortier* concerned a different regulatory scheme and did not make a "broad pronouncement" regarding the interpretation of "State" in federal legislation, the Sixth Circuit nonetheless found *Mortier* as strong support for its' holding. While the Sixth Circuit correctly noted several common factual features between FIFRA¹⁴¹ and the NLRA,¹⁴² such similarities were greatly overstated.

As demonstrated above in Section III(B), the NLRA's legislative history provides strong support for construing the term "State," as used in § 14(b), strictly and narrowly. On the other hand, FIFRA's legislative history provides no indication as to whether "State" as used in § 136v(a) encompassed political subdivisions.¹⁴³ Writing for the majority, Justice White noted that the two Committees responsible for the FIFRA amendment at issue disagreed over whether FIFRA preempted pesticide regulation by political subdivisions.¹⁴⁴ Given this disagreement, it would be illogical to conclude that Congress had the intent, let alone a clear and manifest purpose, to preempt local pesticide use. Despite any specific mention of counties or political subdivisions in the NLRA's legislative

139. *Id.* at 1006 (citing *District of Columbia v. Carter*, 409 U.S. 418, 420 (1973) (internal quotations omitted)).

140. *United Auto.*, 842 F.3d at 414.

141. FIFRA was originally enacted in 1947 to regulate the use of pesticides. The specific amendment in FIFRA addressed by the Court in *Mortier* was passed in 1972, as Congress responded to growing environmental and *safety* concerns. *See Wis. Pub. Intervenor v. Mortier*, 501 U.S. 597, 601 (1991).

142. *United Auto.*, 842 F.3d at 414.

143. *Mortier*, 501 U.S. at 609-10.

144. *Id.* at 610. Justice White found it important to note "this disagreement was confined to the preemptive effect of FIFRA's authorization of regulatory power to the States in § 136v," the particular provision at issue. *Id.*

history,¹⁴⁵ this sharply contrasts with the NLRA's legislative history.

The Seventh Circuit also correctly recognized that *Mortier* began with a fundamentally different, albeit technical, baseline for construing FIFRA. The issue in *Mortier* was whether § 136v(a) forbade political subdivisions from regulating pesticide use, not whether political subdivisions were authorized to regulate some matter otherwise beyond their control.¹⁴⁶ Construing the term "State" in § 14(b) is an entirely different matter. The Supreme Court has recognized that the NLRA has a broad preemptive effect, as, due to the interplay between § 8(a)(3) and § 14(b), state laws regulating union-security agreements are saved from preemption only if the regulations fall within the purview of § 14(b).¹⁴⁷ As § 14(b) is an exception to general preemption, in contrast to § 136v(a), § 14(b) should be construed narrowly.

FIFRA's statutory framework also provides significant reason for distinguishing *Mortier*. As the Sixth Circuit notes, FIFRA is a "comprehensive regulatory statute."¹⁴⁸ Yet FIFRA is comprehensive in a manner distinct from the NLRA, as FIFRA "implies a regulatory partnership between federal, state, and local governments."¹⁴⁹ This is because other FIFRA provisions explicitly designate local involvement as part of the enforcement scheme.¹⁵⁰ Therefore, construing "State" as used in § 136v(a) as excluding political subdivisions would "require the anomalous result" of preempting the actions of any local agency that

145. Levinson, et al., *supra* note 70 at 489.

146. See *Int'l Union of Operating Eng'rs Local 399 v. Vill. of Lincolnshire*, 905 F.3d 995, 1006-07 (7th Cir. 2018), *cert. granted, judgment vacated sub nom. Vill. of Lincolnshire, Ill. v. Int'l Union of Operating Eng'rs Local 399*, 139 S. Ct. 2692 (2019) (emphasis in original); see also *Mortier*, 501 U.S. at 614 ("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. Rather, it acts to ensure that the States could continue to regulate use and sale even where, such as with regard to the banning of mislabeled products, a narrow pre-emptive overlap might occur.").

147. *Oil, Chem., & Atomic Workers Int'l Union, AFL-CIO v. Mobil Oil Corp.*, 426 U.S. 407, 416-17 (1976).

148. *United Auto., Aerospace & Agric. Implement Workers of Am. Local 3047 v. Hardin Cty.*, 842 F.3d 407, 414 (6th Cir. 2016) (citing *Wis. Pub. Intervenor v. Mortier*, 501 U.S. 597, 601 (1991)). However, the degree of FIFRA's comprehensiveness is questionable. See *Mortier*, 501 U.S. at 615 ("FIFRA does not suggest a goal of regulatory coordination that sweeps either as exclusively or as broadly as *Mortier* contends.").

149. *Mortier*, 501 U.S. at 615 (emphasis in original).

150. See, e.g., 7 U.S.C. § 136t(b) ("The Administrator shall cooperate with Department of Agriculture, any other Federal agency, and any appropriate agency of any State or any *political subdivision* thereof, in carrying out the provisions of this subchapter, and in securing uniformity of regulations."); 7 U.S.C. § 136f(b) (requires manufacturers to produce records for inspection "upon request of any officer or employee of the . . . [EPA] or of any State or *political subdivision*") (emphasis added); 7 U.S.C. § 136u(a)(1) (authorizing the Administrator to "delegate to any State . . . the authority to cooperate in the enforcement of . . . [this Act] through the use of its *personnel* or facilities") (emphasis added).

exercised expressly authorized state-delegated powers.¹⁵¹ In contrast, the NLRA contains no provisions implying a similar scheme; regulations of union activity has resided with the Federal government for nearly a century vis-à-vis the NLRA.¹⁵² And as previously noted, construing § 14(b) broadly would in fact create inherent tensions within the NLRA.¹⁵³

Ignoring these fundamental differences between FIFRA and the NLRA, the Sixth Circuit instead relies on the broad principles outlined in *Mortier*.¹⁵⁴ Viewing such principles as a broad pronouncement logically supports the Sixth Circuit's holding but fails to recognize the context in which the *Mortier* Court applied those principles. The NLRA occupies a fundamentally different position compared to FIFRA, and these key distinctions support the Seventh Circuit's conclusion that Congress impliedly intended to exclude political subdivisions from the scope of § 14(b).

2. *City of Columbus v. Ours Garage and Wrecker Serv., Inc.*

In a similar fashion, the Seventh Circuit also correctly distinguished *Ours Garage* based on the differences in statutory framework and overall spirit of the two statutes in question. *Ours Garage* concerned the Interstate Commerce Act and addressed an express preemption provision, § 14501(c)(2)(A), which saved "States" from preemption regarding safety regulation of motor vehicles.¹⁵⁵ The starting point for the Supreme Court's analysis was more in line with construction of § 14(b), as both issues address a specific exception from preemption.¹⁵⁶ While *Ours Garage* did demonstrate that the Supreme Court would apply *Mortier*'s principles to other statutory frameworks,¹⁵⁷ the reasoning underlying *Ours Garage* provides a clear basis for distinguishing the opinion.

151. See *Mortier*, 501 U.S. at 614.

152. *Int'l Union of Operating Eng'rs Local 399 v. Vill. of Lincolnshire*, 905 F.3d 995, 1008 (7th Cir. 2018), *cert. granted, judgment vacated sub nom. Vill. of Lincolnshire, Ill. v. Int'l Union of Operating Eng'rs Local 399*, 139 S. Ct. 2692 (2019).

153. See *supra* Section III.B.

154. See *United Auto., Aerospace & Agric. Implement Workers of Am. Local 3047 v. Hardin Cty.*, 842 F.3d 407, 413-14 (6th Cir. 2016).

155. *City of Columbus v. Ours Garage & Wrecker Serv., Inc.*, 536 U.S. 424, 428 (2002); 49 U.S.C. § 14501(c)(2)(A).

156. Although the Seventh Circuit argues that § 14(b) plays a different role compared to § 14501(c)(2)(A), it is the Author's position that both provisions are more similar than different. The Seventh Circuit's position appears to come from the NLRA's broad and general preemption in the field of labor relations, while the ICA has a narrower scope of preemption. See *Vill. of Lincolnshire*, 905 F.3d at 1008 ("Section 14(b) plays a different function; rather, it is an exception to the general preemption established in the Act for the field of labor relations. The question is only how much subnational authority does section 14(b) restore?").

157. See *United Auto.*, 842 F.3d at 414-15 (*Ours Garage* "closely followed the *Mortier* analysis[.]").

As the Seventh Circuit correctly identified, *Ours Garage* depended “heavily on an extensive contextual analysis” of other ICA provisions “that have no corollary in the NLRA.”¹⁵⁸ Whereas § 14(b) is the only exception to preemption from the NLRA, the ICA contained a general preemption provision followed by four statutory exceptions.¹⁵⁹ The general preemption provision embraces both “a State . . . [and a] political subdivision of a State,”¹⁶⁰ while the exception to preemption in § 14501(c)(2)(A) only references a “State.”¹⁶¹ Yet the third exception to preemption also encompasses “a State or a political subdivision of a State,”¹⁶² and this language is repeated in almost every other provision of the section.¹⁶³ Although this textual structure presented a closer call than *Mortier*, the *Ours Garage* majority recognized that construing “State” narrowly would create inherent tension within the ICA by precluding localities from enforcing safety regulations of motor vehicles enacted by the state legislature.¹⁶⁴ As demonstrated in Section III(A), narrowly construing the term “State” in § 14(b) would create no anomaly in application of the NLRA; rather, broadly construing the term would render other provisions superfluous.

Most importantly, *Ours Garage* demonstrates the fundamental differences between statutes such as the ICA or FIFRA and the NLRA. The *Ours Garage* majority continually references ICA’s focus on “safety regulatory authority.”¹⁶⁵ As the Court noted, “[t]his case . . . [deals] with preemption stemming from Congress’ power to regulate commerce, in a field where *States have traditionally allowed localities to address local concerns.*”¹⁶⁶ Expanding on this focus, the majority emphasized that Ohio lawmakers had delegated some forms of motor vehicle regulations to the cities.¹⁶⁷ Moreover, the ICA primarily concerned economic regulation, whereas § 14501(c)(2)(A) addressed traditional safety concerns.¹⁶⁸ This

158. *Vill. of Lincolnshire*, 905 F.3d at 1008.

159. *City of Columbus v. Ours Garage & Wrecker Serv., Inc.*, 536 U.S. 424, 433 (2002).

160. 49 U.S.C. § 14501(c)(1).

161. 49 U.S.C. § 14501(c)(2)(A).

162. 49 U.S.C. § 14501(c)(2)(C).

163. *Ours Garage*, 536 U.S. at 433.

164. *Id.* at 436 (Since § 14501(c)(1) preempts the power of both states and localities from *enacting or enforcing* a law, “if . . . § 14501(c)(2)(A) reaches only States, then localities are preempted not only from *enacting*, but equally from *enforcing*, safety regulations[.]”)

165. *Id.* at 439.

166. *Id.* (“Congress’s clear purpose in § 14501(c)(2)(A) is to ensure that its preemption of States’ economic authority over motor carriers of property, . . . not restrict the preexisting and traditional state police power over safety. That power typically includes the choice to delegate the State’s safety regulatory authority to localities. Forcing a State to refrain from doing so would effectively restrict that very authority.”) (quotations omitted) (emphasis added).

167. *Id.* at 437-38.

168. *Int’l Union of Operating Eng’rs Local 399 v. Vill. of Lincolnshire*, 905 F.3d 995, 1008 (7th

focus on safety regulations that had traditionally been reserved to the states explains the fundamental difference between the NLRA and other statutes such as FIFRA¹⁶⁹ or the ICA.¹⁷⁰ The NLRA stands in stark contrast as it concerns labor relations, not safety regulations of the type traditionally reserved for the states.¹⁷¹ Labor relations are a fundamentally different concern, and the NLRA was enacted specifically to address collective bargaining. Local right-to-work ordinances fly directly in the face of the NLRA's purpose. And although "states once used their police powers to enact sweeping anti-labor laws, for nearly a century the regulation of unions has rested with the federal, rather than state, government."¹⁷² These fundamental distinctions portray why even despite the broad language in *Mortier* and *Ours Garage*, the focus should be on the specific purpose and spirit of the statute at issue. And in this instance, construing the term "State" in § 14(b) narrowly ensures that the NLRA will continue to serve its intended purpose.

IV. CONCLUSION

Given the holdings of *Mortier* and *Ours Garage*, the Sixth Circuit was correct to analyze § 14(b) within the framework of requiring clear and manifest congressional intent to preempt local authority whenever a statute delegates authority to a "State." Yet as the preceding analysis demonstrates, the Seventh Circuit correctly concluded that § 14(b) should be narrowly construed such that political subdivisions are prohibited from enacting local right-to-work ordinances. Taken as a whole, the NLRA's textual language, legislative history, and purpose demonstrate that the statutory framework is indeed unique and provides the requisite congressional intent to preempt political subdivisions. While *Mortier* and *Ours Garage* might at first present compelling, analogous arguments for permitting redelegation to political subdivisions under § 14(b), the specific statutory frameworks of FIFRA and the ICA are more properly distinguished from the NLRA. Although the Supreme Court has resolved the circuit split given Illinois' recent legislation, the foregoing argument demonstrates that the proper interpretation of § 14(b) requires narrowly construing "States" and prohibiting political subdivisions from regulating

Cir. 2018), *cert. granted, judgment vacated sub nom. Vill. of Lincolnshire, Ill. v. Int'l Union of Operating Eng'rs Local 399*, 139 S. Ct. 2692 (2019).

169. *See Wis. Pub. Intervenor v. Mortier*, 501 U.S. 597, 601 (1991) ("As amended, FIFRA specifies several roles for state and local authorities.").

170. This similarity can also explain why *Ours Garage* heavily borrowed from the principles outlined in *Mortier*.

171. *See Vill. of Lincolnshire*, 905 F.3d at 1007 ("The federal labor laws, as we have already explained, are a different matter altogether.").

172. *Id.* at 1008.

936

UNIVERSITY OF CINCINNATI LAW REVIEW

[VOL. 88

union-security agreements.