Nos. 20-3434, 20-3492

IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

FDRLST MEDIA, LLC,
Petitioner/Cross-Respondent,

v.

NATIONAL LABOR RELATIONS BOARD,
Respondent/Cross-Petitioner.

BRIEF OF *AMICI CURIAE* THE CATO INSTITUTE, REASON FOUNDATION, INDIVIDUAL RIGHTS FOUNDATION, DKT LIBERTY PROJECT, NADINE STROSSEN, P.J. O'ROURKE, CLAY CALVERT, ROBERT CORN-REVERE, MICHAEL JAMES BARTON, AND PENN & TELLER IN SUPPORT OF PETITIONER/CROSS-RESPONDENT

On Petition for Review and Cross-Application for Enforcement of an Order of the National Labor Relations Board

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Dated: March 29, 2021

/s/ Ilya Shapiro
Ilya Shapiro

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[1] Fed. R. App. P. 29 Statement: All parties have consented to the filing of this brief, no party's counsel authored any part of this brief, and no person other than *amici* made a monetary contribution to fund its preparation or submission.

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Nadine Strossen is professor emerita at New York Law School and former national president of the American Civil Liberties Union (1991-2008). She is a frequent speaker and media commentator on constitutional law and civil liberties, and has testified before Congress on multiple occasions. She is author, most recently, of *HATE: Why We Should Resist It with Free Speech, Not Censorship* (2018).

P.J. O'Rourke is one of America's leading political satirists, an H.L. Mencken Research Fellow at the Cato Institute, and a prodigious producer of jokes. Formerly the editor of the *National Lampoon*, he has written for a host of publications and is currently editor-in-chief of the web magazine *American Consequences*. O'Rourke's 20 books, including three *New York Times* bestsellers, have been translated into a dozen languages and are worldwide bestsellers.

Clay Calvert is professor of law, Brechner Eminent Scholar in Mass Communication, and director of the Marion B. Brechner First Amendment Project

at the University of Florida. He has published more than 150 law journal articles related to issues affecting freedom of expression, including ones on the topic of threats, and he has taught courses on communications law for more than 20 years at the undergraduate, graduate and law school levels.

Robert Corn-Revere is a partner at Davis Wright Tremaine LLP, specializing in First Amendment and communications law. He has been involved in many precedent-setting cases, including *United States v. Playboy Entertainment Group, Inc*., 529 U.S. 803 (2000) and *United States v. Stevens*, 559 U.S. 460 (2010). In 2003, Corn-Revere successfully petitioned Governor George Pataki to grant the first posthumous pardon in New York history to the late comedian Lenny Bruce who was convicted for "obscene" comedy routines.

Michael James Barton is a dues-paying union member in Texas. He has lectured at numerous universities and published op-eds across the nation on matters ranging from cybersecurity to missile defense. Barton previously worked in the U.S. Senate, White House, and Pentagon.

Penn Jillette and **Teller** are Emmy-winning magicians, authors, and TV hosts. They are recipients of the Hugh M. Hefner First Amendment Award.

This case concerns *amici* because we are committed to preserving free expression and edgy humor. When an obvious joke is misinterpreted as an illegal threat, everyone becomes a little more frightened that the next thing they say (or

tweet) might get them haled into court. *Amici* have previously filed briefs in many other First Amendment cases, including making light of humorless speech restrictions in *Iancu v. Brunetti*, 139 S. Ct. 2294 (2019), *Matal v. Tam*, 137 S. Ct. 1744 (2017); *Walker v. Texas Div., Sons of Confederate Veterans, Inc.*, 135 S. Ct. 2239 (2015); and *Susan B. Anthony List v. Driehaus*, 134 S. Ct. 2334 (2014).

INTRODUCTION AND SUMMARY OF ARGUMENT

Ben Domenech, publisher of the online politics and culture website *The Federalist*, jokingly tweeted from his personal Twitter account: "FYI @fdrlst first one of you tries to unionize I swear I'll send you back to the salt mine." Another Twitter user with no connection to *The Federalist* filed a charge with the National Labor Relations Board, claiming the tweet amounted to an unfair labor practice by parent company FDRLST Media: threatening reprisal against those wishing to form a union. The NLRB ALJ agreed, as did the Board, ordering Domenech to delete the tweet, among other relief. That order has been appealed, which brings us here.

This case can be resolved on the basis of one fact: Domenech's tweet was a joke, not a threat. We know this because Domenech sent it out to more than 80,000 followers—and anyone else who might find it through retweets or other shares. That's not the typical *modus operandi* for breaking federal labor law. If Domenech really wanted to punish employees of FDRLST Media, he would have done it in an

email—and if he really *really* wanted to punish them, he would have done it in a proverbial meeting (now via Zoom?) that could have been an email.

The tweet was also clearly a joke because it was, well, funny. FDRLST Media is not a cartoonishly evil mega-conglomerate with its own salt mine. Those who approach company headquarters need not fear that Domenech might "release the hounds."[2] His tweet played into that stereotype for humorous effect. There's no indication any FDRLST employee viewed it as anything more than a joke because no reasonable FDRLST employee *could have* viewed it as anything but a joke.[3]

Finally, even though Domenech's tweet was a joke, this case is not. If you can be haled into court and found in violation of federal law on the basis of satire, sarcasm, or hyperbole, everyone will self-censor their humor, to the detriment of freewheeling discourse. Will the NLRB next come for motivational posters saying, "the beatings will continue until morale improves"? Will exasperated exhortations on Twitter to "burn it all down" lead to house calls from the FBI? Better not to start down that path. The NLRB should learn to take a joke.

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[2] Indeed, there are no company headquarters, or at least offices; long before the pandemic, *The Federalist* writers and staff all worked remotely.

[3] Counsel of record, a senior contributor to *The Federalist*, took it as a joke as well. He can also attest, from his experience on the staff listserv, that just as writers take Ben Domenech's story requests to heart, *nobody* takes his tweets seriously.

ARGUMENT

I. THE TWEET WAS A JOKE, NOT A THREAT

The National Labor Relations Act "protects speech by both unions and employers from regulation by the NLRB" if that speech "contains no threat of reprisal or force or promise of benefit." *Chamber of Commerce v. Brown*, 554 U.S. 60, 67 (2008) (quoting 29 U.S.C. § 158(c)). With this provision, Congress "expressly fostered" the "freewheeling use of the written and spoken word." *Id.* at 68 (quoting *Letter Carriers v. Austin*, 418 U.S. 264, 272–73 (1974)).

Because of the important free speech values at stake, courts "should be vigilant to see that the NLRB does not read elements of interference, restraint or coercion into speech that is in fact nonthreatening and that would not strike a reasonable person as threatening." *NLRB v. Windemuller Elec., Inc.*, 34 F.3d 384, 392 (6th Cir. 1994). Unfortunately, that's exactly what the NLRB did here. The Board interpreted this public tweet by *The Federalist* publisher Ben Domenech ("The Tweet") as a threat of reprisal: "FYI @fdrlst first one of you tries to unionize I swear I'll send you back to the salt mine."[4] Both text and context make clear that Domenech's tweet was a joke, not a threat.

[4] Ben Domenech (@bdomenech), Twitter (June 6, 2019, 11:39 PM), https://bit.ly/38KTffz.

A. The Tweet Was Public and Performative

When interpreting whether a message constitutes a threat of reprisal, context is key. Even face-to-face "fighting words" are not considered to be threatening when spoken with "a disarming smile." *Chaplinsky v. New Hampshire*, 315 U.S. 568, 573 (1942). That's even more true where there's a wider audience.

Twitter is a public and performative space, and it should not generally be presumed that a tweet is a formal statement of policy, our last president's dalliances with the platform notwithstanding. A statement must be viewed "in light of all the existing circumstances." *Wheeling-Pittsburgh Steel Corp. v. NLRB*, 618 F.2d 1009, 1020 (3d Cir. 1980); *see also NLRB v. Champion Lab*, 99 F.3d 223, 229 (7th Cir. 1996) ("Context is a crucial factor in determining whether a statement is an implied threat."). Here, the ALJ and NLRB erred by ignoring a crucial piece of context: Domenech's statement was in the form of a tweet on a public and widely followed social-media account.

People generally don't make serious, illegal threats in front of an audience of 83,000 people. That's about how many followers Ben Domenech had on Twitter when he posted The Tweet. *See* Ben Domenech (@bdomenech), Twitter, *on* Internet Archive: Wayback Machine (last visited Mar. 26, 2021) (showing that Domenech had over 83,000 followers on June 14, 2019), https://bit.ly/38GIQSb. And, of course, with retweets and other types of sharing, the potential audience for a tweet is vast.

Yet both the ALJ and the NLRB disregarded this factor, concluding that the public nature of Domenech's tweet had no bearing on its interpretation. In their view, the words of The Tweet should be read exactly as if Domenech had written them in an email sent solely to Federalist Media employees. *See* CAR278 ("[T]he statement 'if you unionize, you will be sent to the salt mines' was meant for the FDRLST employees and not the public.").[5] In this telling, Domenech's thousands of Twitter followers were not an intended audience for The Tweet, despite the message being posted on Domenech's public account. *See* CAR278 ("[T]his tweet had no other purpose except to threaten the FDRLST employees with unspecified reprisal.").[6]

That analysis ignores the inherently public and performative nature of Twitter. Internet users know that delivering a message via tweet is very different from delivering a message via email. "The typical email has an articulated audience, while the typical tweet does not. Email is also usually private, while Twitter is primarily public. Notably, people avoid broaching many topics on Twitter precisely for this reason." Alice E. Marwick & danah boyd [sic], *I Tweet Honestly, I Tweet*

[5] Although millions of Americans over the past year have found themselves saying "this Zoom meeting could have been an email," the NLRB may have been the first to say "this public tweet on a high-profile Twitter account was a violation of federal labor law . . . and also could have been an email."

[6] We've heard of a "reply allpocalypse," but choosing to intentionally and inexplicably CC 83,000 people to a federal crime would be a new one. *See* Tyler Kingkade, "NYU Student Email Reply-Allpocalypse: Entire Student Body Bombarded Due To Listserv Error," HuffPost, Nov. 28, 2015, https://bit.ly/2OtHL9D.

Passionately: Twitter Users, Context Collapse, and the Imagined Audience, 13 New Media & Soc'y 114, 120 (2011).

Even when multiple Twitter users ostensibly carry on a conversation via Twitter, those users are aware that their conversation has a wider public audience, which gives the conversation a performative aspect. *See* Jean Burgess & Nancy K. Baym, *Twitter: A Biography* 53 (2020) (noting that even conversations between two Twitter users are publicly viewable and thus can be "performances of social connection"). *See also* Marwick & boyd, *supra*, at 117 (noting that Twitter conversations "can be viewed by anyone through search.twitter.com, the public timeline, or the sender's Twitter page"). Domenech chose *not* to use Twitter's "direct message" function—it likely never occurred to him to use it for his joke—which more closely resembles email in that it is private and targeted. *See id.* ("Twitter allows individuals to send private messages to people they follow through direct messages (DMs), but the dominant communication practices are public.").

Domenech chose to deliver his message to a wide audience *and people speak differently when they know they have an audience*. That's why conversations on late-night talk shows don't sound the same as conversations in the green room—let alone behind the closed doors of offices and executive suites. On TV, John McCain can tell Jon Stewart "I had something really picked out for you, too—it's a nice little IED [improvised explosive device] to put under your desk" and get laughs from the

crowd, not a visit from the FBI. *See The Daily Show with Jon Stewart: April 24, 2007* (Comedy Central TV broadcast), https://on.cc.com/3rZkDOQ.

The same holds true for speeches in front of a live audience. Consider this statement by a former president, ostensibly addressed to just a few young men (namely the heartthrob boy band the Jonas Brothers): "Sasha and Malia are huge fans. But, boys, don't get any ideas. I have two words for you—predator drones. You will never see it coming. You think I'm joking." President Barack Obama, White House Correspondents' Dinner Address 2010, (May 1, 2010), https://bit.ly/3cC6JLY. If spoken in a private late-night phone call, such a message might be a little unsettling. But since it was actually delivered in front of hundreds of people and broadcast to a national audience, the Jonas Brothers knew from context that it was said only for laughs.

Courts have long understood the common-sense intuition that a speech delivered to a large audience is unlikely to contain an illegal threat. The Supreme Court held that a joke about putting President Lyndon Johnson in the sights of a rifle was not a true threat in part because it "was made during a political debate . . . and the crowd laughed after the statement was made." *Watts v. United States*, 394 U.S. 705, 707 (1969). The Court explained that, "[t]aken in context," the joke was only "a kind of very crude offensive method of stating a political opposition." *Id.* at 708.

And courts have applied the same reasoning to cases involving the statutory provisions at issue here: NLRA sections 8(a)(1) and 8(c). In a case involving a joke made in front of a large audience by a company executive, the Sixth Circuit correctly found it implausible that the sophisticated executive would have admitted to illegal anti-union hiring preferences. As the court explained, the speaker "knew perfectly well that it would be illegal for him to discriminate against union activists." *Windemuller*, 34 F.3d at 393; *see also id.* (noting that the speaker perhaps "did not like the rules, but that hardly means that he was publicly threatening to break them"). And just like in *Watts*, the Sixth Circuit bolstered this interpretation by noting that the audience "broke into laughter." *Id.* at 392.

Despite the fact that Domenech delivered The Tweet to a wide audience, the ALJ nonetheless interpreted it as a message solely for FDRLST Media employees because "the tweet itself was prefaced with [FDRLST Media's] name and it was 'FYI' or 'For Your Information.'" CAR278. This interpretive theory, which the Board adopted, simply misunderstands a common format for jokes on Twitter.

Tagging a Twitter account and prefacing the tweet with a salutation is often done ironically, with no expectation that the tagged account will respond to the message, or even see it. For example, on a day when the internet was consumed by a fierce debate over the true colors of a photographed dress, tweeting "@BarackObama please clear this up for us" was not a serious petition meant only

for the president's eyes.[7] Nor is "Dear President @BarackObama, Please add one extra day between Saturday and Sunday. Thank you. Sincerely, Everyone."[8]

Indeed, tweets ostensibly "addressed" to a certain account routinely make outrageous "requests" for humorous effect. Just a few of many examples include: "Dear @BillGates: Please post a racial slur on the front gate of your home so I can get #Gatesgategate trending.";[9] "Hey @Pontifex [the official Twitter account of The Pope], can we make @DollyParton the first saint with breast implants?";[10] and "Hey @FBI, someone just ran a light on US 1 and Broward Blvd. in Ft. Lauderdale. Please send 15 agents forthwith. Or are they too busy measuring tire marks in TX?"[11]

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[7] B.J. Novak (@bjnovak), Twitter (Feb. 26 2015, 9:48 PM), https://bit.ly/3ePLFUN.

[8] Nicholas Megalis (@nicholasmegalis), Twitter (Mar. 14, 2015, 1:37 PM), https://bit.ly/3qYqKS7.

[9] Patton Oswalt (@pattonoswalt), Twitter (Nov. 7, 2014, 8:14 PM), https://bit.ly/2P43dlv.

[10] Meirav Devash (@MeiravDevash), Twitter (Nov. 17, 2020, 1:41 PM), https://bit.ly/3lpAvaC.

[11] John Cardillo (@johncardillo), Twitter (Nov. 1, 2020, 7:56 PM), https://bit.ly/3tvORsR. Indeed, "addressing" tweets to the @FBI account to alert the Bureau to outrages like gross food pictures constitutes an entire sub-genre of Twitter humor unto itself. *See, e,g.*, "hello @FBI i would like to file a complaint @netw3rk made me watch Hereditary i would like him charged to the fullest extent of the law." Shea Serrano (@SheaSerrano), Twitter (Oct. 24, 2020, 9:47 PM), https://bit.ly/2OGnIVi; "WOW. I can't believe the Blue Jays are turning up the stadium lights AGAIN to make the Yankees play poorly. Unreal. @FBI." Jared Carrabis (@Jared_Carrabis), Twitter (Sep. 8, 2020, 8:37 PM), https://bit.ly/2P0yWUw. Just as with Domenech's tweet, it would be absurd to interpret tagging the official @FBI Twitter account as an indication that these tweets are actually meant for the FBI, let alone *only* the FBI.

Domenech's tweet was in the same mold as these other tweets—jokingly addressed to one account, but in reality meant for public consumption. The Tweet was delivered with Domenech's online audience in mind. A reasonable employee reading the tweet in light of that context would not consider it a personal threat.

B. The Tweet Was Funny

Courts applying NLRA § 8(a)(1) have recognized that "[t]hreatening statements are not usually made in bantering terms." *Champion Lab*, 99 F.3d at 229. That's why the Seventh Circuit reversed the NLRB's conclusion that the comment "I hope you guys are ready to pack up and move to Mexico" constituted a threat when it was made in a conversation where "there was joking going on back and forth." *Id.* at 228–29 (cleaned up). Accordingly, even if a statement is addressed solely to employees (which The Tweet was not), that statement *still* would not be a threat if the employees would reasonably understand it by its own terms as a joke.

That is the case here. A reasonable FDRLST employee would understand that The Tweet was a joke for the simple reason that The Tweet was *funny*. Of course, "[e]xplaining why a joke is funny is a daunting task; as the essayist E.B. White has remarked, 'Humor can be dissected, as a frog can, but the thing dies in the process.'" *Leonard v. PepsiCo, Inc.*, 88 F. Supp. 2d 116, 128 (S.D.N.Y. 1999) (footnote omitted), *aff'd* 210 F.3d 88 (2d Cir. 2000). But in its plodding attempt to translate the literal meaning of "salt mine," the ALJ both killed the frog *and* misconceived it.

See CAR278 ("Obviously, the FDRLST employees are not literally being sent back to the salt mines. . . . The literal definition of *salt mine* explains the origin of the figurative meaning. Work in a salt mine is physically challenging and monotonous, and any job that feels that tedious can be called a salt mine."). Domenech didn't invoke "salt mine" to speak in code; he chose the term to be funny.

Why was The Tweet funny? We can start with the fact that salt mines are funny—even funnier than sugar caves. *See The Simpsons: Deep Space Homer* (Fox TV broadcast Feb. 24, 1994) ("I, for one, welcome our new insect overlords. I'd like to remind them that as a trusted TV personality, I can be helpful in rounding up others to toil in their underground sugar caves."). The premise of being sent to the company salt mines evokes a Monty Burns-like image of a cartoonishly evil corporate tyrant. *See, e.g.*, Josh Groban (@joshgroban), Twitter (June 22, 2017, 12:46 PM), https://bit.ly/3twDocN ("'Welcome to the GOP, here's your "Release The Hounds!" button, t-shirt, and rubber stamp.'"). Evoking this trope no more represents a real threat of punishment than a tweet with the ironic slogan "The beatings will continue until morale improves" represents a real threat of violence. *See, e.g.*, Rick Wilson (@TheRickWilson), Twitter (Aug. 1, 2019, 8:24 AM), https://bit.ly/3lmaKYM ("1. This election is a referendum on Trump and nothing else. Policy is completely irrelevant. 2. Only the electoral college matters.

If your campaign isn't focused on the 15 swing States you're helping Trump. The beatings will continue until morale improves.").

Reasonable observers know that humor trades in outlandish imagery. *See Leonard*, 88 F. Supp. 2d at 130 (due to "the obvious absurdity" of a commercial in which a schoolboy flies a Harrier jet, a reasonable observer would understand the ad to be "clearly in jest" and not a serious offer to sell the jet). Just as a reasonable observer knows that Pepsi doesn't have a Harrier and can't offer one, a reasonable observer knows that *The Federalist* doesn't have a salt mine and can't threaten one.

And we don't have to speculate as to whether *Federalist* employees viewed the Tweet as a joke: we know from sworn affidavits that two of them did. CAR154–58. The ALJ dismissed the probative value of these interpretations, holding that under NLRB precedent a "subjective interpretation from an employee is not of any value to" the analysis of whether it was objectively threatening. CAR278. The NLRB likewise deemed these employees' interpretations "irrelevant." CAR431.

Whether this approach accurately applied NLRB precedent or not, it is not compatible with this Court's precedent. The analysis of whether a statement is objectively threatening must be made "in light of all the existing circumstances." *Wheeling-Pittsburgh Steel*, 618 F.2d at 1020 (3d Cir. 1980). Put simply, the fact that two *actual* FDRLST employees interpreted The Tweet as a joke has some probative weight toward the question whether a *reasonable* FDRLST employee would

interpret The Tweet as a joke. In other words, the actual reaction of employees is a relevant factor when looking at the totality of the circumstances. *See Windemuller*, 34 F.3d at 392 ("It is true that threatening statements can sometimes be made in humorous terms. . . . Usually, however, they are not—and people who are being threatened do not usually find it amusing.") (citation omitted).

Courts applying the NLRA have recognized this fact. The Sixth Circuit correctly gave probative value to the impressions of actual employees in reversing the NLRB and holding that statements in two speeches were not reasonably interpreted as threats. *See NLRB v. Pentre Elec., Inc.*, 998 F.2d 363, 367 (6th Cir. 1993) ("Five employees testified that they did not feel that the speeches by Luff and Meehan were threatening, nor did they know of any other Pentre employees who felt threatened or coerced by the message in the speeches.").

Employees of *The Federalist* would know their colleagues' senses of humor best, and thus would have a good idea of how to interpret whether a colleague's statement is serious or humorous. Both the outlandish language of The Tweet itself and the reaction to it demonstrate that it was objectively humorous, not threatening.

II. TAKING TWEETS OUT OF CONTEXT WOULD CHILL HUMOROUS EXPRESSION

The NLRB's serious misinterpretation of Domenech's Twitter joke has implications that go beyond this one case. If every public tweet and statement were

read with the same tone-deaf literalism as The Tweet was here, public discourse would be seriously chilled by fear of legal persecution.

What other tweets might run afoul of the NLRB? Will it still be kosher to declare "I will fire pineapple pizza haters"?[12] Will a shorthand phrase used to object to loaded questions risk domestic violence investigations? *See* Marc A. Caputo (@MarcACaputo), Twitter (April 13, 2017, 8:30 PM), https://bit.ly/3lqyv1S ("Only when I stop beating my wife. Try again with a legitimate question."). Will calls to "burn it all down" lead to arson investigations? *See* Joe Walsh (@WalshFreedom), Twitter (Nov. 2, 2020, 9:53 AM), https://bit.ly/30WtkNC ("The Republican Party is not salvageable. Burn it all down. Start over."). Will tweets complaining about the emotional impact of sports setbacks be charged with filing a false report? *See, e.g.*, Boston Diehards (@Boston_Diehards), Twitter (Mar. 17, 2020, 8:12 PM), https://bit.ly/30SB6s1 ("@FBI I'd like to report an assault"). Will politicians be investigated for voter fraud if they joke about pets going to vote? *See* Naomi Lin & Emily Brooks, "Elizabeth Warren and the GOP Got In a Tiff About Her Dog Plotting Voter Fraud," Wash. Ex., July 17, 2020, https://washex.am/3cGL9Ge (quoting Sen. Warren as saying that her dog is "definitely going to vote in November").

[12] Kassy Dillon (@KassyDillon), Twitter (Sep. 16, 2020, 10:40 PM), https://bit.ly/3eP5hZc.

Tweets can easily be found ostensibly threatening every crime under the sun. *See, e.g.*, Tim Alberta (@TimAlberta), Twitter (Mar. 11, 2020, 7:25 PM), https://bit.ly/39dG8DV ("For real though if Cassius leads the Spartans to the title game I will kidnap a ref and steal his uni to get into that arena"). Indeed, some high-profile accounts can even be found threatening murder. *See, e.g.*, Seth Mandel (@SethAMandel), Twitter (June 19, 2020, 11:35 AM), https://bit.ly/30ZhGl7 ("man I would kill for some shakshuka rn"); Yashar Ali (@yashar), Twitter (Apr. 13, 2020, 9:20 AM), https://bit.ly/38Ra9tj ("I would kill for footage of Donatella Versace learning how to use Zoom or a @MayaRudolph sketch of her learning how to use Zoom"). Some have already admitted their crimes. *See, e.g.*, Michael Harriot (@michaelharriot), Twitter (July 6, 2020, 10:02 PM), https://bit.ly/3s1e0v6 ("Also, if you're a rapper, stop making me sell drugs and kill people. Same for you, video game creators.").

If humorless and literal-minded government agencies want to trawl the internet or other public squares for threats or admissions of crimes, they'll be able to find far more than just "A Crime a Day." *See generally* Mike Chase, *How to Become a Federal Criminal* (2019). Failing to understand the type of jokes that are made all the time in freewheeling online discourse is no laughing matter. If a joke about non-existent salt mines performed to 80,000 people can be turned into a federal case, everyone will tweet (and speak) less freely.

CONCLUSION

When the NLRB can't take a joke, the right to freewheeling speech both online and offline is threatened. The NLRB's order should not be enforced.

Dated: March 29, 2021

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CERTIFICATE OF COMPLIANCE

I hereby certify that:

1. This brief complies with the typeface and style requirements of Fed. R. App. P. 32(a)(5)-(6) because it has been prepared in a proportionally spaced typeface (14-point Times New Roman) using Microsoft Word.

2. This brief also complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B), as modified by Fed. R. App. P. 29(d), because this brief contains 4,496 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii).

3. The text of the electronic version of this brief filed on ECF is identical to the text of the paper copies filed with the Court.

4. The electronic version of this brief filed on ECF was virus-checked using the latest ESET Cyber Security, and no virus was detected.

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LOCAL RULE 28.3(d) CERTIFICATION

I hereby certify that at least one of the attorneys whose names appear on the foregoing brief, including the undersigned, is a member of the bar of this Court.

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CERTIFICATE OF SERVICE

I hereby certify that on March 29, 2021 I caused to be filed the foregoing document with the United States Court of Appeals for the Third Circuit, via the CM/ECF system, which will provide notice to all counsel of record.

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