No. 18-1070

IN THE

Supreme Court of the United States

VILLAGE OF LINCOLNSHIRE, ET AL.,

Petitioners,

v.

INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 399, ET AL.,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

REPLY IN SUPPORT OF CERTIORARI

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STATUTES

In the decision below, the Seventh Circuit held that the National Labor Relations Act preempted the Village of Lincolnshire's right-to-work ordinance. After Petitioners sought certiorari to review that decision, the State of Illinois enacted legislation preempting that ordinance as a matter of state law. Because the case is now moot, the Court should grant the petition, vacate the decision below, and remand with instructions to dismiss.

I. THE SEVENTH CIRCUIT'S DECISION SHOULD BE VACATED AND REMANDED WITH INSTRUCTIONS TO DISMISS

A. This Case Is Moot

After Petitioners filed their petition, Illinois enacted the so-called Illinois Collective Bargaining Freedom Act. It declares that "[a]ny … ordinance … that restricts or prohibits in any manner the use of union security agreements between an employer and labor organization as authorized under 29 U.S.C. § 158(a)(3) is … void." 820 Ill. Comp. Stat. 12/30; BIO App. 4a.

The Village Ordinance at issue in this case is preempted by this provision. Section 158(a)(3) permits bargaining agreements that require new employees to join the union or to pay equivalent dues to the union or certain third parties. *See Oil Workers v. Mobil Oil Corp.*, 426 U.S. 407, 409 n.1 (1976). But the Village's Ordinance prohibits those practices. *See* Village Ordinance No. 15-3389-116, App. 58a–59a. Because the Village Ordinance "restricts or prohibits … the use of union security agreements … as authorized under … § 158(a)(3)," it is "void"

whether or not the NLRA also prohibits it. As Respondents note, *see* BIO 3–4, this case is thus moot.*

B. This Court Should Vacate the Seventh Circuit's Judgment with Instructions To Dismiss as Moot

1. "The established practice of the Court in dealing with a civil case from a court in the federal system which has become moot while on its way here … is to reverse or vacate the judgment below and remand with a direction to dismiss." *United States v. Munsingwear, Inc.*, 340 U.S. 36, 39 (1950). Under *Munsingwear*, "[t]he principal condition to which [the Court] ha[s] looked is whether the party seeking relief from the judgment below caused the mootness by voluntary action." *U.S. Bancorp Mortg. Co. v. Bonner Mall P'ship*, 513 U.S. 18, 24 (1994).

In keeping with these principles, this Court has vacated and remanded where legislative amendments mooted the government's appeal of a judgment invalidating a federal statute. *See U.S. Dep't of Treasury v. Galioto*, 477 U.S. 556 (1986). In this same vein, appellate courts have regularly vacated lower-court decisions where the case became moot on appeal, not through any fault of the losing party, but through legislative action. *See, e.g.*, *Catawba Riverkeeper Found. v. N.C. Dep't of Transp.*, 843 F.3d 583,

* In addition to their requests for declaratory and injunctive relief, Respondents initially sought damages under 42 U.S.C. § 1983 (and attorney fees under 42 U.S.C. § 1988). The district court and the Seventh Circuit rejected these claims, *see* App. 25a–26a, 40a–42a, and Respondents have not cross-petitioned regarding them. Because these claim have dropped out of the case, they cannot keep the rest of it alive.

590–92 (4th Cir. 2016); *Chem. Producers & Distribs. Ass'n v. Helliker*, 463 F.3d 871, 878–80 (9th Cir. 2006); *Khodara Envt'l, Inc. ex rel. Eagle Envt'l L.P. v. Beckham*, 237 F.3d 186, 194–95 (3d Cir. 2001); *Am. Library Ass'n v. Barr*, 956 F.2d 1178, 1186–87 (D.C. Cir. 1992).

2. Respondents do not appear to contest the appropriateness of vacatur here. *See* BIO 4 n.3. They note, however, that the Court declined to vacate the Sixth Circuit's judgment in *United Automobile, Aerospace, & Agricultural Implement Workers of America Local 3047 v. Hardin County*, where Kentucky's Right-to-Work Act arguably mooted any challenge to the Sixth Circuit's conclusion that the NLRA authorizes municipalities to pass such legislation as well. *See* 842 F.3d 407 (6th Cir. 2016); 138 S. Ct. 130 (2017) (mem.) (denying certiorari).

Hardin County is distinguishable. There, the subsequent state legislation was enacted while the challengers' petition for rehearing en banc was still pending. When the challengers asked the Sixth Circuit to vacate its decision as moot, it declined to do so. It explained: "[T]he impact of the new Kentucky Right to Work Act on the Hardin County Ordinance [wa]s a yet-to-be-determined matter of state law that [wa]s beyond the scope of the appeal," so the court determined that the challengers had "failed to carry their 'heavy burden' of clearly establishing the 'mootness' of th[e] appeal." Dkt. 67-2 in No. 16-5246, *United Auto., Aerospace, & Agric. Implement Workers of Am. Local 3047 v. Hardin County* (6th Cir.). It is little wonder that this Court refused to vacate under *Munsingwear* when the lower court held that the subsequent legislation did not even moot the case.

Here, however, all agree that Illinois's law preempts the Village's Ordinance and moots this case.

CONCLUSION

The Court should grant the petition for writ of certiorari, vacate the decision below, and remand with instructions to dismiss.

Respectfully submitted,

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