No. _____

In The
Supreme Court of the United States

JAMES A. OSBURN and ELIZABETH S. ALVAREZ, as individuals and on behalf of the membership of IATSE PRODUCTION SOUND TECHNICIANS, TELEVISION ENGINEERS, VIDEO ASSIST TECHNICIANS AND STUDIO PROJECTIONISTS, LOCAL 695, a California Nonprofit Labor Corporation,

Petitioners,

v.

INTERNATIONAL ALLIANCE OF THEATRICAL STAGE EMPLOYES AND MOVING PICTURE MACHINE OPERATORS OF THE UNITED STATES AND CANADA, AFL-CIO, CLC, and its International President, MATTHEW LOEB,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Janus v. AFSCME, 585 U.S. ___ (2018) and the granting last month of the petition in *Fleck v. Wetch* 585 U.S. ___ (2018), reinforces the very *Free Speech* and *Association* rights which Petitioners were punished for exercising despite the *Labor Management Reporting and Disclosure Act (LMRDA)*, 29 U.S.C. §401, *et seq.*

1. Whether stifling robust dissent without a true indicia of due process is tolerable when an International President cleverly imposes and quickly lifts a trusteeship after permanently removing only dissenting leaders from office and their staff positions, while also stripping the most vocal of even membership rights, all within weeks of the results of the will of the Local Union membership just exercised at the ballot box becoming known to the International.

2. Whether Petitioners can be removed for inquiring about and objecting to a forced *Studio Mechanics Locals' (SMLs)* scheme across the United States and Canada which inhibits work opportunities, is discriminatory in application and compels both speech and association.

3. Whether the "*patronage*" defense should be retained in this day and age, and if so, whether it can be used to defeat the *LMRDA* rights of an elected officer removed from a *nonconfidential* and *nonpolicy-making* staff position which *Finnegan v. Leu*, 456 U.S. 431, at footnote 11 (1982) left open for resolution.

PARTIES TO THE PROCEEDINGS AND RULE 29.6 STATEMENT

Petitioners, who were Plaintiffs-Appellants in the court below, are James A. Osburn and Elizabeth S. Alvarez.

When the action was first filed, IATSE Production Sound Technicians, Television Engineers, Video Assist Technicians and Studio Projectionists, Local 695 was a named Plaintiff along with James Osburn. Due to imposition of the trusteeship after the lawsuit was originally filed, Local 695, also interchangeably known as the Hollywood Sound Union and IATSE Local 695, was on stipulation removed as a party, while Petitioner Alvarez was added as a litigant when Osburn's membership rights were suspended for one year. Petitioners have continued pursuing these matters, including on behalf of the Local membership.

Respondents, who were Defendants-Appellees in the court below, are Matthew D. Loeb (Loeb), International President of the IATSE; and the International Alliance of Theatrical Stage Employes and Moving Picture Machine Operators of the United States and Canada, AFL-CIO, CLC (IATSE or International).

International Vice President (IVP) Michael Miller was also a Respondent until Alvarez elected to not appeal adverse rulings (App. 12, 44-46) on her claims of unlawful harassment and discrimination attributable to her sex, national origin and protests, with all arising

PARTIES TO THE PROCEEDINGS AND RULE 29.6 STATEMENT – Continued

under *California's Fair Employment and Housing Act, Government Code* §12900, *et seq.*

Because no Petitioner is a corporation, a corporate disclosure statement is not required under Supreme Court Rule 29.6.

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OPINIONS BELOW

The Ninth Circuit order affirming the district court is reproduced at App. 1-8, while its denial of requests from Respondents and Appellants to supplement the record is found at App. 9. The District Court's first order partially granting summary judgment to Respondents except relative to §101(a)(2), is reproduced as App. 10-47. The second order reconsidering and disposing of the remaining *LMRDA* claim is attached as App. 48-71.

The Order also denying Rehearing and En Banc Review is App. 72-73.

JURISDICTION

The Ninth Circuit entered judgment on September 4, 2018 and denied En Banc Review and Rehearing on October 12, 2018. This Court has jurisdiction under 28 U.S.C. §1254(1).

PERTINENT CONSTITUTIONAL PROVISIONS

Relevant provisions of the United States Constitution are set forth in the Appendix at App. 74.

PERTINENT STATUTES AND REGULATIONS

The relevant statutory provisions are reproduced in the Appendix at App. 75-80.

PERTINENT PORTIONS OF INTERNATIONAL CONSTITUTION AND BY-LAWS

Relevant provisions of the International Constitution and By-Laws (International C&B) are reproduced at App. 81-106.

PERTINENT PORTIONS OF IATSE LOCAL 695's CONSTITUTION AND BY-LAWS

Relevant provisions of the Local Union's Constitution and By-Laws are reproduced in the Appendix at App. 107-115.

STATEMENT OF THE CASE

This case challenges International President Matthew Loeb's actions in discarding the labor organization's constitutional provisions, as well as *LMRDA* and *First Amendment* protections. The veiled message that has been sent by an unpublished decision (App. 1) is that employees in both the public and private sectors, including at labor organizations, can be expected to work under conditions of intimidation, compelled

speech and compelled association, without a reasonable expectation of judicial intervention.

A) THE PARTIES AND OVERVIEW OF DISPUTE

1) The International and Matthew Loeb

More than 80 years ago Respondent International was targeted by the federal government because of Mob Infiltration[1] at its highest office, namely the International Presidency. This case depicts the latest attempt by that same parent labor organization to utilize a mob-mentality of threats and intimidation to bypass if not nullify completely the protections passed by Congress in the 1950's to ensure democratic principles governed organized labor.

Loeb who was placed in the position of President in the summer of 2008, upon the departure of International President Thomas Short, has admitted to not working a day in the trenches as a card-carrying member of the IATSE, before his meteoric rise to the International's highest position. [Excerpts of Record ("ER") 2659/2-2660/2, 2662/19-2669/22, 2670/1-2672/23, 2750/11-21].

Neither Petitioners nor Local 695 members encountered problems with *SMLs* that could not be amicably resolved prior to Loeb's Administration. This changed shortly after Loeb was sworn in. Almost immediately after taking office, Loeb tried to alter Local

[1] Tuohy, John, *"Gone Hollywood": How the Mob Extorted the Hollywood Studio System*, dated May 2002, *American Mafia.com*, re George Brown and Willie Bioff [ER 1742].

695's charter jurisdiction by claiming that in hearings Osburn was not invited to, IVP Daniel DiTolla awarded work 695 claimed, to two rival locals. [ER Exhibit 19, 1291-1294; then see 695's Charter Jurisdiction, App. 109-110].

Because Osburn appealed Loeb's directive to the General Executive Board (GEB) [ER 1296-1315] attaching historical documents showing that the work in question truly belonged to Local 695, the GEB reversed its position and limited DiTolla's ruling to only the specific dispute then occurring between the Editors Guild and the Camera Local. According to Osburn, Loeb was quite angry, undoubtedly because his (Loeb's) GEB did not support Loeb's determination. [ER 1193, ¶36; Exhibit 19, ER 1291]. Thereafter Loeb appointed new members to that Board, upon the sudden resignation or death of existing members; the newly constituted all-male Board then became the appellate tribunal hearing Petitioners appeals.

At the same time, unbeknownst to Petitioners, the Sound Crew of Mark Weber and Eric Moorman, members of *SMLs* Local 477 in Florida (App. 123-124) went to the National Labor Relations Board (NLRB) because *SML* Local 478 based in Louisiana forced a producer to rescind offers of employment before they could even start working on *Bad Lieutenant* in June 2008. Requests to transfer membership between *SMLs* were also denied. (App. 136).

Although Weber was a member of Local 695 for years, Petitioners were not privy to nor a party to the

proceedings (App. 116), nor did the International publicize same in its official trade organ, the *IATSE Bulletin*. International General Counsel Dale Short handled the hearings on behalf of the *SML* and lost same on February 17, 2010. (App. 160). The ALJ Decision was adopted by the NLRB on April 16, 2010 (App. 116-117), requiring *SML* Local 478 to pay for the wages lost and sharply criticized the union bosses for making threats and intimidating the crew as well as the Producer.

Loeb and his cohorts then insisted that Osburn, rather than *SML* Local 477, engage in racketeering and recover a percentage of the NLRB Award from Weber and Moorman. (App. 116-159). Osburn refused. (Scott Bernard Deposition (Depo.), ER 3242/5-21). In turn, Chandra Miller, Secretary-Treasurer of *SML* 478, filed charges against Weber with Alvarez, but not *SML* Local 477, accusing Weber of unlawfully refusing to pay a percentage of wages attributable to *Bad Lieutenant*. Petitioners declined to process the charges in February 2011 and no appeals were taken. [ER 2140-2146; Loeb Depo., ER 2817-2826].

These events were described by well-known Hollywood journalist, David Robb,[2] as the precursor to the removal of Petitioners.

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[2] Robb, David. "*IATSE Sound Local Put in Trusteeship After Leader Complains of "Shakedown" By Leaders of Louisiana Union*", May 16, 2014. <http://deadline.com/2014/05/iatse-sound-local-put-in-trusteeship-after-leader-complains/>. For impact, see reference to 40,000 IATSE members belonging to Hollywood Locals, while Loeb in mandatory LM-2 filings with the Department of

Loeb's anger continued to build over being challenged and questioned by Petitioners. Loeb and other IATSE officials sitting as labor Trustees over the Motion Picture Industry Funds (MOPIC) started claiming that Hollywood's premier benefit plans were in financial trouble. Osburn, a former Trustee, started making inquiries, including as early as April 2012, when news of the Screen Actors Guild's refusal to account for let alone turn over *millions of dollars* of residuals and foreign royalties resurfaced. [ER Osburn Declaration (Decl.) 1197/23-27, ¶44 and Exhibit 28, ER 1387-1388, 1393, 1395, 1400-1402]. Osburn did so because as noted in the *IATSE Basic Agreement*, the International was also supposed to have similar deposits made into the MOPIC Plans as well. The International refused to respond. [ER 1197/26-27].

Loeb then formally published the "*doom and gloom*" of the MOPIC Plans in the *IATSE Bulletin*, in the summer of 2013. [ER Exhibit 29, 1393-1403]. When Osburn again asked for details, the International declined but suddenly claimed, within months before Osburn's removal that a substantial sum of money had suddenly been located. [Dean Striepeke[3] Depo., ER 3448/24-3452/23; Osburn Decl., ER 1198, ¶45].

Labor has reported an overall International membership growth from 118,829 in 2014 to 139,217 members as of April 2018.

[3] Striepeke was Osburn's expert on videotape engineering and was well respected for his intricate military and production knowledge, including on *Das Boot* [Striepeke Deposition, ER 3352/3-3361/5; Osburn Decl. ¶39, 1194]. IVP Miller conceded that Striepeke had to be, along with Alvarez, removed because of their

By then, IVP Miller had started diverting to the IATSE's National Funds in New York, health and welfare contributions received by MOPIC from Producers for certain but not all IATSE members. Claudio Il'Grande, a long-term employee of the Health Plans, admitted that IVP Miller took over operations in these regards and redirected contributions of select IATSE members away from the MOPIC Plans, despite *Home Plan Agreements*. This then disqualified members and their families from accessing needed medical care, *i.e.*, *475.1 hours* of contributions [ER 2272] were redirected for California resident Brett Brewington in November 2013 for work performed in New Mexico where *SML* Local 480 was.

IVP Miller's excuses were often conflicting, *i.e.*, *you cannot live in Los Angeles and work outside of California*; *your address had to be outside of California before you could be a Home Plan participant*, and so forth. [ER Il'Grande Depo., 3314/22-3317/12, 3318/14-3347/2].

Upon learning Brewington needed retina surgery which would no longer be possible because of the diversion, Osburn complained again. Miller and Loeb then announced cessation of the *Home Plan* and generated a list of eligible Hollywood Local members who would be grandfathered so future contributions earned in *SML areas* would still be sent to MOPIC. In Local 695's case, only seventy-six (76) of its members were listed,

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loyalty to Osburn [ER 3025/13-3028/24], or in Petitioners' opinion, because of the issues then being pursued.

to wit [ER 1405-1408], less than 5% of its membership base. [ER 2399]. After protesting same including at the Business Agents Meeting held the very day Local 695 and Osburn filed their lawsuit concerning these matters, Loeb then wrote up his own Trusteeship Report over the weekend and imposed same on Monday morning, February 24, 2014. [Docket, ER 4788 and Loeb Letter, ER 1141].

By then, Loeb bore pure hatred towards Petitioners. Loeb even publicly touted to Osburn, in front of the uniformed and armed members of the Los Angeles Police Department who accompanied International President Matthew Loeb and his New York entourage when they personally appeared at Local 695 to impose the trusteeship, "*I have never liked you . . . I don't like you now . . . and you are not my friend*" [ER 4053-4054]. Alvarez was physically bullied as well. (App. 24, 46).

Numerous appeals ensued. [ER 2181-2186].

2) Petitioners Osburn and Alvarez

Osburn and Alvarez on the other hand have spent most of their lives laboring as trade unionists seeking to protect the members of IATSE Local 695 [*See* Resumes, ER 1130-1133, 1225-1227].

In addition to the six consecutive 3-year terms in office Osburn and Alvarez were elected for, between 1998 and 2014, Osburn previously held various offices in Local 695. [ER 1175-1177, 1179, ¶¶2-5, 9]. When first elected to the position of Business Representative in 1978, Osburn was sentenced to jail for contempt by

the Honorable Manuel Real for refusing to sign a Collective Bargaining Agreement that the International negotiated and that Local 695's membership did not ratify. A stay of execution subsequently issued. At the next Convention, Osburn introduced an amendment to the International Constitution which limits the powers of the International President and requires membership ratification of Contracts, *see* Article Seven, §20, "*Members of West Coast Studio local unions shall ratify the Basic Agreement by secret ballot*". [ER 4442]. Loeb has tried to negate those provisions since.

Osburn returned to production in 1990 and worked on James Cameron's blockbuster movie, *Titanic*, for which the Sound Crew received the Academy Award for Best Sound. [ER 1181/6-11]. Osburn then defeated other candidates to return to the helm of Local 695 in 1998 after then International President Short lifted an 18-month Trusteeship imposed upon the former Local Administration for financial improprieties. Meanwhile, Alvarez who had continued to work at Local 695 for close to four years, but was abruptly fired for reporting the financial transgressions of the then Administration, also ran and was elected as Recording Secretary in 1998 and ever since.

Osburn's "*good standing*" in the Union, a threshold requirement for running for office, came to an abrupt halt in July 2014. Loeb's hand-picked "hearing officer", International Representative Scott Harbinson ("Harbinson") who was directly involved in *Bad Lieutenant*, found Osburn guilty of Charges personally filed by Loeb, himself. Osburn was then suspended from membership and the appeal was thereafter heard by a

now biased GEB with heavy *SML* representation. [ER 1707-1709, 1995-2003, 2183].

On urging of the IATSE, the "*patronage defense*" (App. 4), was also utilized by Respondents to justify removals of Striepeke and Alvarez serving as Sergeant at Arms and Recording-Secretary, respectively (App. 107, 111-114, *see* footnote 3, page 6). Both served in "*nonconfidential*" and "*nonpolicymaking*" positions on staff since the Local Union Board of Directors set policies, while the day-to-day affairs of the Union were constitutionally assigned to the elected Business Representative, namely Osburn. (App. 114-115).

Defense counsel tried to justify Alvarez's firing by noting that she had an "*intimate*" relationship with Osburn, even though her lengthy employment history in the industry belied any suggestion that her private affairs affected her capabilities when performing her job. But, Loeb and Miller declined to allow Alvarez to prove herself while scoffing about her diversity complaints, including visible maltreatment of minorities by the International. (App. 24, 46).

B) ROBUST DISSENT AND STIFLING THEREOF

As the District Court noted (App. 13), "*Plaintiffs declarations recount a long history of their commitment to vindicate the interests of IATSE and Local 695 members, which date as far back as four decades ago. . . . The Court focuses on Plaintiffs most recent complaints. . . .*") (App. 13).

1) *Studio Mechanics Locals' (SMLs)* Discriminatory Practices

While protecting Local 695's work jurisdiction in Hollywood, Petitioners were also assisting members who were suddenly experiencing intimidation when working or seeking employment in locations where *SMLs* were established to supplement production crews, including in *right-to-work states*.

Throughout the history of the IATSE, Local 695 members routinely followed the work, with Loeb conceding that it was up to the Producer as to whom they wanted to hire. [ER Loeb Depo., 336/9-23; *see* Surveys of Members, Exhibits 61 and 62, ER 2555-2624; *also see* Osburn Decl., ER 1210-1211, ¶66].

However, Loeb suddenly claimed that Producers would have to physically hire Local 695 Members in Los Angeles, before the member could accept work under the Basic Agreement in a location where there was an Area Standards Agreement. [ER Osburn Decl., 1207-1208, ¶63 and Exh. 43, ER 1548; Bernard Depo., ER 3249/6-18]. In contrast, members of favored Locals 600, 700 and 800 (Camera, Editors and Art Directors) were free to live and work wherever they wanted to without having to pay any monies to the *SML*. (App. 16).

This then opened the door for *SML* Union officials, including Mike McHugh, Bill McCord, Chandra Miller and Phil Salvatore LoCicero of Local 478 handling Louisiana/Southern Mississippi/Alabama; Bill Randall with Local 485 in Arizona; John Hendry at Local 480

of New Mexico and Jonathan Andrews[4] of Ohio's Local 209, to confront Local 695 members seeking to work in their states.

SMLs were demanding that 695 Members execute Check-Off Forms so Producers would remove from paychecks and forward dues, work assessments or contract service charges, directly to the *SMLs*. Some but not all Local 695 members refused initially to sign; those who questioned same capitulated when their financial livelihood was further threatened. Osburn often personally helped his members pay the obligations because of diminishing work opportunities at a time when *SMLs* were also threatening members' livelihood and physical wellbeing. [ER Osburn Decl., 1204-1212, ¶¶57-68; cancelled checks, ER 2122, 2305-2306; check-off forms, ER 1580, 2126, 2225 and questionable as well as revised invoices, ER 2121 and 2238].

Loeb was fully aware that the *SMLs* were refusing to provide even invoices to Local 695 Members, preventing an adjustment in the amount of dues owing to one's member Local, pursuant to Article Nineteen, §26 of the IATSE Constitution. [App. 100-101; ER Loeb Depo., 2807/9-2809/13]. Without this information, Petitioners could not fulfill their duties either.

In the case of Kate Jesse working in Arizona, an objectionable blank contract service charge check-off form [ER 2126] which would afford the *SML* carte

[4] IVP Michael Miller, a former resident of Ohio, has been a friend of Andrews' for more than 15-20 years. [ER 2888/21-23]. Andrews has never been a member of Local 695. (App. 37).

blanche access to 4% all of Jesse's earnings regardless of where she worked was presented by Bill Randall, then declining to admit Jesse into *SML* 485's membership. [ER 2138, 2165]. Despite repeated demands for a proper invoice showing what was allegedly owed, one was never provided until Loeb finally intervened. [ER 2121].

Richard Hansen, now living in Indiana, was presented an objectionable 5% dues check-off by Jonathan Andrews. [ER 1548-1549]. Hansen objected, but quickly capitulated and signed the form, for fear that he would lose out on future employment opportunities in the Midwest. Ironically, Cuyahoga Films bellied up and failed to pay wages owing to Hansen and others. [ER 1550-1551].

Both Thomas Conrad and Josh Levy who took up permanent residence in Louisiana with their families objected to paying questionable fees, when Local 478 was also denying them membership. Conrad was expelled from 695 for non-payment of dues [ER 2248], while starting a motion picture studio in Louisiana with blessings from the IATSE. Levy on the other hand moved his family back to California, fearing for their safety due to the *SMLs* actions. [ER 1898-1899, 2735/2-25, 2742/16-2744/12 and Exhibit 6, 2054].

Thus, all financial obligations owing by Conrad or Levy were either tendered to or forgiven by the *SML*, well before Petitioners were formally charged. [ER 1556 (Jesse) and 2305-2306 (Levy); Chandra Miller E-Mail, App. 182-183, reproduced in full at ASER 26-30].

Regardless, Article Sixteen, §2 of the International C&B (App. 83) clearly states that the sole remedy when an individual fails to pay dues and assessments, is summary removal from the Union, without benefit of hearing.

2) Refusal to Account for Political Contributions

Alvarez also sought an accounting of more than $350,000.00 collected and entrusted to the Entertainment Union Coalition under the leadership of IVP Thom Davis. [ER 1124, ¶26]. Scott Bernard who had been on staff with Osburn's Administration, was retained as an Assistant to the Trustees and then elected Business Representative when Osburn was disqualified from running [ER 3191], admitted that such an accounting was not provided until more than two years after Petitioners were removed. [ER 3261-3264].

3) Discriminatory Treatment of Women

Alvarez also raised issues about the discriminatory treatment of women, including Loeb's refusal to place same in high level leadership positions, as had been the case under prior Administrations. [App. 24, 46; Alvarez Decl., ER 1125-1128, ¶¶28-35]. The fact that women have now been placed back into these

positions bodes well for Alvarez who had to raise these issues in the first place.[5]

C) STRONG ARM TACTICS TARGETING PETITIONERS

The "paper" removal on February 24, 2014 of others besides Appellants does not *a fortiorari* compel the conclusion that Appellants were not targeted, despite the lower courts so finding. (App. 2-3, 66-67). *See* Loeb's Memorandum of February 25, 2014 wherein he (Loeb) advised everyone at Local 695 that Petitioners were removed and that everyone else could stay on the payroll. [ER 2635]. *Also see* LM-2 Reports submitted [ER 2319, 2333-2336, 2398, 2412-2414], showing commonality

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[5] However, it now appears Loeb has resumed his dictatorial tactics. See articles in Deadline.com, over the course of the last six months showing that Loeb is now targeting Cathy Repola, the head of the Editors Guild. See Deadline.com coverage entitled, "*Editors Guild Answers IATSE President Matt Loeb's "Baseless" Claims Against Its Leader", August 16, 2018; "Editors Guild's Cathy Repola Cries Foul After IATSE President Matt Loeb Boots Her From Seat On Pension & Health Plans*", October 29, 2018.

Since this case was filed, John Hendry has also been removed from his *SML* in New Mexico, amidst allegations of harassment and use of union funds for personal and political reasons. Longwell, Todd. "*New Mexico Ex-IATSE Official Accused of Sexual Harassment Still Casts Long Shadow*", June 20, 2018. <https://variety.com/2018/artisans/production/new-mexico-iatse-1202851566/>.

Ironically, Loeb falsely accused Petitioners of financial improprieties and then desperately looked during the short-lived trusteeship for any evidence of financial wrongdoing on the part of Petitioners. He found nothing and then lifted the trusteeship in less than a year. [ER 1712-1713, 1863-1864, 2005].

of officers and staff, largely with the exception of Petitioners.

1) DEMOCRATICALLY DEVISED CONSTITUTIONAL PROVISIONS WERE WHOLLY IGNORED

Because of Petitioners well documented campaign of dissent, Loeb then chose to silence Plaintiffs, using his own brand of justice, rather than follow carefully crafted democratic procedures in the International's C&B, as well as its Advice Manual which governs trials before Local Unions. [ER *see* Exhibit 37, 1476-1487]. This occurred even though years before, Petitioners and the International were cautioned by the Honorable Richard Gadbois about the importance of following the democratic procedures contained within the IATSE C&B. [ER 1920, and then *see* 1923/21-1924/20].

a) Forum, Timeliness and Notice Requirements

Loeb admitted that until the Trusteeship was imposed, he (Loeb) was obligated to pursue charges against Osburn under Article Sixteen (App. 82-85), *within sixty days* of learning an offense had been committed. Loeb admitted to having preexisting knowledge well before he filed charges against Osburn on January 31, 2014. [ER 2708-2711, 2121, 2123].

Despite same, Loeb filed charges under Article Sixteen, and then ignored the procedure mandated for proceeding on said charges, including advising the

Charged Party as to what violations had taken place, and when. (Loeb Depo., at 247/1-258/23, 260/16-20, 260/9-261/15, 262/22-25, 264/12-19, 289/11-290/25, 291/2-8). Loeb was also obligated to have the charges heard by the Local Union. (App. 82-85).

Although no Charges were filed against Alvarez, Alvarez was still removed from office and her position at Local 695, without benefit of hearing or due process was terminated. [ER Loeb Depo., 292/5-25, 293/1-8]. Alvarez was not invited to be an advisor like her colleagues, nor become a Delegate to the International Convention. Loeb and the Trustees abrogated the International C&B and limited the number of Delegates who could be elected to only four, while Alvarez placed 5th or 6th. Absent membership approval reducing the size of delegation, Local 695 was clearly entitled to quadruple that amount, but authorization was never sought by Loeb. [ER 1171].

Likewise, the failure of Petitioners to process some charges filed by *SML 478 in 2011 and 2012* against *Weber, Levy* or *Conrad*, required *SMLs* to appeal *within 30 days* pursuant to Article Seventeen, §§1 and 2. (App. 94-95). *SMLs* never filed any appeals, even though they clearly knew that when Local 695 took cognizance of other *SML* charges against *Levy* and *Jesse in 2010 and 2012*, an obligation arose to object and appeal if not satisfied with the scope of the 695 hearings in which *SMLs* participated.

Ironically, Loeb has used time and specificity requirements against IATSE Members who have been

aggrieved by actions of their ruthless leaders. [ER Exhibit 63, at 1710-1711, Loeb rejected several appeals from the Members of Local 800 on the grounds the charges were untimely.].

Even the Trusteeship Loeb imposed disregarded democratic principles. Article Twenty, §3 (App. 101-104) requires that charges be filed *within sixty days* and that the charges be specific. The charges were not specific, except to recite Local 478's version of what happened with Josh Levy.

Expanding upon the scope of the charges after filing is also prohibited under Article Twenty, §3, since notice in order to permit a defense is required. [Compare Loeb's biased Decision, Exhibit 51, ER 1594-1623, with the original charges referred to Donald Gandolini for hearing, Exhibit 46, ER 1566-1570].

Similarly, the International C&B mandates that hearings against Local Union Officers and its Members are to be heard by the Local Union in accordance with Article Sixteen, yet all three hearings conducted below were before hearing officers not affiliated with Local 695, but rather firmly entrenched members of the Loeb Administration in New York. (App. 82-93).

b) Conditions for Exercise of Presidential Powers Not Met

Although Article Seven, §5(a)-(f) confers presidential powers upon Loeb, the specific requirements before he could exercise same were not met herein, with Loeb

conceding such. For instance because of the chronology of events, the trusteeship had not yet been imposed, while Loeb's Charges against Osburn were filed on January 31, 2014 and February 12, 2014. [ER 2013-2015 and 2073-2076]. Nor was a directive pursuant to §5(e) issued to Osburn or Local 695. Instead, Loeb merely forwarded a copy of his castigating written threat to female member Kate Jesse, in February 2011, to Osburn. No such letters issued to a single male, nor did Loeb rescind his earlier requirement that an *SML* issue a proper invoice. [Loeb Depo., ER 2728, 28001/17-2803/12, 2827].

Nonetheless, from that point forward, the *SML* in Louisiana flaunted Loeb's demand for a proper invoice by issuing instead a bill for "working dues" owing, without specifying what same consisted of, let alone the period of time covered. [Compare Dues Statements issued to Jesse in Arizona [ER 2121] with Local 478's "invoice" to Conrad. [ER 2238].

Loeb also conceded he never conducted an emergency trusteeship hearing. [ER 288/11-17].

2) SHAM HEARINGS AND BIASED APPELLATE PROCEEDINGS

Loeb then conducted "kangaroo-court" proceedings (App. 179) before his hand-picked hearings officer, William Gearns, Donald Gandolini and Scott Harbinson. The first sham trial took place on December 18, 2013 before Gearns, recently placed by Loeb on the

GEB. Neither Petitioners, Josh Levy nor Local 695 received notice of the hearing. [ER 2712/12-15; Alvarez Decl., 1124/8-11, ¶25]. Levy was current on his dues obligations since October and had even signed a Check-Off Form [ER 1791-1822, 1858/5-1859/1, 2305-2306], yet a $12,500 fine issued against Levy, in absentia.

Meanwhile, Local 478's hearing before International Representative Donald Gandolini seeking trusteeship concluded on January 7, 2014, without any testimony from Levy. With fine in hand, Loeb then threatened Levy's financial ruin, utilizing same as a means to talk directly with Levy. Petitioners allege Loeb "twisted" Levy's arm into testifying that Osburn told Levy "*not to pay his dues*", when Osburn did nothing of the sort. Loeb promised to excuse Levy's fine, but then testified the fine was merely in abeyance, undoubtedly to ensure Levy's testimony when this matter went to trial. [ER 1880, 1905, 2827-2828; App. 18-19].

Loeb then reopened the Gandolini record, without notice to Petitioners or Local 695 or giving an opportunity to object. In turn Loeb expanded the charges against the Sound Union and then issued his own Decision imposing the trusteeship. [ER 2018-2031, 2752-2756].

After charging Osburn as an "obstructionist" [ER 2012-2019], Loeb then ignored Article Sixteen, §17 (App. 90) which permits the accused but not the accuser to have representation. [ER 1828-1829 (condensed pages 16/10-17/14)]. Loeb named IVP John Lewis, a GEB member who is also an attorney licensed to practice in Canada, to prosecute Osburn, while

refusing requests to allow undersigned counsel to appear on behalf of or assist Osburn. [ER 1879].

Loeb then absented himself from the hearings, depriving Osburn of an opportunity to examine his accusers, including *SMLs* Jonathan Andrews who did not appear but wrote an Affidavit about the Hansen matter. Osburn inquired about Loeb's whereabouts, to no avail, and objected to the denial of due process. [ER 153/13-154/11, 1916/15-1917/11].

Knowing several Trusteeship appeals were pending before the GEB and that Harbinson had not yet issued a Decision, Loeb then published a highly defamatory statement about Osburn and Alvarez in the *695 Quarterly* and refused to issue a retraction or print a rebuttal. [ER Exhibit 62, at 1701, 1703]. Loeb also feigned a lack of recall as to whether he spoke about these matters with Harbinson and Gandolini, let alone the GEB, before their decisions issued, nor could he explain why the transcripts of the hearings were not provided the GEB to read relative to the pending appeals. Petitioners were also denied appearances at the GEB meetings where their appeals were considered and decided within minutes. [ER 1645, 1651, 1661-1662, 1706, 1709].

3) CONVENTION DELEGATES DELIBERATELY MISLED

While these matters were pending, the 2017 Convention Delegates assembled and asked to rule on the Trusteeship and Suspension Appeals. Appellants were not invited to present their appeals at the Convention, nor could they serve as Delegates, because Osburn

lacked "*good standing*" to run, while Alvarez was excluded from serving, despite the election results. [ER 1165, 1171].

Although the Ninth Circuit Panel declined to augment the record in these regards (App. 9), a full picture of the due process violations which continue to be suffered by Petitioners let alone Local 695's membership is warranted. In Convention Proceedings, Loeb dishonestly recited facts about the *Bad Lieutenant* matter, claiming the production was in 2011 and that monies demanded by the *SML* were for work actually performed. (App. 166; and then *see* NLRB Decision, App. 117-160).

Likewise, as Appellants Supplemental Excerpts (ASER) showed, the IATSE and *SMLs* has not been consistent in applying its own Rules, while Loeb has kept the GEB and the membership in the dark about these matters, while selectively controlling what has been released despite the need to keep the membership fully informed. (App. 182-183).

D) OBVIOUS CREDIBILITY ISSUES EXIST

Appellants have consistently denied telling anyone to not pay, with the District Court finding a material disputed fact in this regard. (App. 38-39).

Further scrutiny of Levy's and Respondents' motive, truthfulness and veracity by a trier of fact is warranted. (App. 17-19, 32, 37, 40; *see* Levy Hearing Testimony, ER 1880-1905, admitting he did not want to pay because Louisiana was a right-to-work state

[ER 1898-1905] and further believed his physical safety was being threatened by the Louisiana Local. [ER 1894-1895, 1907-1913].

Also see portions of nationally distributed E-Mail from *SML* Secretary-Treasurer Emeritus Chandra Miller now conceding that certain IATSE members were treated differently than other IATSE members. (App. 182-183).

E) PROCEEDINGS BELOW

Petitioner Osburn and IATSE Local 695 filed the underlying action [ER 4736], in the Central District of California on February 20, 2014, in light of the failure of Respondents to follow specific Constitutional provisions when threatening to place a trusteeship upon Local 695 as well as because Loeb filed disciplinary charges against Osburn. [ER 4745-4746, 4753-4756, ¶¶13, 17-25].

An Ex Parte Application for Issuance of Temporary Restraining Orders and/or for Order to Show Cause why Preliminary Injunction should not issue was denied, without prejudice, on February 24, 2014. [ER 4379]. In turn the International imposed its Trusteeship on that same day [ER 1593-1623] and an agreement seeking to preserve Local autonomy was negotiated between Loeb, Osburn, and the LAPD Labor Relations Detail. [ER 1634]. Despite same, the next day the International seized control of Local 695's assets, with a February 27, 2014 letter from Local 695's President Mark Ulano, still in office, to permit the Trustees to seize Local 695's bank accounts. [ER 4336].

Ulano was then placed on staff by the Trustees where he joined two other long-term Local 695 officers and staff members, Laurence Abrams and Scott Bernard. (App. 107-108).

A Motion for Leave to Amend and Revise Case Caption was then filed on April 21, 2015, after issues about "*Grammarly Reports*" and an Anti-SLAPP was threatened. [ER 4095-4151, 4239-4301]. The First Amended Complaint was then filed [ER 3821-3889] and an Answer was docketed. [ER 3797-3820].

In July 2016, the Court allowed Petitioners §101(a)(2) claims to survive, but found that the trusteeship was reasonable. (App. 10, 34-39). By then, the 18 months had lapsed since Loeb lifted the trusteeship.

Based largely on the false claim that Defendants did not have the opportunity to discuss §101(a)(2) in its First Motion [ER 574], a Second Summary Judgment was filed. (App. 48-49). Although in the Joint Report it is expressly noted therein that only three-member officers on staff were removed by Loeb [ER 3784/13-26, 3787/23-28], and Uncontroverted Fact 17 [ER 3740] was submitted by Respondents admitting fewer than all were terminated, the Court ruled that Plaintiff failed to point these facts out, prior to the final hearing on this matter. (App. 63).

Petitioners appealed [ER 1] and the Ninth Circuit issued unfavorable rulings, including refusing to consider what Respondents distributed at the 2017 Convention proceedings while denying Petitioners the

privilege of participating as delegates or guests. (App. 1-9).

REASONS FOR GRANTING PETITION

Refusing to grant this petition is tantamount to the United States Supreme Court condoning Respondents' cleverly-crafted scheme to summarily remove newly reelected Union Officers from office and to negate their *LMRDA* rights on the guise a short-lived *Title III* trusteeship can legally squelch robust dissent.

The events prefatory to litigation and what has occurred since collectively chill the waters for local union leaders and members who subscribe to democratic principles, but find the heads of their parent labor organization negating clear and unambiguous Constitutional provisions designed to afford meaningful due process.

If Petitioners are deprived of their day in court, every parent labor organization throughout America could nullify the ballot box by simply issuing letters removing everyone from office and then reinstating staff whose views and associations are compatible with the parent organization.

Also implicated are national policies protecting members of Labor Unions who seek to question discriminatory assessments and thug tactics threatening one's pursuit of "*life, liberty and happiness*". Similarly, extracting exorbitant fees/dues/assessments/charges,

without proper explanation or accounting for same, implicates compelled speech and compelled association objected to by this Court. *See Communications Workers of America v. Beck*, 487 U.S. at 761 (1988); *Pattern Makers v. NLRB*, 473 U.S. 95, 104-107 (1985); *Janus, supra*, 585 U.S. ___ (2018) and now, *Fleck, supra*, 585 U.S. ___ (2018).

ARGUMENT

A) PETITIONERS AND MEMBERS' FREE SPEECH AND ASSOCIATION RIGHTS HAVE BEEN NULLIFIED

After acknowledging the United States Supreme Court holding in *Sheet Metal Workers v. Lynn*, 488 U.S. 347 (1989) *(Lynn)*, Respondents put forward the novel claim that imposition of a Trusteeship upon the Local Union negated all of Petitioners' §101(a)(2) rights. Respondents also claimed that Petitioners were seeking to use *Title I* to place independent limitations on the imposition of a *Title III* trusteeship, even though caselaw and the legislative history clearly shows that *Title I* and *Title III* exist *independent* of each other.

Lynn, however, teaches that Loeb's *SML* scheme, his crafted trusteeship and his relentless pursuit of Petitioners' rights as elected officials and as members are unlawful and contrary to legislative intent.

1) Free Speech in Labor Union Context

Congress when adopting more than seventy years ago the *Taft-Hartley Act*, 29 U.S.C. §141, *et seq.*, to address unfair labor practices by labor organizations, and when passing the *LMRDA* to curb corruption and dictatorial actions within the union by union officials, envisioned a procedure to remedy retaliation targeted at disenfranchising the will of the membership as expressed at the ballot box, including petitioning the court for redress.

The *LMRDA* grew out of the McClellan Committee's investigations of autocracy and corruption in the labor movement in the 1950's. S. Rep. No. 187, 86th Cong., 1st Sess. 2 (1959), *reprinted in* 1 NLRB, *Legislative History of the LMRDA* 398 (1959) ("Legis. Hist."). The McClellan Committee investigations revealed many different ways in which corrupt union leaders had dominated unions and remained unaccountable to their members.

The Committee focused specifically on the problem of international union officers who "circumvent freedom of speech on the part of [a] local" by punishing local officers. E.g., 2 Legis. Hist. 1105 (1959) ("Legis. Hist.") (Senator Mundt, citing the McClellan Committee Hearings). Unfortunately, Congress found that union officials did not always subscribe to democratic views of what is in the best interest of their members. According to one view, "widely-held in the labor movement, labor unions should be regarded as military organizations, for their function is to wage economic

warfare with employers. . . . As a wartime army can neither brook divided leadership nor tolerate active dissidents, so must a union punish the trouble-makers in order to close ranks against employers and rival organizations". Cox, *Internal Affairs of Labor Unions Under the Labor Reform Act of 1959*, 58 Mich. L. Rev. 819, 829 (1960).

However, Congress rejected that view when adopting the *LMRDA*, concluding that the needs of workers would be better served by truly democratic unions in which policies were formulated and adopted after open discussion, debate, and criticism. As one court put it, the balance was struck in favor of democracy. *Salzhandler v. Caputo*, 316 F.2d 445, 451 (2d Cir. 1963); *Navarro v. Gannon*, 385 F.2d 512, 518 (2d Cir. 1967). For that reason, the *LMRDA's Bill of Rights*, including *§101(a)(2)*, was modeled on the constitutional Bill of Rights, and was intended to give union members rights comparable to constitutional rights that citizens enjoy against the government. 2 *Legis. Hist.* 1103, 1234, 1238. *Steelworkers v. Sadlowski*, 457 U.S. 102, 111 (1982). *See also Reed v. UTU*, 488 U.S. 319, 325 (1989).

As noted in *Lynn, supra*, "(t)he potential chilling effect on Title I free speech rights is more pronounced when elected officials are discharged. Not only is the fired official likely to be chilled in the exercise of his own free speech rights, but so are the members who voted for him (or her)." *Lynn, supra*, at 355. [ER Alvarez Decl., 1112, ¶5, and Osburn Decl., 1177, ¶4].

This derivative impact cannot be ignored since Petitioners were *reelected* by the membership for another three (3) year term only weeks before Matthew Loeb furthered his scheme to suppress dissent by removing both from office.

2) Trusteeship Punished Robust Dissent

The novel suggestion Osburn and Alvarez were not discharged or targeted, under the facts of this case, must be rejected. This Court explicitly stated in *Lynn, supra*, 488 U.S. at 356-357, "we find nothing in the language of the LMRDA or its legislative history to suggest that Congress intended Title I rights to fall by the wayside whenever a trusteeship is imposed. Had Congress contemplated such a result, we would expect to find some discussion of it in the text of the LMRDA or its legislative history. Given Congress' silence on this point, a trustee's authority under Title III ordinarily should be construed in a manner consistent with the protections provided in Title I."

Also see post-*Lynn* cases continuing to so hold, *Black v. Ryder/P.I.E. Nationwide, Inc.*, 970 F.2d 1461, 1468 (6th Cir. 1992); *Ross v. Hotel Employees and Restaurant Employees International Union*, 266 F.3d 236 (3d Cir. 2001) (although Ross failed to allege a Title I violation); and *Pope v. Office and Professional Employees International Union*, 74 F.3d 1492, 1504 (6th Cir. 1996).

In the context of this case where collection of dues or work assessment or service charges are at issue and

the *SML* declines membership opportunities to IATSE members willing to pay double if not far greater for the privilege of being able to feed their families, then the very motive of why the instant trusteeship was resorted to becomes suspect. As noted, Petitioners were also demanding accountability of political contributions, while extending membership opportunities within *SMLs* would have invited additional scrutiny in these regards that neither the *SMLs* nor Loeb wanted.

If a trusteeship cannot dispense, as *Santo v. Laborer's International Union*, 836 F.Supp.2d 100 (D.C.N.Y. 2011) held, with the requirement that the membership have a right to vote on dues increases and work assessments, as otherwise provided for in §101(a)(3)(A), the *SML* scheme should not be used as a tool to extract monies without benefit of providing membership or a means to avoid taxation without representation. This is especially so since Petitioners were obligated to adjust Local Union dues, pursuant to Article Nineteen, §26 (App. 100-101). Absent proper invoices Petitioners could not do so properly, thereby leaving more revenue available for political contributions the International demanded but declined to account for. *Also see Michelotti v. Air Line Pilots Ass'n*, 61 F.3d 13, 15 (7th Cir. 1995). Section 101(a)(3)(B) is intended to ensure that dues or assessments are not levied by unrepresentative union leaders; to wit, Trustees let alone *SMLs* herein.

3) Association Rights Abrogated

Similarly, Defendants have clearly referenced Alvarez' and Striepeke's association with Osburn, yet that association is incapable of dislodging *LMRDA* rights. (App. 36). *See Ostrowski v. Local 1-2, Util. Workers Union of Am., AFL-CIO*, 530 F.Supp. 208, 218 (S.D.N.Y. 1980) ("An examination of the legislative history of the LMRDA leaves little doubt that [29 U.S.C. §] 411(a)(2) should be read as protecting freedom of association."); *Magriz-Marrero v. Union de Tronquistas de Puerto Rico, Local 901*, 933 F.Supp.2d 234, 248 (D.P.R. 2013) ("Section 101(a)(1) and (2) [of the LMRDA] 'is intended to ensure that unions use democratic processes' and grants union members equal rights of association and expression." (citing *Johnson v. Kay*, 860 F.2d 529, 536 (2d Cir. 1988)). Thus, Petitioners' right to free speech and assembly under Title I of the LMRDA should not have "vanish(ed) with the imposition of a trusteeship." *Lynn, supra*, 488 U.S. at 358. But it did.

A trier of fact could find that the action against Alvarez and Striepeke was taken to further chill the rights of Osburn. In a Title VII action, the Supreme Court has held that a claim for employment discrimination may be stated where a plaintiff suffers an adverse employment action in retaliation for the protected activity of another person. Citing *Burlington N. & S. F. R. Co. v. White*, 548 U.S. 53 (2006), the United States Supreme Court in *Thompson v. N. Am. Stainless, LP*, 562 U.S. 170, 178 (2011) made that specific finding, noting that "retaliation for the protected activity of another person" is unlawful where there is a

reasonably close relationship between the plaintiff and the person who engaged in the protected activity. Id. at 175 ("We expect that firing a close family member will almost always meet the *Burlington* standard and inflicting a milder reprisal on a mere acquaintance will almost never do so, but beyond that we are reluctant to generalize.").

This analysis has also been applied in connection with a retaliation claim under ERISA. *See Ollier v. Sweetwater Union High Sch. Dist.*, 768 F.3d 843, 866 (9th Cir. 2014) (pursuant to *Thompson*, "any plaintiff with an interest arguably sought to be protected by a statute with an anti-retaliation provision has standing to sue under that statute" (internal quotation marks omitted).

Likewise, because Respondents raised the issue about the relationship between petitioners to justify terminating Alvarez, the only inescapable conclusion is that Loeb and Miller intended the adverse employment action inflicted upon Alvarez to also harm Osburn. Nor was Alvarez merely "an accidental victim of the retaliation," either. *Thompson*, *supra*, 562 U.S. at 178. [ER 451/7-9].

B) *SML* SCHEME AND DUES PRACTICES IMPLICATE ISSUES OF NATIONAL IMPORTANCE

The genesis of Loeb's desire to stymie the dissent of Petitioners, if Respondents are to be believed, is because Petitioners allegedly caused Local 695 members

to not pay dues obligations to *SMLs*. Appellants continue to deny the allegations and note that *SMLs* and Loeb did not want to be scrutinized regarding the sum of monies being demanded by *SMLs*, even though Article Nineteen, §26 requires such scrutiny by a Local Union in order to avoid double taxing members for the privilege of working.

These facts support rather than detract from application of a "*dual motive instruction*" as this Court developed in *Desert Palace, Inc. v. Costa*, 539 U.S. 90 (2003). A jury could reach, like the district court first thought was possible (App. 37), a different conclusion than the one advanced by Respondents or the unpublished decision. (App. 1-8).

In light of issues about thug tactics and mandatory use of Check-Off Forms instead of alternative payment arrangements, as well as the refusal to permit the electorate to determine their leaders let alone to join *SMLs* where union finances can also be questioned, compelled speech and compelled association is implicated. *See Communications Workers of America v. Beck*, 487 U.S. 735, 761 (1988); *Pattern Makers v. NLRB*, 473 U.S. 95, 104-107 (1985); *Janus v. AFSCME*, 585 U.S. ___ (2018) and most recently *Fleck v. Wetch*, 585 U.S. ___ (2018).

C) "SOME EVIDENCE" IS NOT SUFFICIENT TO ERASE CONTRACTUAL AND DUE PROCESS GUARANTEES

The Ninth Circuit indicates that the underlying charges satisfied basic notice requirements and that there was "*some evidence*" to support the IATSE's determination that Osburn told members to not pay. (App. 6). This purportedly nullified Petitioners due process challenge under §101(a)(5) and §609 [29 U.S.C. §529], citing *International Boilermakers v. Hardeman*, 401 U.S. 238 (1971). However, Justice Douglas eloquently stated when dissenting in *Hardeman, supra*, 401 U.S. at 250-251:

> "It is unthinkable to me that Congress in designing §101(a)(5) gave unions the authority to expel members for such reasons as they chose. For courts to lend their hand to such oppressive practices is to put the *judicial imprimatur on the union's utter disregard of due process* to reach its own ends."

1) Notions of Breach of Contract are Hollow if a Parent Union and its President Can Pick and Choose

Section 301 of the LMRA, 29 U.S.C. §185, allows suit to be brought against a union for breach of a contract or collective bargaining agreement – including its Constitution. In *Wooddell v. International Brotherhood of Electrical Workers*, 502 U.S. 97 (1991), this Court found that subject-matter jurisdiction extends to suits on union constitutions brought by individual union

members. Although a union's interpretation of its constitution is generally entitled to deference, bad faith and self-interest can upset that preference. *Local 1052 of United Bhd. of Carpenters & Joiners of Am. v. Los Angeles Cty. Dist. Council of Carpenters*, 944 F.2d 610, 614-15 (9th Cir. 1991). (App. 4).

As Petitioners learned many years ago, *democratic procedures* must nonetheless be followed. *Motion Picture & Videotape Editors Guild, Local 776 v. International Sound Technicians, Local 695 (Local 776 v. Local 695)*, 800 F.2d 973, 975 (9th Cir. 1986). Yet, Loeb's interpretation of the International Constitution, including Articles Seven, Sixteen, Seventeen, Nineteen, and Twenty, are illogical and contradicted by the plain meaning of the sections at issue herein.

To discard these Articles because "some evidence" exists to support Respondents (App. 5-6) is under these circumstances, intolerable, with the weight of the evidence favoring Petitioners.

2) Due Process Denied by Biased Hearings and Appellate Processes

Osburn, Alvarez and Local 695 have been denied *due process*, and subjected to an arbitrary and biased hearing and appellate process, in lieu of the mandated trial proceedings to be afforded Local Unions and their Officers, let alone IATSE members.

Original charges must satisfy basic specificity requirements, particularly if accusations uttered at hearings were not even charged to begin with. *Johnson*

v. National Association of Letter Carriers, 182 F.3d 1071, 1074-1075 (9th Cir. 1999) reversed a §101(a)(5) violation because the underlying charges were not specific enough, citing *Gleason v. Chain Service Restaurant*, 422 F.2d 342 (2d Cir. 1970) and *Curtis v. IATSE*, 687 F.2d 1024, 1027 (7th Cir. 1982). *Tincher v. Piasecki*, 520 F.2d 851, 854 (7th Cir. 1975).

Nor does an attack on a union disciplinary decision as "biased" depend on the court's finding that the disciplinary action was motivated by the desire to extirpate a union opponent. If that were all that were involved, the claim would be completely duplicative of the claim that could be brought under §§101(a)(2) and 609 of the *LMRDA*, on the theory that the discipline "infringed" the candidate's free speech rights or had been imposed in retaliation for the exercise of free speech rights, *see Lynn*, *supra*, 488 U.S. at 353-354 (1989) (action under §§101(a)(2) and 102).

Yet the cases make quite clear that the due process requirements of §101(a)(5) apply in addition to the right not to be disciplined for the exercise of free speech rights. *E.g.*, *Black v. Ryder/PIE*, 970 F.2d 1461, 1467-1468 (6th Cir. 1992); *Bise v. IBEW Local 1969*, 618 F.2d 1399, 1304-1305 n.5 (9th Cir. 1979).

Wildberger v. Sturdivant, et al., 86 F.3d 1188 (D.C. Cir. 1996), is quite instructive on these matters. Like President Sturdivant, Loeb was clearly enmeshed in these disputes. Loeb served as the prosecutor by filing charges against Osburn and hand-picked Gearns, Gandolini and Harbinson as hearing officers. Like

Sturdivant, Loeb investigated matters submitted by directly speaking to and threatening Levy. [Levy Communications, ER 2051-2059, also submitted by Respondents below, ER 3592-3600; App. 37].

Unlike Sturdivant who also appointed a 3-member trial committee, Loeb hand-picked a single hearing officer for each matter, knowing full well that Article Sixteen afforded Osburn, Alvarez, Levy, and Local 695 a trial before a Trial Committee or 695's membership (App. 88-89) at large. Unlike Sturdivant who justified his resort to his own trial committee because the "*conditions within (the) local (were) such that a fair and impartial trial cannot be conducted*", Loeb never made such a finding herein. In fact, Loeb's continuing reliance upon the "removed" Board of Directors and other officers as "advisors" shows that Loeb did not genuinely believe Local 695 was incapable of conducting a fair and impartial investigation or local trial.

Although "combination of investigative, prosecutorial, and adjudicatory functions in [a single body] does not, by itself, violate the LMRDA," *Wildberger*, 86 F.3d at 1195, when this combination occurs, courts "should be alert to the possibilities of bias that may lurk in the way particular procedures actually work in practice." *Withrow v. Larkin*, 421 U.S. 35, 54 (1975). Plaintiffs "must overcome a presumption of honesty and integrity in those serving as adjudicators; and [they] must convince that, under a realistic appraisal of psychological tendencies and human weakness, conferring investigative and adjudicative powers on the same individuals poses such a risk of actual bias or

prejudgment" to constitute a denial of the right to a full and fair hearing. *Id.* at 47.

Nor was the appellate process neutral herein in light of what occurred before the GEB and the 2017 Convention. Use of an all-male Executive Board was hardly neutral since Alvarez vocally protested Loeb's refusal to appoint a single woman to a leadership position, to wit, the positions given to Gearns and LoCicero in 2012 and 2013. Nor was the recusal of some GEB Members sufficient since *SMLs* were well represented in the constituted appellate tribunal [ER 3044/21-3848/5], while Petitioners were even denied an appearance to see whether recused members stayed. Nor could Petitioners offer the transcripts of hearing that the International refused to distribute.

Likewise, Loeb's use of a false Narrative to Convention Delegates (App. 164-181) while refusing to allow Petitioners to be heard or sit as members of that delegate body proper.

Petitioners renew their claim that their due process rights have been violated by the internal appeals and Convention process, especially since the Grievance Committee which rubber-stamped Loeb's actions, before the Convention Delegates were even shown the appeals, is not a constitutional body. As noted in *Kiepura v. Steelworkers Local 1091*, 358 F.Supp. 987, 991-992 (N.D. Ill. 1973), when an appeal is allowed, it must comport with due process norms, including the right to see the record on which the appeal *will be* heard. *See Kuebler v. Litho. & Photo. Local 24-P*, 473

F.2d 359, 364 (6th Cir. 1973); *Reilly v. Sheet Metal Workers*, 488 F.Supp. 1121, 1127-1128 (S.D.N.Y. 1980). This was not done herein.

Since Loeb, like Sturdivant, "deliberately employed his considerable authority to serve as accuser, prosecutor, grand jury, judge, and jury in conducting a lengthy investigation of an intra-union opponent, composing charges, and then taking every step necessary to ensure that his opponent(s) would be ridden out of the union", Loeb too must be held accountable. *Wildberger*, *supra.*

D) IN LIGHT OF THIS RECORD, THE PATRONAGE DEFENSE HAS LOST ITS UTILITY

The 9th Circuit concluded that the "patronage defense", also known as a "*loyalty*" expectation was applicable herein. (App. 4). Based upon the facts of this case and other laws now governing unions, continued utility of "*patronage*" as a defense is seriously waning. *See Smith v. IBEW Local 11*, 109 Cal.App.4th 1637 (2003), *rehearing and review and depublication denied* (2003), loudly rejecting "*patronage defense*", when stating to the union, "*not in this century . . . not in this Court*". *Id.*, at 1647.

This too should become the law of the land.

If this Court is not disposed towards eliminating "patronage" then the invitation the Supreme Court referenced in 1982 in *Finnegan v. Leu*, 456 U.S. 431 (1982), at footnote 11, should be accepted, namely determining

whether "patronage" should apply when an employee like Alvarez or Striepeke are *nonconfidential* and *non-policymaking*.

Similarly, the issue of whether an employee is or is not capable of performing his/her job is the inquiry rather than Respondents' prurient interest in eliciting details about Petitioners' personal lives. *Rulon-Miller v. International Business Machines*, 162 Cal.App.3d 241 (1984). Since the IATSE has never claimed that Alvarez was incapable of performing her membership duties, nor did the Trustees allow her to prove herself, then application of the "*patronage defense*" should have been rejected, in the same way Rulon-Miller should not have lost her job because of who she was seeing outside of work. However, neither Loeb nor International Vice President Miller permitted same, in light of their expressed disdain and their erroneous belief that Alvarez would engage in a "Mexican standoff". (App. 13, 17, 44-45).

E) LOEB MUST BE FULLY LIABLE AND RESPONSIBLE FOR THE DAMAGES SUFFERED

The Ninth Circuit also declined to address the personal liability of Loeb, although the District Court did initially. (App. 7, 38-39).

Under the §609 claim alone, Loeb can be held personally liable. For legislative history behind the Congressional decision in 1959 to hold union officials responsible, *see* footnotes 5-7 in *Vandeventer v. Local*

Union No. 513, etc., 579 F.2d 1373 (1978). Likewise, "a union official who aids abets, instigates, or directs a wrongful use of union power to deprive a member of his rights under *§101* may be held liable under *§102*[.]" *Rosario v. Amalgamated Ladies' Garment Cutters' Union, Local 10*, 605 F.2d 1228, 1246-1247 (2d Cir. 1979), *cert. denied*, 446 U.S. 919, 100 S.Ct. 1853, 64 L.Ed.2d 273 (1980). *See Tomko v. Hilbert*, 288 F.2d 625, 625-626 (3d Cir. 1961) (finding that the LMRDA provides a civil remedy "for the vindication of rights contained in the bill of rights" against someone who "is . . . acting in the capacity of an official or agent of a labor union.") and *Guzman v. Bevona, et al.*, 90 F.3d 641 (2d Cir. 1996), upholding award of damages against union officials which included local and International officers still holding Union office.

Suffice it to say a jury rather than Respondents [ER 477] should decide if Matthew D. Loeb is a "man of conscience and intellectual discipline" or another Union official who should be held liable for intentionally and deliberately chilling Petitioners and other Union Members in their exercise of firmly entrenched *LMRDA* and First Amendment rights. (App. 37-39).

CONCLUSION

In light of the plethora of evidence which contradicts the self-serving statements placed before the 2017 Convention and undermines the Opinions procured by Respondents, a reasonable trier of fact should

be allowed to listen to the real evidence and then decide if the contractual and *LMRDA* violations occurred.

For these reasons, the petition for a writ of certiorari should be granted and the case set for plenary review. In the alternative, the petition should be granted and the decision below summarily reversed.

Respectfully submitted,

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