No. 18-932

In The Supreme Court of the United States

JAMES 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 EMPLOYERS AND MOVING PICTURE MACHINE OPERATORS OF THE UNITED STATES AND CANADA, AFL-CIO, CLC and its International President, MATTHEW LOEB,

Respondents.

On Petition For Writ of Certiorari To the United States Court of Appeals for the Ninth Circuit

OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

*David A. Rosenfeld
Counsel of Record
Roberta D. Perkins
Weinberg, Roger & Rosenfeld
1001 Marina Village Parkway
Suite 200
Alameda, CA 94501
(510) 337-1001
drosenfeld@unioncounsel.net
rdperkins@unioncounsel.net

Monica T. Guizar
Lisl R. Soto
Weinberg, Roger & Rosenfeld
800 Wilshire Boulevard
Suite 1020
Los Angeles, CA 90017-2623
mguizar@unioncounsel.net
lduncan@unioncounsel.net

Attorneys for Respondent
INTERNATIONAL ALLIANCE OF THEATRICAL STAGE EMPLOYEES, MOVING PICTURE TECHNICIANS, ARTISTS AND ALLIED CRAFTS OF THE UNITED STATES, ITS TERRITORIES, AND CANADA and its International President, MATTHEW LOEB

Mosaic - (301) 927-3800 - Cheverly, MD

In the context of a trusteeship imposed on a local union pursuant to the Labor Management Reporting and Disclosure Act (LMRDA), 29 U.S.C. 462, which grants the authority and power to an International Union to impose a trusteeship on a local union and to remove all officers as part of the trusteeship, and where the challenge to the trusteeship is abandoned, the following questions are presented:

QUESTIONS PRESENTED

1. When all local union officers are removed in connection with a lawfully imposed trusteeship, and the propriety of the trusteeship is not challenged, can two of the ousted officers maintain a claim under the Labor Management Reporting and Disclosure Act, 29 U.S.C. 411(a)(2) or 529 challenging their removal from office and the internal discipline of one of them?

2. Does *Finnegan* v. *Leu*, 456 U.S. 431 (1982), continue to control the question of whether the termination of an appointed union employee violates 29 U.S.C. 411(a)(2) or 529?

3. Is there any violation of 29 U.S.C. 411(a)(5) when a union member is provided with sufficient notice and afforded a full and fair hearing with the opportunity to present evidence and a defense prior to the imposition of discipline arising out of the same facts that caused the imposition of the trusteeship?

PARTIES TO THE PROCEEDING AND CORPORATE DISCLOSURE STATEMENT RULE 29.6 STATEMENT

Respondents, who were the defendants and respondents below, are the International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators and its President, Matthew Loeb. IATSE is an unincorporated association and labor organization. IATSE is not a publicly traded corporation, issues no stock, and has no parent corporation. There is no publicly held corporation with more than a 10% ownership stake in IATSE. President Loeb is the duly elected president of IATSE.

Petitioners James Osburn and Elizabeth Alvarez, plaintiffs and appellants below, are former officers of IATSE Local 695, who were removed from their positions as a result of the Trusteeship. IATSE Local 695 is an unincorporated association and labor organization.

TABLE OF CONTENTS

Page

TABLE OF CONTENTS (Cont'd)

Page

TABLE OF AUTHORITIES

Page

Federal Cases

TABLE OF AUTHORITIES (Cont'd)

Page

TABLE OF AUTHORITIES (Cont'd)

Page

TABLE OF AUTHORITIES (Cont'd)

Page

State Cases

Federal Statutes

TABLE OF AUTHORITIES (Cont'd)

I. BRIEF IN OPPOSITION

Respondent International Alliance of Theatrical Stage Employees, Moving Picture Technicians, Artists and Allied Crafts of the United States, its Territories, and Canada (IATSE or the International) and IATSE President Matthew Loeb (President Loeb) respectfully submit this opposition to the petition for writ of certiorari submitted by petitioners James Osburn (Osburn) and Elizabeth Alvarez (Alvarez).

The petition cites none of the considerations stated in Rule 10. There is no claim of a circuit split or any misapplication of the legal principles. At best, petitioners just disagree with the conclusion of the courts below. Significantly, they do not argue that any of the courts below misapplied the law.

Because the petition is disorganized, it is difficult for respondents to provide a point-by-point opposition. Instead, this opposition is organized around the way in which the court below framed the issues, keeping in mind the fundamental underlying fact that the imposition of the trusteeship on Local 695 in response to the Local's efforts to undermine the dues structure was explicitly abandoned below.

II. OPINIONS BELOW

The opinion of the Ninth Circuit (Pet. App. 1-8) is an unpublished memorandum decision, available

electronically at 2018 U.S. App. LEXIS 25056. The district court's order on respondents' first motion for summary judgment (Pet. App. 9-47) is not published in the Federal Supplement and is not available electronically. The order on respondents' second summary judgment motion (Pet. App. 48-71) is not published in the Federal Supplement, but is available at 2016 U.S. Dist. LEXIS 194181.

III. JURISDICTION

Judgment of the United States Court of Appeals for the Ninth Circuit was entered on September 4, 2018. Mandate issued on October 22, 2018. The petition for writ of certiorari was filed on January 10, 2019. Jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

IV. STATUTORY PROVISIONS INVOLVED

29 U.S.C. 411(a)(2) provides:

> Every member of any labor organization shall have the right to meet and assemble freely with other members; and to express any views, arguments, or opinions; and to express at meetings of the labor organization his views, upon candidates in an election of the labor organization or upon any business properly before the meeting, subject to the organization's established and reasonable rules

> pertaining to the conduct of meetings: Provided, That nothing herein shall be construed to impair the right of a labor organization to adopt and enforce reasonable rules as to the responsibility of every member toward the organization as an institution and to his refraining from conduct that would interfere with its performance of its legal or contractual obligations.

29 U.S.C. 411(a)(5) provides:

> No member of any labor organization may be fined, suspended, expelled, or otherwise disciplined except for nonpayment of dues by such organization or by any officer thereof unless such member has been (A) served with written specific charges; (B) given a reasonable time to prepare his defense; (C) afforded a full and fair hearing.

29 U.S.C. 462 provides:

> Trusteeships shall be established and administered by a labor organization over a subordinate body only in accordance with the constitution and bylaws of the organization which has assumed trusteeship over the subordinate body

> and for the purpose of correcting corruption or financial malpractice, assuring the performance of collective bargaining agreements or other duties of a bargaining representative, restoring democratic procedures, or otherwise carrying out the legitimate objects of such labor organization.

29 U.S.C. 464(c) provides:

> In any proceeding pursuant to this section a trusteeship established by a labor organization in conformity with the procedural requirements of its constitution and bylaws and authorized or ratified after a fair hearing either before the executive board or before such other body as may be provided in accordance with its constitution or bylaws shall be presumed valid for a period of eighteen months from the date of its establishment and shall not be subject to attack during such period except upon clear and convincing proof that the trusteeship was not established or maintained in good faith for a purpose allowable under section 462 of this title. After the expiration of eighteen months the trusteeship shall be presumed invalid in any such proceeding and its

> discontinuance shall be decreed unless the labor organization shall show by clear and convincing proof that the continuation of the trusteeship is necessary for a purpose allowable under section 462 of this title. In the latter event the court may dismiss the complaint or retain jurisdiction of the cause on such conditions and for such period as it deems appropriate.

29 U.S.C. 529 provides:

> It shall be unlawful for any labor organization, or any officer, agent, shop steward, or other representative of a labor organization, or any employee thereof to fine, suspend, expel, or otherwise discipline any of its members for exercising any right to which he is entitled under the provisions of this chapter. The provisions of section 412 of this title shall be applicable in the enforcement of this section.

V. STATEMENT OF THE CASE

Petitioners Osburn and Alvarez are members of IATSE and former officers of IATSE Local 695 who have a dispute with the International over the assessment of dues required by the IATSE

Constitution and Bylaws. Petitioners emphasize a litany of wrongs, none of which they raised before the imposition of the trusteeship and none of which matters were dealt with by the district court; however, only a summary of the events that resulted in the imposition of the trusteeship—the removal of all officers, and the subsequent discipline against Osburn—is warranted for purposes of this opposition.

Local 695 is one of Hollywood's most essential and storied unions. It is composed of the skilled craftspeople who assist in the making of movies, television shows, and newer media. Its membership consists of many classifications of the technicians who are responsible for the video and audio productions for those media. Although centered in the Los Angeles area, its members work throughout the United States and Canada for signatory employers. Local 695 has existed since 1930.

When a member of Local 695 (or indeed any member of an IATSE local union) works in another jurisdiction, Article Nineteen, Section 26 of the IATSE Constitution requires that the visiting member pay the same work assessment fee to the local in the jurisdiction where the work is being performed. The work assessment fees are also referred to as "working dues," or "dues assessments." C.A. E.R. 3692-3694. This Constitutionally-required allocation of dues is at the heart of this dispute.

Although the membership of IATSE decided long ago that the dues should be distributed equitably in part to Local 695 (or applicable home local) and in part to the local union in whose jurisdiction the members are working, Local 695, through Osburn and Alvarez, sought to undermine this essential organizational structure by openly and consistently discouraging members from paying dues to the local unions in whose jurisdictions they worked. Petitioners label these local unions "SMLs" or Studio Mechanics Locals. In essence, then, this is a dispute over dues between the SMLs and Local 695, which the IATSE Constitution resolved through the establishment of the dues structure that Local 695 sought to avoid. C.A. E.R. 4472.

In 2010, 2011, and 2012, members of Local 695 who were working outside of California and within the jurisdictions of other IATSE local unions failed to pay working dues/dues assessments, as required by the International Constitution. C.A. E.R. 3835, 3978-3984, 3995-3996. In response to the 2011 incidents, President Loeb issued a "directive to Local 695 concerning the obligation of its members to pay dues when they are working as local hires in the jurisdiction of another local." *Id.* at 3960. In that directive, President Loeb advised that if he were to "find any evidence that an officer [had] counseled [a member] to engage in this behavior, s/he will be brought up on charges and subject to the full panoply

of penalties including suspension and expulsion if charges are proved." *Id.* at 3995-3996.

In 2012, the IATSE local in Louisiana filed charges against a Local 695 member for failing to pay work assessment fees while the member worked on three separate movies filmed in Louisiana. C.A. E.R. 3618-3619, 3838, 2971-3973. After providing notice to the member and holding a hearing on one of the charges, which the offending member did not attend, the member was found to have violated the International Constitution and was assessed a $25.00 fine. *Id.* at 3618-3619.

An additional hearing was held on the remaining changes in 2013. The member was again provided with notice, and again failed to attend the hearing. C.A. E.R. 1788, 2051, 3589. It was only after receiving the decision and notice of a $12,500 fine (*id.* at 3587-3591) that the offending member emailed President Loeb and explained that while he was willing to pay the Louisiana local's work assessment, Osburn told the member that he "did not have to pay this [the assessment fee], this was ridiculous," that Local 695 "would work it out" with the Louisiana local, and Osburn directed the member "NOT to pay the assessment." *Id.* at 3594-3595, 3597-3599.

In addition to filing the work assessment charge, the Louisiana local also filed charges against Local 695 for obstructing the IATSE Constitution by

specifically advising its members not to pay the work assessment fees. A separate hearing on that charge was convened. Osburn, who was President of Local 695, and the person responsible for providing the erroneous advice, received notice of this hearing and had a full and fair opportunity to present evidence and examine witnesses at the hearing. Following a hearing on the obstruction charges, the hearing officer recommended the "International take immediate control of [Local] 695 because [it] was engaging in conduct that is detrimental to itself, [the Louisiana local] and the alliance as a whole." C.A. E.R. 3695, 3840, 3958, 3971-3976.

Based on his review of the hearing record, on February 24, 2014, President Loeb issued a "Decision and Order of the International President after Hearing in the Matter of Local No. 478 v. Local No. 695" (Decision and Order). C.A. E.R. 3956-3969. The Decision and Order concluded that Local 695 and its officers, *i.e.*, Osburn and Alvarez, were "engaged in a concerted, intentional, continuing violation of the International Constitution * * *" that their conduct was "undermining and interfering with the collective bargaining responsibilities of the International * * *," and that the principal officers were "committed to a course of reckless action." *Id.* at 3959. These actions were "so serious" as to require intervention by the International. *Ibid.*

On February 24, 2014, the International placed Local 695 into trusteeship under Article Twenty, Section 1 of the International Constitution and 29 U.S.C. 462 and 464 (c). These provisions of the LMRDA allow the imposition of trusteeship by international unions over local unions based on prescribed purposes and certain procedural safeguards. In conjunction with implementing the trusteeship, Osburn, Alvarez, and every other Local 695 officer were suspended from office, as required by the IATSE Constitution. Pet. App. 19-20. Because the trusteeship was established in conformity with the IATSE Constitution after a hearing was held, the trusteeship was "entitled to a presumption of validity" under 29 U.S.C. 464(c). C.A. E.R. 96-97.

The International filed charges against Osburn individually on January 30, 2014, for violating the IATSE Constitution by counseling Local 695 members to violate the Constitution by advising that they did not need to pay the work assessments while working in the jurisdictions of other IATSE locals. C.A. E.R. 3918-3921. Osburn was provided with a full and fair hearing on the charges and put forth a defense. Osburn was afforded the opportunity to examine and present witnesses and evidence in his defense and to testify in response to the charges. *Id.* at 3581, 3583, 3638-3642, 3989. The hearing officer concluded that Osburn was guilty as charged and ordered he be expelled from IATSE. President Loeb, the International President, reduced the expulsion to

a suspension from Local 695 for one year. *Id*. at 4031-4032. This decision was affirmed during IATSE's internal appeals process. Pet. App. 21-23.

Osburn and Alvarez filed a complaint in the district court alleging:

(1) a breach of the IATSE Constitution and Bylaws based on the imposition of the trusteeship on Local 695, Osburn's subsequent suspension from IATSE for one year, and Alvarez's removal as an officer when the trusteeship was imposed and the simultaneous termination of her employment with Local 695;

(2) that IATSE and President Loeb violated Osburn's and Alvarez's free speech and assembly rights under the LMRDA, 29 U.S.C. 411(a)(2) and 529;

(3) President Loeb was personally liable for the alleged violations; and

(4) improper imposition of the trusteeship.

Alvarez additionally asserted a hostile work environment claim for unlawful sexual harassment, sexual discrimination, national origin/ethnicity discrimination, and unlawful retaliation, all which were abandoned on appeal. The Local was initially named as a plaintiff but later removed as a party.

The district court initially granted summary judgment in favor of respondents on all causes of action except the claim alleging violations of speech and assembly rights under the LMRDA, 29 U.S.C. 411(a)(2) and 529. Pet. App. 10-47.

The district court subsequently granted a request by IATSE and President Loeb to file a second motion for summary judgment on the remaining claim. Pet. App. 48-49. Finding that the IATSE Constitution required the removal of *all* elected officers upon imposition of a trusteeship and that Osburn and Alvarez were not targeted for removal, the district court found that "Plaintiffs cannot show a violation of the LMRDA," dismissed the Section 411(a)(2) claim, and held that President Loeb could not be held liable for carrying out his official duties under the IATSE Constitution. *Id.* at 49, 60-70.

Osburn's and Alvarez's appeal to the Ninth Circuit presented four issues for review: dismissal of the LMRDA, 29 U.S.C. 411(a)(2) and 529 claims; dismissal of the breach of the IATSE Constitution and Bylaws claim; the dismissal of the claim that Osburn's suspension violated Section 411(a)(5); and the determination that President Loeb was not personally liable. Pet. App. 2-7. In an unpublished memorandum opinion, the Ninth Circuit affirmed in full, holding:

- Because all officers were removed when the trusteeship was instituted, "Osburn and Alvarez cannot establish they were targeted for removal for exercising their speech or assembly rights," Pet. App. 2-3;

- IATSE had a non-discriminatory reason for suspending Osburn, *id.* at 4;

- There was no violation of the LMRDA when Alvarez was terminated because "[t]he leader of a local union has the power to appoint his own supporters to his staff, and such appointments do not violate the speech or assembly rights guaranteed by the LMRDA," *ibid.*;

- There was no violation of Section 529 when Osburn's membership was suspended because IATSE had a non-discriminatory reason for doing so, *id.* at 5;

- There was no violation of Section 411(a)(5) because Osburn received notice of the hearing and the charges against him, he was present at the hearing and presented witnesses and evidence, and there was sufficient evidence to support the imposition of discipline, *id.* at 5-6;

- There was no breach of the IATSE Constitution, *id.* at 6-7; and

- The claims against IATSE and President Loeb alleged the same conduct. "Given that summary judgment is appropriate in IATSE's favor, judgment is also appropriate in Loeb's favor." *Id.* at 7.

The Ninth Circuit denied a Petition for Rehearing. Pet. App. 72-73.

VI. REASONS WHY THE PETITION SHOULD BE DENIED

A. THE PETITION DOES NOT PROVIDE ANY BASIS FOR GRANTING CERTIORARI UNDER RULES 10 AND 14 OF THIS COURT

The petition fails to present or articulate any reason for review. Although the petition recites many irrelevant facts, petitioners challenge only the democratically made and Constitutionally based decision of the International to impose a trusteeship on Local 695 and to discipline Osburn in response to petitioners' continuing insubordination. Petitioners question only the factual findings made in the proceedings below, not the well-established authority interpreting the LMRDA, which was properly applied in the proceedings below, except they question the continued validity of *Finnegan* v. *Leu*, *supra*.

Petitioners' questions 1 and 2 encompass no legal issue, just an argumentative characterization of the dispute over the efforts by the leadership of Local

695 to undermine the dues structure of the International. These questions do not comply with Supreme Court Rule 14(1)(a). Question 3 refers to a legal dispute but only asks whether the forty year old precedent in *Finnegan* v. *Leu*, *supra*, has continuing validity.

B. SECTION 411(A)(2) DOES NOT CONFER ANY FREE SPEECH RIGHTS ON UNION OFFICERS WHO ARE REMOVED AS PART OF THE PROPER IMPOSITION OF A TRUSTEESHIP

The Decision and Order that placed Local 695 into trusteeship under Article Twenty, Section 1 of the International Constitution and under 29 U.S.C. 462 and 464(c) of the LMRDA, suspended *all* Local 695 officers pursuant to the placing of the Local in trusteeship, and appointed International Vice President Michael F. Miller, Jr. and International Representatives Steve Aredas and Peter Marley to serve as Trustees of the Local. C.A. E.R. 3601-3616, 3954-3969. On February 24, 2014, President Loeb notified Osburn, Alvarez, and all other Local 695 officers that they were "suspended from office in Local 695 and that the Local [was] placed into trusteeship." *Id.* at 3601-3616. As noted, the district court's conclusion that the "imposition and maintenance of the trusteeship was not improper" (Pet. App. 34, 42-44), was not challenged in the appeal to the Ninth Circuit.

Petitioners assert no authority that it is improper to remove all officers as a result of a trusteeship. The IATSE Constitution *requires* removal of all officers because the Local's autonomy is suspended. C.A. E.R. 4440. Indeed, when a trusteeship is imposed, it makes eminent sense that all officers be replaced since the trustee is now responsible for running the affairs of the Local for the length of the trusteeship, which is presumed valid for a period of eighteen months. 29 U.S.C. 464(c).

Petitioners concede that the underlying reason for the trusteeship was the dispute over whether dues should be allocated to the local union (SML) or Local 695. Pet. App. 42-43. Respondents agree that this was the underlying dispute. The problem is that Local 695, through the actions of Osburn and Alvarez, went far beyond advocacy and dissent. They actively undermined and thwarted the International's Constitution and implementing decisions, which made clear that working dues would be paid and that any interference with that decision would not be tolerated. C.A. E.R. 3995-3996.

Yet, Osburn and Alvarez continued to undermine the Constitution and interfere with that decision, and, after hearings in which the interference was manifest, the trusteeship was imposed. Petitioners offer no legal or practical support for the idea that an International cannot set policy on dues payments and expect subordinate locals and their officers to

follow that policy, which is contained in its Constitution, approved by the membership. The International was not required to and was not going to tolerate the continued resistance and insubordination by Osburn and Alvarez.

Longstanding precedent furthermore confirms that 29 U.S.C 411 (a)(2) confers no free speech rights on officers of a labor organization. It is "readily apparent, both from the language of [29 U.S.C. 411(a)(1) and (2)] and from the legislative history of Title I, that it was rank-and-file union members—not union officers or employees, as such—whom Congress sought to protect" in enacting the LMRDA. *Finnegan* v. *Leu*, 456 U.S. at 436-439. Although a *member* is free to criticize union management and policies, an *officer* has no such rights; "[t]o obligate union leadership to tolerate open defiance of, or disagreement with, its plans by those responsible for carrying them out, would be to invite disaster for the union." *Newman* v. *Local 1101, Commc'ns Workers*, 570 F.2d 439, 445 (2d Cir. 1978). Section 411(a)(2) offers no protection to petitioners as officers.

The undisputed evidence below was that "members of Local 695 had failed on multiple occasions to pay work assessments." Pet. App. 43. This evidence resulted in the district court concluding that none of "IATSE's reasons for the trusteeship were impermissible." *Ibid*. The inquiry properly stopped when the district court reached that

conclusion, a conclusion that was not challenged by petitioners. "As long as the trusteeship is supported by at least one proper purpose, it is immaterial that the labor union which imposed the trusteeship may also have had an impermissible motive." *Ibid.* (quoting *SEIU Local No. 87* v. *SEIU Local No. 1877*, 230 F.Supp.2d 1099, 1104 (N.D. Cal. 2002)).

Petitioners did not challenge the district court's finding that the trusteeship was properly imposed. Pet. App. 3 n.1 ("Osburn and Alvarez do not challenge the imposition of the trusteeship on appeal."). The failure to challenge the validity of the trusteeship on appeal is fatal to the Section 411(a)(2) claim. "Once the validity of a trusteeship has been established under Title III, any Title I challenge to its imposition is foreclosed." *Keenan* v. *Int'l Assn. of Machinists*, 632 F.Supp.2d 63, 71 (D. Me. 2009) (quoting *Johnson* v. *Holway*, No. CIV. A. 03-2513 (ESH), 2005 U.S. Dist. LEXIS 34787, at *56 (D.D.C. Dec. 6, 2005)); see also *Estate of Bernard* v. *Int'l Bhd. of Teamsters*, No. 15-11107, 2015 U.S. Dist. LEXIS 127107, at *8-10 (E.D. Mich. Sept. 23, 2015). A plaintiff cannot circumvent Title III by repackaging the same claim as an affront under Title I. See *Morris* v. *Hoffa*, No. CIV. A. 99-5749, 2001 U.S. Dist. LEXIS 16692, at *31-32 (E.D. Pa. Oct. 12, 2001) (argument that the imposition of a trusteeship violates Section 411(a)(2) rights is "really just another way of saying that the trusteeship was

invalid because it was imposed for an improper motive").

Petitioners rely on *Sheet Metal Workers' International Association* v. *Lynn*, 488 U.S. 347 (1989) (*Lynn*). Pet. App. 36-42. In *Lynn*, a business representative, who had been retained by the trustee after the trusteeship had been imposed, was removed a month *after* imposition of the trusteeship, and only after the business representative had refused to support the trustee's proposal for a dues increase and spoke against the proposal at a union meeting. 488 U.S. at 350. *Lynn* does not address the situation where *all* officers are removed as required by the union constitution, *when* the trusteeship is put in place and as part of imposing the trusteeship.

When *all* of Local 695's elected officers were removed from office *at the outset* of the trusteeship, as constitutionally required, the International was doing nothing more than enforcing its Constitution, which provided for the removal of all officers upon the imposition of a trusteeship. Pet App. 2-3. All elected officers were removed when the trusteeship was imposed, as required by the International Constitution and Bylaws. The Local was placed in trusteeship because petitioners actively resisted the International's established dues structure, not because of their speech. This Court's analysis in *Lynn* does not apply in this situation. Petitioners

have submitted no contrary or potentially conflicting authority.

C. UNDER *FINNEGAN* v. *LEU*, THE TRUSTEE OF THE LOCAL WAS ENTITLED TO REMOVE ALVAREZ, WHO WAS ALSO AN APPOINTED EMPLOYEE OF THE LOCAL.

Petitioners assert that Alvarez, as an appointed employee of Local 695, was entitled to protection from removal at the imposition of the trusteeship. Pet. 29-32, 39-40. But that argument fares no better since the trustee was entitled to ensure the loyalty of employees when he made the termination decision. The trustee had no obligation to rehire Alvarez, who had been at the center of the Local's resistance to complying with the International Constitution. The Ninth Circuit properly cited *Finnegan* v. *Leu*, *supra*, in holding that Alvarez could not maintain any claim based on the termination of her employment with Local 695. Pet App. 4. Petitioners offer no conflict among the circuits[1] or other compelling reason why

---

1 Petitioners rely on one lower court decision from California, *Smith* v. *International Brotherhood of Electrical Workers, Local Union 11,* 109 Cal.App.4th 1637 (2003) (*Smith*). See Pet. 39. This decision does not help petitioners. The *Smith* court held the LMRDA did not preempt plaintiff's causes of action for wrongful termination in violation of public policy based on age and disability discrimination under the California Fair Employment and Housing Act, California Government Code

the trustee should not have the right to retain as employees those who will be loyal, and assert no reason for this Court to reject the controlling authority of *Finnegan* v. *Leu* in the context of this case.

Finally, 29 U.S.C. 529 affords no remedy for Osburn or Alvarez since it applies to membership rights, not the rights of employees or officers. *Finnegan* v. *Leu*, *supra*; *United Steel Workers Local 12-369* v. *United Steel Workers Int'l*, 728 F.3d 1107, 1117 (9th Cir. 2013). Pet. App. 5.

D. THE NINTH CIRCUIT CORRECTLY AFFIRMED THE DISCIPLINE IMPOSED ON OSBURN FOR INTERFERING WITH THE DUES ALLOCATION PROVISIONS OF THE INTERNATIONAL CONSTITUTION

Without any reference to the record, petitioners assert that the Ninth Circuit applied the wrong standard when reviewing the decision to affirm the discipline imposed on Osburn. Pet. 34. The Ninth Circuit reviewed the record and found "[t]here was

---

§ 12900 et seq. The court did, however, hold the LMRDA preempted plaintiff's cause of action for breach of contract. As to that decision, the *Smith* court followed the California Supreme Court's decision upholding the principles of *Finnegan* v. *Leu*, *supra*. See *Screen Extras Guild* v. *Superior Court*, 51 Cal.3d 1017 (1990). Alvarez abandoned claims that would not have been preempted. Osburn never made such claims.

sufficient evidence to support the imposition of discipline." Pet. App. 6 (citing *Int'l Bhd. of Boilermakers* v. *Hardeman*, 401 U.S. 233, 246 (1971) (*Hardeman*), which adopted the "some" evidence standard in review internal union proceedings). The court expressly rejected the proposition that it "must accept the union's fact-finding as true." *Id.* at 5. Instead, the court determined it must "engage in an independent review of the record and determine whether disputed facts exist that bar summary judgment." *Ibid.* The court could "find no such disputed facts." *Ibid.* Petitioners' suggestion that this Court should overrule *Hardeman* and adopt the dissent of Justice Douglas is both unwarranted and unnecessary. Pet. 34. The Ninth Circuit also rejected Osburn's claim based on 29 U.S.C. 529 because it does not apply to the rights of officers and "IATSE had a non-discriminatory reason for suspending Osburn." Pet. App. 5. Petitioners offer no compelling reason to review these conclusions.

E. DEFERENCE TO THE INTERNATIONAL'S INTERPRETATION OF ITS CONSTITUTION WAS REQUIRED

In a disorganized and unsupported argument, which is three short paragraphs, petitioners assert that the International's interpretation of its Constitution should be rejected. Pet. 34-35. Petitioners undermine their own argument when they concede "a union's interpretation of its

constitution is generally entitled to deference." *Id.* at 35.

The IATSE Constitution authorizes disciplinary action when a member or officer of a local union violates the provisions of the Constitution and Bylaws, or engages in conduct that is detrimental to the advancement of the purposes that the Alliance pursues, or interferes with the performance by the Alliance of any contracts it holds, among other things. Pet. App. 101-102. Petitioners argue the International's interpretation of its Constitution and Articles Seven, Sixteen, Seventeen, Nineteen and Twenty, "are [*sic*] illogical and contradicted by the plain meaning of the sections at issue" (Pet. 35), but that is not the proper test, nor was it the test applied in the proceedings below.

There is a "well-established, soundly based policy of avoiding unnecessary judicial intrusion into the affairs of labor unions." *Local No. 48, United Bhd. of Carpenters* v. *United Bhd. of Carpenters*, 920 F.2d 1047, 1051 (1st Cir. 1990) (*Local No. 48*); see also *Local 334, United Ass'n of Journeymen & Apprentices of the Plumbing Indus.* v. *United Ass'n of Journeymen & Apprentices of the Plumbing Indus.*, 669 F.2d 129, 131 (3d Cir. 1982) (courts will interfere "only where the official's interpretation is not fair or reasonable") (quoting *Stelling* v. *Int'l Bhd. of Elec. Workers Local Union No. 1547*, 587 F.2d 1379, 1388 (9th Cir. 1978)); *Exec. Bd. of Transp. Workers Union,*

Local 234 v. *Transp. Workers Union*, 338 F.3d 166, 170 (3d Cir. 2003) (courts typically will not override union's interpretation of its own constitution unless interpretation is "patently unreasonable," which imposes an "undeniably [ ] high" standard); *Newell* v. *Int'l Bhd. of Elec. Workers*, 789 F.2d 1186, 1189 (5th Cir. 1986) (union's construction of its own constitution will not be invalidated unless "patently unreasonable"); *Local Union No. 657 of the United Bhd. of Carpenters* v. *Sidell*, 552 F.2d 1250, 1256-1257 (7th Cir. 1977) (similar), cert. denied, 434 U.S. 862 (1977); *Motion Picture & Videotape Editors Guild, Local 776* v. *Int'l Sound Technicians of the Motion Picture Indus., Local 695*, 800 F.2d 973, 975 (9th Cir. 1986) (*Motion Picture*) ("It would seem self-evident that the interpretation of a union's own constitution represents virtually the ultimate in internal affairs"), cert. denied, 483 U.S. 1022 (1987); *Local 1052 of the United Bhd. of Carpenters* v. *L.A. Cty. Dist. Council of Carpenters*, 944 F.2d 610, 613 (9th Cir. 1991) (absent bad faith or special circumstances, union's interpretation of its constitution and rules "should not be disturbed").

In the absence of bad faith, a labor organization's interpretation of internal union documents puts an end to judicial scrutiny. *Motion Picture*, 800 F.2d at 975; *Local No. 48*, 920 F.2d at 1052. Petitioners failed to cite to "any persuasive evidence of bad faith or special circumstances." Pet. App. 3, 6. Petitioners' only argument is that the International's

interpretations "are illogical and contradicted by the plain meaning of the sections at issue herein" without providing more. Deference to the International's determination was properly accorded and provides no basis for review.

F. THERE WAS NO VIOLATION OF DUE PROCESS RIGHTS

Petitioners assert that "Osburn, Alvarez and Local 695 have been denied *due process*, and subjected to an arbitrary and biased hearing and appellate procedure." Pet. 35. First, Local 695 is not a party, and the claim that that the trusteeship was imposed improperly or for an improper motive has been abandoned. Second, no discipline was imposed on Alvarez. She was terminated from her position with Local 695 and removed from office as part of the trusteeship. What is left is the discipline imposed on Osburn as a member.

Petitioners argue Osburn's due process rights were violated when he was suspended from IATSE for one year after a hearing held pursuant to the International Constitution. Pet. 35-39. Petitioners appear to suggest the "some evidence" standard established in *Hardeman* is improper, but, as discussed above, offer no argument or authority in that regard. Instead, petitioners claim the hearing and appellate process afforded Osburn was "arbitrary and biased," and the charges against

Osburn were not sufficiently specific. *Id.* at 35. This fact-bound issue provides no basis to grant review; the facts and evidence in the record below clearly establish that Osburn was provided all the process due him under the LMRDA, and the district court and Ninth Circuit readily agreed. Nor have petitioners pointed to any specific failure that would warrant review by this Court.

The LMRDA provides three specific requirements to safeguard against improper discipline: a member must be "(A) served with written specific charges; (B) given a reasonable time to prepare his defense; (C) afforded a full and fair hearing." 29 U.S.C. 411(a)(5).

The charging instrument provided to an accused "must be * * * 'specific enough to inform the accused member of the offense that he has allegedly committed.'" *Hardeman*, 401 U.S. at 245. The charge must inform the charged party of the facts that form the "basis for the disciplinary action" (*ibid.*), so that the charged party may prepare a defense. *Johnson* v. *Nat'l Ass'n of Letter Carriers Branch 1100*, 182 F.3d 1071, 1074-1075 (9th Cir. 1999); *Gleason* v. *Chain Serv. Rest.*, 422 F.2d 342, 343 (2d Cir. 1970). The charge need not rise to the level needed for a criminal indictment. *Johnson*, 182 F.3d at 1074-1075; *United States* v. *Intl. Bhd. of Teamsters*, 19 F.3d 816, 823 (2d Cir. 1994); *Curtis* v. *Int'l All. of Theatrical Stage Emps., Local No. 125*, 687 F.2d 1024, 1027 (7th Cir. 1982); *Kuebler* v.

Cleveland Lithographers Union Local 24-P, 473 F.2d 359, 363 (6th Cir. 1973). Petitioners assert no countervailing authority or cases to support their argument. This does not fall anywhere near the requirements of Supreme Court Rule 10.

More than adequate protection was afforded to Osburn. "Osburn received written notice of his hearing, and he was given ample time to prepare. The notice specified the basis of the charges against him. He was present at his hearing, and he presented witnesses and evidence. There was sufficient evidence to support the imposition of discipline." Pet. App. 6; see also *id.* at 11 ("On the evidence presented, no reasonable jury could conclude that IATSE failed to observe the procedural safeguards as required under [29 U.S.C. 411(a)(5)]."). There was no due process violation, and there is no basis for review.

G. THE LIABILITY OF PRESIDENT LOEB

No legal error is asserted in the petition regarding the alleged liability of President Loeb. Pet. 40-41. Petitioners incorrectly claim, "The Ninth Circuit also declined to address the personal liability of Loeb * * *." *Id.* at 40. Petitioners are wrong; the Ninth Circuit specifically addressed this issue (Pet. App. 7), and its conclusion that any claim against President Loeb personally must fail because the

claims against IATSE fail poses no issue warranting review.

VII. CONCLUSION

This case does not present any compelling issues for review. In placing Local 695 into trusteeship, removing the officers, terminating Alvarez as an employee and in disciplining Osburn as a member, the International followed its Constitution and Bylaws and the requirements of the LMRDA. Well-established law was applied to the relevant undisputed facts in the proceedings below.

For the reasons suggested above, the petition for writ of certiorari should be denied.

Respectfully Submitted

Weinberg, Roger & Rosenfeld
A Professional Corporation

/s/ *David A. Rosenfeld*
By: David A. Rosenfeld
Attorneys for Respondent
INTERNATIONAL ALLIANCE OF THEATRICAL STAGE EMPLOYEES, MOVING PICTURE TECHNICIANS, ARTISTS AND ALLIED CRAFTS OF THE UNITED STATES, ITS TERRITORIES, AND CANADA and its International President, MATTHEW LOEB

Dated: March 15, 2019