

No. 21-5510 ORIGINAL

IN THE  
SUPREME COURT OF THE UNITED STATES

\*\*\*\*\*

Supreme Court, U.S.  
FILED

AUG 20 2021

OFFICE OF THE CLERK

Prayed -- PETITIONER

vs.

United States Department of Labor, et al. -- RESPONDENT (S)

ON PETITION FOR A WRIT OF CERTIORARI TO  
UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

**PETITION FOR WRIT OF CERTIORARI**

Prayed

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### **QUESTION PRESENTED**

In this case specifically, has the Petitioner's substantive rights been abridged, a violation of 28 USC 2072 (b), by the Court rules and procedures effecting encroachment of an American's First, Fifth, Ninth, and Tenth Amendment guarantees vested within our Constitution for the United States of America, thereby impeding his service to this nation advancing argument promoting the creation of positive law in matters of first impression relevant to the Labor Management and Reporting Disclosure Act of 1959, As Amended (LMRDA), and to fairness standards and nondiscriminatory safeguards for an employee when Union leadership, as the "exclusive representative", receives the majority of their respective income from the employer, and to the responsibility vested in the Court to administer adherence and remedy inequitable conduct by inferior courts as pertains to existing rules of practice and procedures constituting good Behavior when holding office or is it most appropriate that these important issues need be reviewed and resolved by this Court?

### LIST OF PARTIES

All parties do not appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

- UNITED STATES DEPARTMENT OF LABOR, *Secretary of Labor Martin J. Walsh* – Respondent
- ALASKA RAILROAD WORKERS LOCAL 183 – Respondent
- BRUCE M. SHELT, Interim President Local No. 183 – Respondent
- ALASKA RAILROAD CORPORATION – Respondent

### RELATED CASES

The ramification of this case could extend to any civil issue involving Labor/Management Relations wherein the Union serves as the exclusive representative for employees and the Union leadership's majority percentage of income results from employment with the company. No case is "directly related".

## **TABLE OF AUTHORITIES CITED**

### *CASES*

Crolwey, 467 U.S. at 528..... 9

### *STATUTES AND RULES*

Federal Rules of Procedure (FRCP) 6(a)(4)..... 7

FRCP Rule 83..... 7

Labor-Management Reporting and Disclosure Act of 1959, As Amended, (LMRDA), As Amended .....

..... 2, 8

Title 1, LMRDA..... 3

Title IV, Sec 403, (29 USC 483)..... 2, 9

28 USC 2072(a)..... 9

28 U.S.C. 2072(b)..... 3

29 U.S.C. 401 & 402..... 7

29 U.S.C. 402, SEC. 3. (f)..... 8

29 U.S. Code § 412..... 3

29 USC 413..... 2

29 USC 481-82, 521..... 9

29 USC 483..... 2, 8, 9

### *OTHER*

First Amendment to Constitution for the United States of America..... 1, 8

Fifth Amendment to Constitution for the United States of America..... 1, 7, 8

Ninth Amendment to Constitution for the United States of America..... 2, 8

Tenth Amendment to Constitution for the United States of America..... 2, 8

**IN THE**  
**SUPREME COURT OF THE UNITED STATES**  
**PETITION FOR WRIT OF CERTIORARI**

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

**OPINIONS BELOW**

The opinion of the United States court of appeals appears at Appendix A to the petition and is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is unpublished.

**JURISDICTION**

The United States Court of Appeals for the Ninth Circuit decided my case with a Mandate and Memorandum indicating judgment entered March 23<sup>rd</sup>, 2021. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

**CONSTITUTIONAL & STATUTORY PROVISIONS INVOLVED**

**First Amendment to Constitution for the United States of America:**

*“Congress shall make no law... abridging the freedom of speech, ... and to petition the government for a redress of grievances.”*

**Fifth Amendment to Constitution for the United States of America:**

*“No person shall... be deprived of life, liberty, or property, without due process of law”*

**Ninth Amendment to Constitution for the United States of America:**

*“The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.”*

**Tenth Amendment to Constitution for the United States of America:**

*“The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.”*

**Labor-Management Reporting and Disclosure Act of 1959, As Amended, (LMRDA),**

**As Amended**

See Appendix C

**Title IV, Sec 403, (29 USC 483)**

*“...The remedy provided by this subchapter for challenging an election already conducted shall be exclusive.”*

**29 USC 413**

*Nothing contained in this subchapter shall limit the rights and remedies of any member of a labor organization under any State or Federal law or before any court or other tribunal, or under the constitution and bylaws of any labor organization.*

**29 USC 483**

*The remedy provided by this title for challenging an election already conducted shall be exclusive.*

**STATEMENT OF THE CASE**

This case is not deemed to have statutory standing by the district court, but that is an area that Petitioner still disagrees and argues jurisdiction vests within the LMRDA. Recognizing this statutory challenge early on, the basis for federal jurisdiction was asserted as residing within the Constitution of the United States of America with

emphasis upon Amendment I, Amendment IX, and Amendment X. Thus prompting a Notice of Constitutional Question invoking **28 U.S.C. 2072(b)** to preserve a lawful challenge because legal expertise does not individually vest with the Petitioner.

As a legal neophyte, I readily struggled in the on-the-job format wherein the opponents' counsels as well as the orders of the court serve to be instructive. Perhaps the greatest impediment became the CoVid pandemic, as access to the law library was lost altogether and still limited. Yet, the Petitioner was experiencing great hardship from a most unfortunate problem that needed pursued.

Thus jurisdiction also extends from the legal position that the USDOL was stating, that it cannot intervene in a **Title 1, LMRDA** scenario, which does seem arbitrary and capricious absent case precedent but none-the-less it became the Petitioner's burden to bear if clarity and greater effectiveness in LMRDA's is to emerge, by illustrating that it never was in a **Title 1, LMRDA** scenario, but the agency is not assuming its full legislated enforcement authority under Title IV.

Another area of challenge is the obfuscating entity's relationship as a public corporation to the people, but that is a distinctly different federal case. But the ARRC does not exist as part of the state's governing structure, yet here it is best to simply understand that it exists as the employer. Consequently ARW and the actions of employees of ARRC have become intertwined and subject to a complaint asserting civil action for infringement of rights; where jurisdiction resides in **29 U.S. Code § 412**.

Comprehensively, the record established between the District Court and the Appeals Court can verify the following history succinctly:

- 1) On October 9<sup>th</sup>, 2015, at 4:22 PM, Alaska Railroad Corporation (ARRC) employee, Bruce Shelt, failed to advance the Alaska Railroad Workers Local 183, AFGE/AFL-CIO Executive Board's directive for him as Union president to advance arbitration on behalf of Petitioner Prayed as related to Grievance 2015-06. The deadline for timely filing was at 5:00 PM that same day. Please see District Court Docket (D.C.Dk #31-25).
- 2) Argument was made that Title I retaliatory claims prior to September 25, 2015 are barred by applicable statute of limitations is stipulated to by Petitioner Prayed as Shelt's failure to advance arbitration to preserve Prayed's employed position with ARRC is within that window (D.C.Dk # 57, p. 16).
- 3) On December 3<sup>rd</sup> 2015, Petitioner Prayed filed a complaint to the Union formally asserting charges against Shelt in accordance with the Constitution and Rules of the American Federation of Government employees (D.C.Dk #31-24).
- 4) This failure by ARRC employee Bruce Shelt to perform his Union President's responsibility created many major disagreements with Mr. Prayed. Another was impeding an active grievance investigation by failing to defend Petitioner Prayed's rail yard access via ARRC's Director of Labor Relations Debra English on March 10<sup>th</sup> 2016. (D.C.Dk # 31-26 & # 54, Exh. C.). "Additionally, President Shelt accepted the action, without grievance or argument protecting access or inspection to the work sit for safe guarding member's work environment by Mr. Prayed, the only ARW union officer for the northern half of the railroad" (9<sup>th</sup> Circuit Appeals Docket (9thDk #11, Exhibit K)

- 5) Election of Union Officers held on November 17<sup>th</sup> 2016, plagued with LMRDA violations, Petitioner Prayed formally files Election Protest alleging 31 violations (D.C.Dk #32).
- 6) From phone calls from other Union members, Petitioner Prayed predicts Shelt's retaliatory action prior to its occurrence to alter Prayed's membership in-good-standing status, as may be observed in FAX Transmittal cover page to the U.S. Department of Labor (USDOL) Office of Labor Management Standards communicating a 114 page "Complaint protesting illegal election of union officers" on February 27<sup>th</sup> 2017 (D.C.Dk # 32-6).
- 7) April 11<sup>th</sup> 2017, Shelt uses his position to influence the Executive Board in a first attempt to terminate Petitioner Prayed's membership with false assertions that can be refuted with other evidence on record and statement by USDOL that Prayed remains a member-in-good standing (D.C.Dk # 32-7).
- 8) OLMS finds merit in Petitioner Prayed's complaint of invalid election procedural adherence with standards codified by LMRDA and secures a Voluntary Compliance Agreement. Prayed invited by USDOL to attend June 1<sup>st</sup> 2017 Pre-Election Conference (D.C.DK #32-10).
- 9) While Prayed is vetted by USDOL, as a member-in-good standing via examination of both AFGE and ARW doctrine (see 9<sup>th</sup>Dk # 11, Exhibit C), and actively on the ballot running for Union President (Id, Exhibit E & F) in the USDOL "supervised" election, a small constituency of 25 ARW members led by Shelt, out of the 282 members within the Union dispersed over 600 miles of rail road, performed a simple voice vote on August 3<sup>rd</sup> 2017, absent procedural

guidelines stipulated by the ARW's Constitution, Article X, "Offenses, Trials, Penalties, Appeals", Section 1 stating, "All offenses, trials, penalties, and appeals shall be accomplished in accordance with the AFGE National Constitution. See AFGE National Constitution, Article IX, Section 5 and Article XXIII" (See D.C.DK # 31-7, p.8, and view the AFGE Constitution, Article XXIII, Offenses, Trials, Penalties, Appeals (D.C.Dk # 50, Exhibit G)). Then Shelt and associates broadcast Petitioner Prayed's illegitimate expulsion via the teleconference monthly meetings (August 3<sup>rd</sup> 2017 & September 7<sup>th</sup> 2017) while ballots are out and before returned (D.C.Dk # 50, Exhibit H) for counting September 28<sup>th</sup>, 2017 (D.C.Dk #32-15), a later date than planned because USDOL had to remedy another procedural flaw in the supervised election.

- 10) After the illegal expulsion event detailed by Prayed's affidavit (D.C.Dk # 57-7), Shelt continued to control the teleconference access to monthly railroad membership meetings, by actively blocking or directing Prayed be blocked from Fairbanks call-in participation in all future attendance in membership meetings. "This telephonic call-in participation to the ARW General Membership is a right codified within the Local Bylaws, Article 1 Local Membership Meetings, SECTION 2(b) (see D.C.Dk #31-7, p. 9 & # 57-7).
- 11) While Petitioner Prayed technically remained a member-in-good standing with dues payment credited ahead of schedule, and the ARW Secretary, Jeonghee Schlotisek, instructed not to communicate with him (D.C.Dk #57-1), northern ARW member, Jeremy Bahr, contacted Prayed on May 1<sup>st</sup> 2018 with an email example of continued abuse of power by Shelt implementing new and unlawful

bylaws. Shelt stating, “After minimal discussion, a voice vote will be held for those that attend, and that vote will determine final pass/fail” (D.C.Dk #32-19). A blatant disregard of ARW’s Standard Local Constitution, Article XI, Sec. 3, wherein, “Bylaws shall be adopted and amended only after one month notice to the local’s membership and by two-thirds vote of members, either present at a membership meeting and voting, with a provision for absentee vote, or by mail ballot” (D.C.Dk # 31-7, p. 8). There should be no doubt that Petitioner Prayed and ARRC employee Bruce Shelt did have contentious disagreements over Shelt’s leadership, and Shelt’s lack of integrity including the retaliatory behavior.

12) Lastly, Petitioner Prayed’s advanced his civil complaint to the federal district court of Alaska on September 25, 2017 (D.C.Dk #1), whereby Prayed’s continued pursuit of fairness brings forth conflict that the Appeals Court cares not or lacks authority as pertains to Rules of the Court review (Appendix A, p.4). Paper filers are not availed equal rights with electronic filers per **Federal Rules of Procedure (FRCP) 6(a)(4)**; and, the district court did not furnish public notice for public comment or enacting Local Rule changes per **FRCP Rule 83**, (D.C.Dk #62, Exhibit A). And **Fifth Amendment** protections for due process in monies as taxed (9thDk Exhibit L). Prayed consciously states these concerns for this Court’s awareness and wisdom in review.

#### **REASONS FOR GRANTING THE PETITION**

“Controlling only a percentage of the evils abusing the election environment creates a public disservice, repudiates the standing of the DOL, and alienates the intent of Congress to control toxic elements, as derived by **29 U.S.C. 401 & 402**, its

impact vexatious upon commerce" (D.C.Dk #31, p. 5). Therein lies the beauty of the Court and my responsibility to constitutionally challenge by **First, Fifth, Ninth, and Ten Amendments**, argument through sovereign American voice, perfecting our Congressional legislation as embodied within **LMRDA**.

But please understand, this case and controversy has come at a significant cost and hardship to the Petitioner, and thus LMRDA can be fortified by the Court's ruling coherently with the existing codification with some clarifying interpretation. The LMRDA definition establishes that an "Employee", means any individual employed by an employer, and includes any individual whose work has ceased as a consequence of... or because of exclusion or expulsion from a labor organization in any manner or for any reason inconsistent with the requirements of this Act" **(29 U.S.C. 402, SEC. 3. (f)).**

Thus, the Petitioner's "exclusive representative", the ARW, led by an ARRC employee Bruce Shelt, who failed to arbitrate Prayed's forced "voluntary termination", confronted Shelt about numerous unlawful actions, one of which invoked the USDOL presence to conduct a "supervised" election. Under this LMRDA Title IV responsibility **(29 USC 483)** assumed by the USDOL, "The remedy provided by this title for challenging an election already conducted shall be exclusive." Therefore, once the USDOL had "exclusive authority", as witnessed by the May 9<sup>th</sup> 2017 execution of the Voluntary Compliance Agreement reserving their legal authority until October 31, 2017, for remedy of the past, procedurally flawed, original election of November 17<sup>th</sup> 2016, this Title IV supervised election of

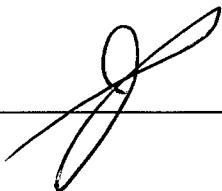
September 28<sup>th</sup>, 2017 is an excepted event! No Title I provision can be triggered in that timeframe but remedy with the USDOL becomes exclusive.

Consequently, USDOL's conduct was arbitrarily incongruent with the codification vested in **LMRDA Title IV**, at **29 USC 483**. "Title IV, in contrast, provides an elaborate postelection procedure aimed solely at protecting union democracy through free and democratic elections, with primary responsibility for enforcement lodged with the Secretary of Labor" (**29 USC 481-82, 521**, See also **Crolwey, 467 U.S. at 528**). So which party was a greater fail of their exclusive responsibility. I argue the USDOL, as Shelt can be held accountable, but the national responsibility must be examined and remedied by this Court.

### CONCLUSION

Thus the United States court of appeals did not decide an important question of federal law that should be settled by this Court as it is a matter of first impression and has national ramifications to existing application of the LMRDA by the USDOL, the gravity of Union leadership financially reliant on the employer as primary source of income in Labor/Management Relations for exclusive representation, and review and potential remedy of rules of Court as is their national responsibility per **28 USC 2072(a)**. The petition for a writ of certiorari should be granted.

Submitted with Love and Respect,

A handwritten signature in black ink, appearing to read "John Shelt", is written over a horizontal line.

Date: 20<sup>th</sup> August 2021