No. 22-208

IN THE SUPREME COURT
OF THE UNITED STATES

Benoit Brookens,
Plaintiff
v.
LaRhonda Gamble, et al
Defendants

and

Benoit Brookens,
Plaintiff
v.
Dino Drudi, et al
Defendants

On Petition for a Writ of Certiorari
To the United States Court of Appeals
For the District of Columbia

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

The Labor-Management Reporting and Disclosure Act (LMRDA) expressly provides any person whose rights are infringed by any violation of the subchapter may bring a civil suit in a district court of the United States for such relief (including injunctions) as may be appropriate. Such action against a labor organization shall be brought in the district court where the alleged violation occurred, or where the principle office of the labor organization is located. 29 U.S. C. Sec. 412.

The Court of Appeals for the District of Columbia Circuit rejected this requirement. The Court adopted the district court's holding held that Section 402(e) "excludes the United States or any corporation wholly owned by the United States or any State or political subdivision thereof," from its definition of "Employer." Sec. 402(e). The DC Circuit held that because Local 12 and Council 1 are composed exclusively of government employees the district court rightly dismissed Brookens' claim. The D.C. Circuit further factually erroneously held that to the extent Brookens contends that Council 1 unlike Local 12 is a "joint council" Sec. 402(i) the argument was forfeited because it was not raised in the district court.

The question presented is:

Whether the DC Circuit is bound by the Federal Regulation 29 CFR 458.1 General Subpart A-Substantive Requirements interpreting 29 U.S.C. Sec. 411 Concerning Standards of Conduct. The regulation state that "unless otherwise provided in

this part or in the CSRA or FSA...any term shall have the meaning that term has under the LMRDA." "In applying the standards" whether the Court as well as "the Director shall be guided by the interpretation and polices followed by the Department of Labor in applying the provisions of the LMRDA and by applicable court decisions."

PARTIES TO THE PROCEEDING AND CORPORATE DISCLOSURE STATEMENT

Petitioner Benoit Brookens is a retired member of the America Federation of Government Employees (AFGE), Local 12, U.S. Department of Labor, Headquarters, on behalf of himself.

Respondents are Dino Drudi, Frank Silberstein, and Gina Walton in their capacity as AFGE, Regional Council of Washington, DC Area and Federal and D.C. Government Labor Unions (Council 1), Election committee;

AFGE, Local 12, Headquarters union for the U.S. Department of Labor, unincorporated associations; LaRonda Gamble, President of Local 12, AFGE;

Martin J. Walsh, Secretary , U.S. Department of Labor, in his official capacity; Kenneth Deane, Director of Security, U.S. Department of Labor, in his official capacity.

There are no corporations to disclose under Rule 29.6

RELATED PROCEEDINGS

This case arises from the following proceedings:

Benoit Brookens, v. Gamble, et al., No. 21-7020,(District of Columbia Cir.) filed May 31, 2022; and

Brookens v. Drudi, et al., No. 21-5049 (District of Columbia Cir.) filed May 31, 2022.

There are no proceedings in state of federal trial or appellate courts, or this Court, directly related to this case under Supreme Court rule 14.1(b)(iii).

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PETITION FOR WRIT OF CERTIORARI

Petitioner Benoit Brookens respectfully petitions this court for a writ of certiorari to review the judgment of the United States Court of Appeals for the District of Columbia.

OPINIONS BELOW

The court of appeals' opinion (App. Ba3) is not reported. The relevant opinions of the district court are at (App.Ea15; *Druidi*) and (App.Fa26;*Gamble*).

JURISDICTION

The judgment of the court of appeals was entered on May 31, 2022. App. Ba3 on March 28, 2022. Rehearing was denied en banc May 31, 2022 App. Aa1).

STATUTORY PROVISIONS INVOLVED

The Supremacy Clause of the U.S. Constitution (art. VI, cl.2) provides in part that "the laws of the United States...shall be the supreme law of the land." The relevant part of the Labor-Management Reporting and Disclosure Act is reproduced at App. Ga26 and the relevant Regulation Standard of Conduct, 29 CFR Part 458 is reproduced at App. Ha50).

The jurisdictional statute in question reads as follows:

29 U.S. Code § 412 - Civil action for infringement of rights; jurisdiction

Any person whose rights secured by the provisions of this subchapter have been infringed by any violation of this subchapter may bring a civil action in a district court of the United States for such relief (including injunctions) as may be appropriate. Any such action against a labor organization shall be brought in the district court of the United States for the district where the alleged violation occurred, or where the principal office of such labor organization is located.

(Pub. L. 86–257, title I, § 102, Sept. 14, 1959, 73 Stat. 523.)

The interpretive regulation reads as follows:

29 CFR PART 458-STANDARDS OF CONDUCT

Subpart A-Substantive Requirements Concerning Standards of Conduct

Sec. 458.1 General

The tern LMRDA means the Labor-Management Reporting and Disclosure Act of 1959, as amended (29 U.S.C. 401 et seq.). Unless otherwise provided in the part or in the CSRA or FSA, any term in any section of the LMRDA which is incorporated into this part by reference, and any term in this part which is also used in the LMRDA, shall have the meaning which the term has under the LMRDA, unless the context in which it is used indicates that such

meaning is not applicable. In applying the standards contained in this subpart the Director will be guided by the interpretations and policies followed by the Department of Labor in applying the provisions of the LMRDA and the applicable court decisions.

[45 FR 15158, Mar. 7, 1980. Redesignated at 50 FR 31311, Aug. 1, 1985, as amended at 78 FR 8026, Feb. 5, 2013]

STATEMENT

Federal law provides jurisdiction to the U.S. District Court to adjudicate allegations of violations of union member Bill of Rights.

In the decision below the District of Columbia Circuit adopted the District Courts determination that it lacked jurisdiction to hear the proceedings brought by Mr. Brookens or to grant the requested injunctive relief. The D.C. Circuit determined that the Labor Department's expansive regulatory interpretation was not raised in the District Court (Gamble) or that statutory requirements were not met as provided by U.S. Department of Labor Regulations (Drudi).

The district court opinion, as a factual matter, provides otherwise:

App. [ ]

Brookens also cites a fact sheet posted on the DOL website, which advised federal employees:

> If the union that you allege violated your rights (whether a local union or a parent body) represents any private sector employees, your complaint is covered by the LMRDA[.] Pl.'s Reply 3. (Att. _____)

I. FEDERAL REGULATOR BACKGROUND

A. Under predecessor labor legislation, prior to evolving to where it is today, amendments by the Taft-Hartley Act of 1947 provided the framework to this litigation and the court's review of factual findings by an agency. Universal Camera v. NLRB, 340 U.S. 474 (1951). The result was "full blown judicial recognition in Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc. [467 U.S. 837 (1984)] where the court articulated a rule of deference to administrative agencies on matters of statutory interpretation."[1]

> The power of an administrative agency to administer a congressionally created ...program necessarily requires the formulation of policy and the making of rules to fill any gap left, implicitly or explicitly by Congress. Id. 31.

II. PROCEEDINGS BELOW

A. Plaintiff sued Council 1 (Drudi) for disqualify his Council 1 Presidential candidacy and LaRhonda Gamble (Local 12 President, AFGE Local, for rejecting his membership dues payments and the

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[1] Understanding Labor law, Douglas Ray et al., 4th ed. 2014, p. 31

Department of Labor Security Chief, Kenneth Dean, for colluding with Ms. Gamble to block his access to Local 12 membership meetings, on Federal Government property, which could-- by vote of the entire Local 12 membership--resolve the membership issue.

Mr. Brookens, in the alternative, sought resolution by the U.S. District Court under 29 USC 412. Relying on Wildberger, 86 F.3d at 1192. The district court "noted that DOL regulations classify 'locals composed purely of government employees' as outside the LMRDA coverage). Mr. Brookens seeking to sidestep this obstacle, according to the district court, "cited Standards of Conduct for Federal Sector Labor Organizations, 71 Fed. Reg. 31,929 (jun. 2, 2006)" .

The district erroneously court found, and the issues on appeal here that 'DOL itself recognized in promulgating that rule, federal-sector unions' members are protected by the CSRA rather than the LMRDA—and "[t]he SCTRA, unlike the LMRDA, does not confer jurisdiction on Federal district courts." 71 Fed. Reg.at 31,939." (a-13)

REASONS FOR GRANTING THE PETITION

A. THE QUESTION PRESENTED IS OF EXCEPTIONAL IMPORTANCE

The D.C. Circuit's failure to act, overturns decades of valuable well settled, legal precedence agitating the

existing split in the Circuits on this private attorney general like enforcement statute.

The Labor-Management Reporting and Disclosure Act (LMRDA) expressly provides any person whose rights are infringed by any violation of the subchapter may bring a civil suit in a district court of the United States for such relief (including injunctions) as may be appropriate. Such action against a labor organization shall be brought in the district court where the alleged violation occurred, or where the principle office of the labor organization is located. 29 U.S. C. Sec. 412.

The Court of Appeals for the District of Columbia Circuit rejected this requirement, adopting the District Court's holding. The court of Appeals for D.C. held that Section 402(e) "excludes the United States or any corporation wholly owned by the United States or any State or political subdivision thereof," from its definition of "Employer." Sec. 402(e). the DC Circuit held that because Local 12 and Council 1 are composed exclusively of government employees the district court rightly dismissed Brookens's claim. The D.C. Circuit further erroneously held that to the extent Brookens contends that Council 1 unlike Local 12 is a "joint council" Sec. 402(i) the argument was forfeited because it was not raised in the district court.

The question presented to the D.C. Circuit and not addressed in its unpublished decision is the inforce status of the applicable Labor Department regulation:

29 CFR 458.1 General Subpart A-Substantive Requirements Concerning Standards of Conduct stating that "unless otherwise provided in this part or in the CSRA or FSA...any term shall have the meaning that term has under the LMRDA." "In applying the standards" whether the DC Circuit and "the Director shall be guided by the interpretation and polices followed by the Department of Labor in applying the provisions of the LMRDA and by applicable court decisions."

The Labor Department has been long authorized to interpret the LMRDA over which it has been delegated regulatory responsibilities by the U.S. Congress. The District Court has recognized this adjudication resolving authority under section 412 even in cases involving alleged conspiracy theories between the union and the employer. Abrams v. Carrier Corp. C.A.2 (NY) 1966, 361 F. 2d 137, cert. den. 91 S. Ct. 1253; 401 U.S. 1009, 28 L.Ed.2nd 545.

In Abrams, the only grounds to assert the court' jurisdiction was the alleged conspiracy, unlike in the Gamble case. In Zamora v. Massey-Ferguson, Inc. S.D. Iowa, 1972. 336 F. Supp. 885, in comparison, the district court recognized its jurisdiction to protect employee statutory rights. Even for allegations of conspiracy between the employer and the union, jurisdiction was still held in the district court to hear and resolve the dispute. Thomas v. Penn. Supply and Metal Corp. E.D. Pa. 1964 35 F.R.D.17.

B. HEARING THIS CASE WILL RESOLVE A SPLIT AMONG THE CIRCUITS.

The 11th Cir. was confronted with the issue of whether the LMRDA covered mixed unions:

> Addressing the question whether the LMRDA covers mixed unions, the Eleventh Circuit has read the Act's definition of labor organization "to include those associations of workers that deal with *any* `employer,' as defined by the Act." *Hester v. International Union of Operating Eng'rs*, 818 F.2d 1537, 1541 (11th Cir.), *reh'g denied*, 830 F.2d 172 (11th Cir.1987), *vacated on other grounds*, 488 U.S. 1025, 109 S.Ct. 831, 102 L.Ed.2d 963, *reaff'd in pertinent part*, 878 F.2d 1309, 1310 (11th Cir.1989), *cert. denied*, 494 U.S. 1079, 110 S.Ct. 1808, 108 L.Ed.2d 939 (1990). Because the Act covers employees working for private employers, the Eleventh Circuit reasoned, unions representing private employees as well as federal employees also are subject to the Act. *Id.* Other circuits have likewise applied the Act to mixed unions. *See, e.g., Celli v. Shoell*, 40 F.3d 324, 327 (10th Cir.1994); *Martinez v. AFGE*, 980 F.2d 1039, 1041-42 (5th Cir.1993); *Berardi v. Swanson Memorial Lodge No. 48*, 920 F.2d 198, 201-02 (3d Cir.1990). Although this circuit has not explicitly addressed the issue, we have taken approving notice of the Eleventh Circuit's position. *See Hawaii Gov't Employees Ass'n Local 152 v. Martoche*, 915 F.2d 718, 720 & n. 15 (D.C.Cir.1990) (holding that a nonprofit educational organization was not a political

> subdivision of state government and, thus, was subject to the LMRDA). Because we think the Eleventh Circuit's approach is consistent with the Act, we agree with the district court that the AFGE, a mixed union, is subject to the Act.

The 11th Cir. further wrote, "[w]e also agree with the district court that Wildberger does not lose LMRDA protection merely because his local consists only of government employees. Wildberger at 1192.

Eight years later, in 1998, Richard Taylor, a federal employee, member of "Local 48" and a delegate to biennial Bremerton Council election. After Taylor was nominated for the position of Bremerton Council vice-president, the Bremerton Council president ruled that Taylor was ineligible to run for vice president because his national union, American Federation of Government Employees ("AFGE") was not affiliated with the Bremerton Council. The Bremerton Council by-laws require Bremerton Council affiliates to comply with the Metal Trades Department constitution. The Department constitution precluded any delegate from holding office of the delegates national union was not affiliated with and paid dues to the Metal Trades Department.

The Secretary of Labor, in the district court, sought to set aside the Bremerton Council election under the LMRDA because of Taylor's alleged unlawful exclusion. 29 U.S.C. Sec. 482(c). The Bremerton Council moved for summary judgment, contending that it was not a labor organization because as a joint council, it was comprises of local

unions, representing both public and private sector employees. Bremerton Council contented that (1) it was not subject to the LMRDA because it represented only public sector employees; (2) the CSRA, 5 U.S.C. Sect. 7101-7135 preempts the LMRDA when the latter is invoked by a federal employee; and (3) the candidacy requirements—affiliation by the national union with the Metal Trades Department were reasonable. The district court rejected the first two arguments and granted summary judgment on the third. The Secretary appealed, prevailing in the 9th Cir.

IN 2006, the Secretary of Labor, amended 29 CFR 458.4 Informing members of the standards of conduct provisions. The section (a) stated "Every labor organization subject to the requirements of the CSRA, FSA, or the CAA shall inform its members concerning the standards of conduct provisions of the Acts and the regulations of the subchapter. 71 FR 31492, June 2, 2006 and amended at 78 FR 8026, February 5, 2013.

This constituted the basis for the DOL web site and Mr. Brookens presentation to the district court "which advises federal employees: "if the union that you allege violated your rights (whether a local union or a parent body) represents and private sector employees, your complaint is covered by the LMRDA[.]" P.'s Reply 3.

On this point the 9th Cir. and the 11th Cir. and the trial court in the D.C. Cir. concur with Mr. Brookens' jurisdictional views under 28 U.S.C. Sec. 412, except in Mr. Brookens' cases regarding *Drudi* and *Gamble*.

RELIEF REQUESTED

This court is request to find as a matter of law, the district court in Druid and Gamble has jurisdiction under 29 U.S.C. 411 to adjudicate Mr. Brookens' claims and to grant all appropriate relieve, including injunctive.

Respectfully Submitted,

Benoit Brookens