NO. 22-_____

In the Supreme Court of the United States

JOSE MENDOZA, ET AL.,

Petitioners,

v.

AMALGAMATED TRANSIT UNION INTERNATIONAL ("ATU"), ET AL.,

Respondents.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

The Labor Management Relations Act of 1947 ("LMRA") adopted by Congress provides a federal forum for resolving disputes over collective bargaining agreements ("CBA") and contracts between unions. *See* 29 U.S.C. § 185. This Court has consistently held that "an application of state law is preempted by § 301 of the [LMRA] only if such application requires the interpretation of a CBA." *See Lingle v. Norge Div. of Magic Chef*, 486 U.S. 399, 413 (1988); *Livadas v. Bradshaw*, 512 U.S. 107, 123–24 (1994); *Hawaiian Airlines v. Norris*, 512 U.S. 246, 262-63 (1994). The Labor-Management Reporting and Disclosure Act of 1959 ("LMRDA") was adopted by Congress to regulate internal union governance and preserves state claims and remedies by union members against their unions to enforce union constitutions. *See* 29 U.S.C. §§ 413, 466, 483, 523.

The Question Presented Is:

1. Does § 301 of the LMRA completely preempt state law claims and remedies by union members against their unions to enforce union constitutions despite the LMRDA's six savings clauses preserving state law claims and remedies to enforce union constitutions?

PARTIES TO THE PROCEEDINGS

Petitioners and Plaintiffs-Appellants Below

- Jose Mendoza Jr.
- Myeko Easley
- Robtert Naylor
- Robbie Harris
- Gary Sanders
- Linda Johnson-Sanders
- Ceasar Jimenez
- Dennis Hennessey

Respondents and Defendants-Appellees Below

- Amalgamated Transit Union International ("ATU")
- James Lindsay III
- Lawrence J. Hanley
- Antonette Bryant
- Richie Murphy
- Keira Mcnett
- Daniel Smith
- Tyler Home
- Keolis Transit America Inc.
- Miller Kaplan & Arase
- Anne Salvador
- Alexandra Chernyak

LIST OF PROCEEDINGS

Direct Proceedings

United States Court of Appeals for the Ninth Circuit
No. 20-16079; 20-16080
Mendoza v. Amalgamated Transit Union Int'l, et al.
Date of Final Judgment: April 7, 2022

United States District Court for the District of Nevada
No. 2:18-CV-959 JCM (DJA)
Mendoza v. Amalgamated Transit Union Int'l, et al
Date of Final Order: May 4, 2020

Related Proceeding

United States Court of Appeals for the Ninth Circuit
No. 19-16863
Raymond Garcia v. Service Employees International Union, et al.
Date of Final Judgment: April 5, 2021

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The Petitioners (Plaintiffs-Appellants below) seek review of the memorandum opinion of the United States Court of Appeals for the Ninth Circuit, dated April 7, 2022 (App.1a), which affirmed that Plaintiffs' state law claims were preempted by Section 301 of the Labor Management Relations Act (LMRA). On that same date the Ninth Circuit issued a separate published opinion, reported at 30 F.4th 879 and included at App.7a which affirmed that some of Plaintiffs' claims were barred by the doctrine of claim-splitting. The orders of the United States District Court for the District of Nevada regarding § 301 pre-emption are reproduced at App.24a, 85a, and 130a.

JURISDICTION

The court of appeals entered its memorandum opinion on April 7, 2022. (App.1a). This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Pertinent statutory provisions are reprinted at (App.169a).

STATEMENT OF THE CASE

A. Statement of Facts.

ATU Local 1637 was governed by the ATU Constitution and General Laws and the Local 1637 Bylaws during the period relevant to this case. Petitioner Jose Mendoza Jr. was elected by Local 1637 membership to be the Local 1637 President beginning in July 2010. (App.195a). At the time, Local 1637 was governed by 2008 version of the Local 1637 Bylaws. (App.203a). Article 4 of the 2008 Bylaws provided that "The President-Business Agent shall be paid at a daily rate of 8 hours times the highest hourly rate paid to an employee in their job classification for 40 hours per week to perform duties of the office." *Id.*

In late 2010, Mendoza, and the former Local 1637 Secretary/Treasurer spoke to various ATU International officials regarding this pay provision. (App.198a). The Local 1637 officers inquired whether Article 4 authorized the President to receive the highest hourly rate of any employee in a job classification in the union, or if the President was to receive only the highest rate of pay in the President's job classification before getting elected, which would result in unequal pay for Presidents of Local 1637.

Mendoza and the former Local 1637 Secretary/Treasurer "interpreted the Local 1637 Bylaws as entitling the president to receive the highest pay rate of any employee in the union at large for his salary but they both felt the language of Article 4 was open to interpretation and consulted international officials for guidance." (App.198a). Petitioner Mendoza spoke with

ATU International Vice President William McLean and ATU International Representative Steven MacDougall over a span of several years regarding the provision, and "McLean and MacDougall told Mendoza that they agreed with his interpretation." *Id.* One other Local 1637 Board Member, Petitioner Robbie Harris, "personally witnessed Jose Mendoza inform ATU IVP William Mclean of his interpretation of the Local 1637 Bylaws Article 4 as authorizing the Local 1637 PBA the highest rate of pay of any employee/member of Local 1637" in 2012, and testified that McLean agreed with the interpretation. (App.221a).

Mendoza's pay was initially set at the highest rate of pay for his prior job classification as a driver "until their interpretation that Mendoza could receive the highest rate of pay of any employee was confirmed" by ATU International. (App.198a-199a). In July 2011, Mendoza's hourly salary rate increased to the higher rate of Mechanic A. The Local 1637 Executive Board did not seek to overturn Mendoza's decision because it was believed to have been approved by ATU International. (App.217a-245a). While a couple of disgruntled members had raised the pay issue at Local 1637 Executive Board meetings and to ATU International, there "were never enough members who wanted to challenge the decision to appeal this decision." *Id.*

The Local 1637 membership also repeatedly "approved the budget which incorporated the higher rate" and "meeting minutes and witnesses support passing a budget and instances of transparency related to Mendoza's compensation." (App.199a). Mendoza's decision to interpret the Local 1637 Bylaws as granting the Local 1637 President the highest rate of pay of any employee in the union regardless of their prior job

classification was not a unilateral decision. Mendoza sought guidance and approval from ATU International. Mendoza ensured several Local 1637 Board members were present when that approval was given. After ATU International's approval, Mendoza informed the Local 1637 Executive Board of the changed the rate of pay giving them an opportunity to overturn the decision. Mendoza presented the changed rate of pay to the Local 1637 membership for approval, and the membership approved the changed rate of pay when passing the Local 1637 budget.

In 2012, at the directive of ATU International Representative MacDougal, Local 1637 endeavored to amend the Local 1637 bylaws. The evidence showed that the former Local 1637 Secretary/Treasurer, who was responsible for submitting the bylaws to ATU International, "improperly submitted an amended version of the bylaws (a collaboration of unchanged October 1, 2008 provisions and February 2012 executive board approved amendments) to the ATU for final approval. Accordingly, these altered February 2012 bylaws were subsequently approved by the ATU, without prior executive board or membership approval." (App.197a-198a).

In 2015, tensions between ATU International President Hanley and Mendoza over a collective bargaining dispute with a Local 1637 employer culminated in Mendoza filing charges of corruption "against ATU International Representative Richie Murphy for his conduct in negotiations with a Local 1637 employer." (App.232a). At that same time, a lone member of Local 1637 petitioned ATU International President Hanley to intervene regarding the pay issue. Hanley sent ATU International Vice President James Lindsay to

Local 1637 to conduct an investigation into Mendoza's salary. (App.230a).

Lindsay involved the Local 1637 Executive Board in his investigation into Mendoza's alleged overpayment in salary. After reviewing the evidence Lindsay and Mendoza presented the Local 1637 Executive Board came to a consensus that the 2012 version of the Local 1637 Bylaws approved by ATU International, which became the subject of the financial malfeasance investigation, had not been approved by the Local 1637 Executive Board or membership. (App.217a-245a). In November 2016, ATU International President Larry Hanley ordered Mendoza's salary be recalculated to the lower rate based on the 2012 Local 1637 Bylaws. (App.198a). Mendoza acquiesced to Hanely's demand, reduced his salary, began paying a monthly repayment plan, and appealed Hanley's decision.

To formally remedy the issue, the Local 1637 Executive Board proposed to amend the Local 1637 Bylaws to reflect what the Local 1637 membership had approved in 2011, including the pay provision anchoring the President's pay to highest rate in the CBA. These 2016 Local 1637 Bylaws, including "changes to Article 4 related to the president's salary were properly approved by the executive board and submitted to the ATU for approval, but denied." (App.198a). ATU International subsequently suspended Mendoza and the rest of the Local 1637 Executive Board from union office and imposed a trusteeship over Local 1637 for financial malfeasance. A trusteeship hearing pursuant to 29 U.S.C. §§ 462 and 464 was held on May 9, 2017, and the Hearing officer refused to permit Mendoza to cross-examine many of the witnesses that testified at the hearing and generally impeded his ability to

effectively present the union's case in opposition to the trusteeship. (App.217a-245a). This litigation followed.

On September 22, 2017, Mendoza filed action in the State of Nevada seeking to enjoin the trusteeship imposed on Local 1637 by ATU International and for damages stemming from improper union fines and discipline in breach of the ATU International Constitution. *See Mendoza v. Amalgamated Transit Union International, et al.*, Case No. A-17-761963-C. Mendoza's Nevada Complaint notified the Court that the conduct alleged fell within the scope of conduct regulated by the LMRDA and was saved from preemption by the LMRDA's numerous savings clauses preserving state claims and remedies by union members against their unions to enforce union constitutions. (App.246a-251a; App.155a-156a). The claims were brought pursuant to Nevada's own common law legal standards for the enforcement of union constitutions and challenging union trusteeships. (App.251a); *Johnson v. International of United Bhd.*, C. J., 52 Nev. 400, 412, 288 P. 170, 173 (Nev. 1930); *Hickman v. Kline*, 71 Nev. 55, 69, 279 P.2d 662, 669 (1955).

During the pendency of the lower court proceedings, because Mendoza was removed from office for financial malfeasance, the United States Department of Labor's ("DOL") criminal investigation division, the Office of Labor Management Standards ("OLMS"), was required to open a criminal investigation into Mendoza's alleged financial malfeasance. (App.195a-200a). On September 28, 2018, the:

> Conclusive OLMS investigation determined that . . . the aforementioned payments issued to Mendoza were not paid at the higher questionable rate until after international

> representatives provided interpretational guidance on various occasions.

(App.195a).

The OLMS found that the "altered February 2012 bylaws were . . . approved by the ATU, without prior executive board or membership approval" and that "[i]nevitably, IP Hanley made all of his determinations as to Mendoza's alleged wrongdoing based on inapplicable versions of the local's bylaws including an unapproved Article 4." (App.198a). The OLMS also found that the Local 1637 Executive Board properly amended the bylaws after the 2016 investigation, which were approved by the Local and "submitted to the ATU for approval, but denied." *Id*. The OLMS found that there was evidence of ATU International's approval of the salary change and transparency with the Local 1637 membership that approved the budget with the increased salary multiple times. (App.199a). Ultimately, the "OLMS investigation failed to substantiate a misappropriation of funds attributable to Mendoza" and closed the case. (App.200a).

B. Procedural History.

On September 22, 2017, Petitioner Jose Mendoza Jr., a member of ATU International, filed action in the State of Nevada seeking to enjoin a trusteeship imposed on his local union by ATU International and for damages stemming from improper union discipline in breach of the ATU International Constitution and related tort claims (hereinafter referred to as "*Mendoza I*"). ATU International removed *Mendoza I* to the United States District Court for the District of Nevada arguing that the claims were completely pre-

empted by § 301 of the LMRA, 29 U.S.C. § 185. Petitioner moved to remand arguing that Congress did not intend to preempt state law claims and remedies by union members against their unions to enforce union constitutions, and endorsed such claims when preserving state law with the LMRDA's savings clauses. The district court found that the claims were completely preempted and denied remand. (App.121a-126a). ATU International then moved to dismiss the state tort claims as barred by § 301 of the LMRA, which the district court granted. (App.139a-146a).

ATU International moved to dismiss the state breach of contract claims seeking to overturn the trusteeship arguing that the LMRDA's "presumption of validity" standard in 29 U.S.C. § 464 applied to the preempted § 301 LMRA claims because the standard is applied in other federal cases challenging union trusteeships when both § 301 LMRA and LMRDA claims are alleged. (App.139a-145a). The district court refused to apply the LMRDA standard, however, because it had previously found the claims preempted. *Id*. The only claims that remained after ATU International's motion to dismiss were the two breach of contract claims that proceeded under § 301 of the LMRA. (App.145a-146a). The district court invited Mendoza to amend the *Mendoza I* complaint to plead the state claims as LMRDA claims after acknowledging that doing so would forfeit Mendoza's straight breach of contract legal theory pursuant to § 301 of the LMRA.

To avoid losing the § 301 LMRA breach of contract legal theory Mendoza and seven former members of the Local 1637 Executive Board filed a subsequent legal action in federal court pleading the LMRDA claims and additional state tort claims and federal claims based on

some of the same conduct alleged in *Mendoza I*. Many of the claims plead conduct that occurred after the conduct alleged in *Mendoza I*. (App.88a-92a). The case was docketed with district court Judge James Mahan, the same judge presiding over *Mendoza I*. On March 26, 2019, "the court held a hearing to give the parties an opportunity to show cause why the court should not consolidate these related cases." (App.83a). The district court then consolidated *Mendoza I* and *Mendoza II* to "eliminate the substantial duplication of labor which would otherwise result from trying the cases separately, and will avoid the risk of potentially inconsistent outcomes." (App.83a-84a). After consolidation, the district court dismissed all the claims in *Mendoza II* against ATU International as impermissibly duplicative pursuant to the *res judica*ta doctrine of claim splitting. (App.102a-107a). The Court then granted summary judgment to the defendants on the remaining claims.

Petitioner Mendoza appealed challenging the district court's removal jurisdiction over *Mendoza I* for complete preemption pursuant to 29 U.S.C. § 185. Mendoza argued that this Court's precedent on § 301 of the LMRA limits complete preemption to claims requiring interpretation and application of the terms of a CBA. Petitioner further argued that Congress preserved Petitioner's state law claims when passing the LMRDA and its six savings clauses that preserve state claims and remedies by union members against their unions to enforce union constitutions. The *Mendoza II* Petitioners also appealed, arguing in relevant part, that because the district court lacked jurisdiction over *Mendoza I* the claim splitting ruling of the district court was similarly improper.

On April 7, 2022, the Ninth Circuit affirmed the district court's decision citing to an opinion entered in *Garcia v. Serv. Emp. Int'l Union*, 993 F.3d 757, 762 (9th Cir. 2021) (hereinafter the "*Garcia* case") earlier that year holding that union constitutions are contracts between unions within the scope of § 301 of the LMRA and thus preempted. (App.6a-7a, 152a-164a). The Ninth Circuit found that the claims in *Mendoza II* were impermissible claim splitting because Petitioner Mendoza, "despite not sharing a formal legal relationship" with the other board members, adequately represented them in *Mendoza I*. (App.23a).

Mendoza now petitions this Court for a writ of certiorari to resolve the question of whether Congress intended § 301 of the LMRA to completely preempt state claims and remedies by union members against their unions to enforce union constitutions despite passing the LMRDA, which includes six savings clauses expressly preserving state claims and remedies by union members against their unions to enforce union constitutions.

C. Statutory Background.

This novel issue of § 301 complete preemption requires an analysis of Congressional intent regarding two separate acts of Congress, the LMRA and LMRDA.

1. LMRA Statutory Background.

§ 301 of the LMRA was codified in 29 U.S.C. § 185, and provides that "Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this Act, or between any such labor organizations, may be brought in any district court of

the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties." 29 U.S.C.S. § 185. In *Textile Workers v. Lincoln Mills*, this Court held that "301(a) is more than jurisdictional" authorizing the Federal courts to fashion a body of Federal substantive law to enforce CBAs. 353 U.S. 448, 450–52 (1957).

"The pre-emptive effect of § 301 was first analyzed in *Teamsters v. Lucas Flour Co.*, 369 U.S. 95, 103 (1962), where the Court stated that the 'dimensions of § 301 require the conclusion that substantive principles of federal labor law must be paramount in the area covered by the statute [so that] issues raised in suits of a kind covered by § 301 [are] to be decided according to the precepts of federal labor policy.'" *See Allis-Chalmers Corp. v. Lueck*, 471 U.S. 202, 209 (1985). In *Lueck*, this Court addressed whether a state tort claim alleging the mishandling of "a claim under a disability plan included in a collective-bargaining agreement" was preempted by § 301. *Id.* This Court ultimately held in *Lueck* that "that when resolution of a state-law claim is substantially dependent upon analysis of the terms of an agreement made between the parties in a labor contract, that claim must either be treated as a § 301 claim, . . . or dismissed as pre-empted." *Id.* at 220.

Three years later, in *Lingle*, this Court this Court clarified its opinion in *Lueck*, citing its prior holding that "Section 301 governs claims founded directly on rights created by [CBAs], and also claims 'substantially dependent on analysis of a [CBA].'" *Lingle*, 486 U.S. at 410 n.10 *citing Lueck*, 471 U.S. at 220. This Court held that "an application of state law is

preempted by § 301 . . . *only if* such application requires the interpretation of a [CBA]." *Id.* at 413. (emphasis added).

The core aspect of the complete preemption machinery of § 301 of the LMRA has always been to enforce arbitration agreements because of "the central role of arbitration in our 'system of industrial self-government.'" *Lueck*, 471 U.S. at 219. Interpretive uniformity of CBAs has always been the bedrock of this Court's preemption precedent. As this Court "explained in *Lueck*, 'the need to preserve the effectiveness of arbitration was one of the central reasons that underlay the Court's holding in *Lucas Flour*.'" *Lingle*, 486 U.S. at 411. To prevent employees from bringing employment related grievances under the guise of state law claims, this Court has long held that when a state law cause of action is either founded on a right created by a CBA or involves interpretation of the CBA, then the claim is preempted.

2. LMRDA Statutory Background.

The LMRDA was passed because "[d]uring the 1950's there came to light various patterns of union abuse of power." *Lockridge*, 403 U.S. at 321 (White and Berger dissenting). "Congress acted to correct these evils by directly addressing itself to some aspects of union-member affairs." *Id.* "Beyond any doubt whatever, although Congress directly imposed some far-reaching federal prohibitions on union conduct, it specifically denied any pre-emption of rights or remedies created by either state law or union constitutions and bylaws." *Id.* This Court has consistently recognized that the LMRDA "reflects congressional awareness of the

problems of pre-emption in the area of labor legislation, and which did not leave the solution of questions of pre-emption to inference." *De Veau v. Braisted*, 363 U.S. 144, 156 (1960). This Court has repeatedly noted that "Congress . . . preserved state law remedies by § 103 of the LMRDA, 29 U.S.C. § 413." *Int'l Bhd. of Boilermakers v. Hardeman*, 401 U.S. 233, 244 n.11 (1971).

The LMRDA was intended by Congress to be "supplementary legislation that will afford necessary protection of the rights and interests of employees and the public generally." 29 U.S.C. § 401. The legislation being supplemented included "the [LMRA] as amended." *Id.* This later act of Congress, which supplemented the LMRA, included seven (7) separate anti-preemption savings clauses that preserved state claims and remedies by union members against their unions to enforce union constitutions. *See* 29 U.S.C. §§ 413; 466; 483; 501; 523; 524; 524(a); *see also De Veau*, 363 U.S. at 156; *Hardeman*, 401 U.S. at 244 n.11; (App.155a-156a). That is, Congress has "affirmatively endorsed" state law claims and remedies to enforce union constitutions. *Lingle*, 486 U.S. at 413.

The LMRDA expressly references unions constitutions in every title of the act. *See* 29 U.S.C. §§ 411; 413; 431; 462; 481; 501. Every Title of the LMRDA also includes a broad savings clause that "preserve state claims and remedies brought by union members against their unions to enforce union constitutions." (App.155a-156a).

29 U.S.C. § 413 states that "Nothing contained in this title . . . 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 U.S.C. § 413.

29 U.S.C. § 466 provides that "The rights and remedies provided by this title . . . shall be in addition to any and all other rights and remedies at law or in equity," preserving state laws regulating union trusteeships. 29 U.S.C. § 466. 29 U.S.C. § 483 preserves all existing rights and remedies to enforce a union's constitution and bylaws with respect to union elections prior to the holding of the election. *See* 29 U.S.C. § 483.

29 U.S.C. § 523 is known as the LMRDA's catchall savings clause, providing that "[e]xcept as explicitly provided to the contrary, nothing in this Act shall reduce or limit the responsibilities of any labor organization or any officer, agent, shop steward, or other representative of a labor organization, or of any trust in which a labor organization is interested, under any other Federal law or under the laws of any State, and except as explicitly provided to the contrary, nothing in this Act shall take away any right or bar any remedy to which members of a labor organization are entitled under such other Federal law or law of any State." *See* 29 U.S.C. § 523. At the time the LMRDA was passed, Nevada had its own laws and remedies for enforcing union constitutions and to review the imposition of union trusteeships, the very claims alleged in *Mendoza I. Johnson*, C. J., 52 Nev. at 412; *Hickman*, 71 Nev. at 69.

Congress affirmatively endorsed state claims and remedies by union members against their unions to enforce union constitutions in every Title of the LMRDA, saving such claims from preemption including those alleged in *Mendoza I.* (App.155a); *see also* 29

U.S.C. §§ 413; 466; 483; 501; 523; 524; 524(a); *see also De Veau*, 363 U.S. at 156; *Hardeman*, 401 U.S. at 247-48.

D. The Decision Below.

The Ninth Circuit panel in this case applied the earlier ruling in the *Garcia* case without conducting further analysis. Petitioner challenges the reasoning of the *Garcia* panel that state claims to enforce a union constitution are preempted by § 301 of the LMRA as applied in this case. The Ninth Circuit's decision holds that despite Congress's clear expression of intent to preserve state claims and remedies by union members against their unions to enforce union constitutions as expressed in the LMRDA, § 301 of the LMRA, the earlier less specific act operates to preempt state law. (App.155a-162a). Rather than analyze Congressional intent, the Ninth Circuit held that any and all "State law claims that fall within the area of § 301 are considered federal law claims and are preempted and removable." (App.153a)

Under the Ninth Circuit's rule, whether a union member's claim for breach of a union constitution is preempted depends not on Congressional intent to preempt union constitution claims, but whether the contract at issue is potentially actionable under § 301. (App.151a-157a). Petitioners argue that Congressional intent to preempt state law is the ultimate touchstone, and Congress did not intend to preempt Mendoza's state law claims in this case.

REASONS FOR GRANTING THE PETITION

The Ninth Circuit panel's decision in this case and the *Garcia* case meets all the conventional criteria for certiorari. The Ninth Circuit's decision directly contrary to decades of Supreme Court decisions on § 301 preemption, union constitution claims and the LMRDA. The decision of the Ninth Circuit decided an important question of federal law that has not been, but should be, settled by this Court. The Ninth Circuit's decision conflicts with decisions of other courts of appeals.

I. THE DECISION BELOW CONFLICTS WITH THE DECISIONS OF THIS COURT.

The Ninth Circuit panel's decision in the *Garcia* case and *Mendoza I* directly conflicts with three legal principles established by Supreme Court labor-management precedent.

A. The Decision Below Conflicts with the Decisions of This Court Because It Fails to Analyze and Willfully Ignores Congressional Intent Not to Preempt State Claims and Remedies to Enforce Union Constitutions.

This Court has repeatedly held that the proper analysis for any court reviewing a novel issue of preemption is to determine whether Congress intended to preempt state law. "[T]he question whether a certain state action is pre-empted by federal law is one of congressional intent." *Lueck*, 471 U.S. at 220; *Caterpillar, Inc. v. Williams*, 482 U.S. 386, 395 (1987). Only Congress has the "power to pre-empt state law [which]

is derived from the Supremacy Clause of Art. VI of the Federal Constitution." *Id.* To determine the purpose of Congress, the courts are instructed to look "to the plain meaning and legislative history of the statutory provision." *Cal. State Bd. of Equalization v. Sierra Summit*, 490 U.S. 844, 845 (1989). If Congressional intent is not clear from the plain language of the statute itself, the courts are instructed to look at the legislative history.

It must be stressed that "Congress did not state explicitly whether and to what extent it intended § 301 of the LMRA to pre-empt state law." *Lueck*, 471 U.S. at 208-09. When Congress has not expressed intent to preempt, this Court had made clear that lower courts must "sustain a local regulation 'unless it conflicts with federal law or would frustrate the federal scheme, or unless the courts discern from the totality of the circumstances that Congress sought to occupy the field to the exclusion of the States.'" *Id.* "The purpose of Congress is the ultimate touchstone." *Id.*

The Ninth Circuit's decision flouts the settled principle that before preempting state law the court must determine Congressional intent to preempt. (App.155a-161a). In the panel's view, Mendoza and Garcia's claims are preempted simply because "'a union constitution is a 'contract' within the plain meaning of § 301(a).'" *Id.* at 83a *quoting Journeymen*, 452 U.S. at 622. According to the Ninth Circuit, "State law claims that fall within the area of § 301 are considered federal law claims and are preempted and removable." (App.153a).

The Ninth Circuit failed to appreciate, however, that "Congress did not state explicitly whether and to what extent it intended § 301 of the LMRA to pre-

empt state law," thus requiring analysis of Congressional intent before expanding § 301 preemption to claims seeking to enforce union constitutions. *Lueck*, 471 U.S. at 208-09. That is, regardless of whether a union constitution is a contract within the plain meaning of § 301, because § 301 has no express preemption provision the lower court must analyze Congressional intent and permit the state law claim "'unless it conflicts with federal law or would frustrate the federal scheme," or Congress has occupied the field. *Id.* This Court has made clear that "not every dispute concerning employment, or tangentially involving a provision of a collective-bargaining agreement, is pre-empted by § 301." *Id.* at 211. Congress did not occupy the entire field of § 301 labor disputes. *Id.* The Ninth Circuit did not analyze Congressional intent nor hold that permitting union constitution claims in state court conflicts with federal law or would frustrate any federal scheme. (App.152a-161a). This Court's Congressional intent analysis as established in *Lueck* and its progeny is not permissive. *Williams*, 482 U.S. at 395; *Lingle*, 486 U.S. at 410 n.10; *Livadas,* 512 U.S. at 120.

Importantly, here, the Ninth Circuit panel willfully ignored the absolutely clear expression of Congressional intent to preserve state claims and remedies to enforce union constitutions when passing the LMRDA. (App.155a-156a). The Ninth Circuit panel held that the plain meaning of the LMRDA's "six savings clauses . . . operate to preserve state claims and remedies brought by union members against their unions to enforce union constitutions." *Id.* By expressly preserving state claims and remedies by union members against their unions to enforce union

constitutions, Congress has "affirmatively endorsed" state claims and remedies in this field of labor law. *Lingle*, 486 U.S. at 412.

The Ninth Circuit actually held that the plain language of the LRMDA savings clauses demonstrate Congressional intent "to preserve state claims and remedies brought by union members against their unions to enforce union constitutions." *Id.* The Ninth Circuit then proceeded to ignore this expression of Congressional intent not to preempt state claims and remedies brought by union members against their unions to enforce union constitutions because "three of the clauses cited by the Union Members are entirely inapplicable." (App.155a-156a). The three clauses cited as being inapplicable are 29 U.S.C. §§ 524, 483, and 501. The Ninth Circuit acknowledged, however, that the other three savings clauses were applicable to the subject matter of Garcia's state law claims: 29 U.S.C. §§ 413 (union discipline), 523 (fiduciary duty); and 466 (trusteeships). *Id.*

The Ninth Circuit explained that the LMRDA savings clauses do not operate as an exception to § 301 LMRA preemption because the LMRDA "contains no words repealing § 301 or its preemptive effect." (App.156a). This conclusion evidences a fundamental misunderstanding of this Court's § 301 LMRA precedent. The first case to discuss the preemptive effect of § 301 of the LMRA was *Lucas Flour Co.*, 369 U.S. at 103, which was decided in 1962 three years after the LMRDA was passed. *See Lueck*, 471 U.S. at 209. The *Lucas Flour Co.* decision, like all future § 301 LMRA preemption precedent, analyzed Congressional intent to preempt state law based on legislative history because "Congress did not state explicitly whether

and to what extent it intended § 301 of the LMRA to pre-empt state law," triggering the Congressional intent analysis. *Id.* at 208-09.

The LMRDA contains "no words repealing § 301 or its preemptive effect" because this Court had not established the § 301 preemption doctrine at the time the LMRDA was passed. *Id.* Instead, anticipating that the Court might continue to expand its existing labor-management preemption doctrine, Congress passed the LMRDA and every other subsequent act in the field of labor-management to include express pre-emption and savings clauses. This Court has already acknowledged that "the 1959 Act . . . reflects congressional awareness of the problems of pre-emption in the area of labor legislation, and which did not leave the solution of questions of pre-emption to inference." *De Veau*, 363 U.S. at 156.

The Ninth Circuit also highlighted that "none of the LMRDA's savings clauses concern the subject of uniform interpretation of labor contracts." (App.156a). Again, the Ninth Circuit panel is technically correct but fails to understand this Court's LMRA and LMRDA precedent and the Congressional intent behind the LMRDA. None of the LMRDA's savings clauses concern the subject of uniform interpretation of labor contracts because Congress made clear that state claims and remedies by union members against their unions to enforce union constitutions were to be preserved. (App.155a). That is, Congress endorsed multiformity for union constitutions. Congress was aware of the problems with preemption in the field of labor legislation, and chose not to leave the issue of preemption of union constitution claims to inference. *De Veau*, 363 U.S. at 156. Congress understood that "State law, in

many circumstances, may go further." *Hardeman*, 401 U.S. at 244 n.11. "But Congress, which preserved state law remedies by § 103 of the LMRDA, 29 U.S.C. § 413, was well aware that even the broad language of Senator McClellan's original proposal was more limited in scope than much state law." *Id.*

The Ninth Circuit correctly acknowledged that despite the fact that there is a "topical overlap between the statutes, '[i]t is not sufficient . . . to establish, that subsequent laws cover some or even all of the cases provided for by the prior act; for they may be merely affirmative, or cumulative or auxiliary.'" (App.156a-157a). The panel then noted that "*Congress was aware that the rights conferred by the [LMRDA] overlapped those available under state law and other federal legislation, and expressly provided that these rights were to be cumulative[,]' . . . with the new protections contained in the LMRDA overlapping and supplementing existing state and federal protections*." (App. 156a-157a) (emphasis added). Because § 301 preemption did not exist at the time the LMRDA was passed by Congress, the Congressional intent that the LMRDA preserve all other existing overlapping state law and federal rights via the savings clauses precludes, or otherwise establishes an exception to applying § 301 preemption for all overlapping state law that existed at the time including Nevada's union constitution and trusteeship law. *Id.* The LMRDA savings clauses do not repeal § 301's preemptive effect, they exempt state rights that overlap with the LMRDA from preemption. The Ninth Circuit's new rule permits § 301 of the LMRA to preempt those overlapping state protections preserved by Congress rendering the savings clauses nugatory.

As this Court clearly acknowledged in *Lingle* some state laws may be distinguished as being excluded from § 301 preemption when "Congress has affirmatively endorsed state . . . remedies" when passing a later, more specific labor act. *Lingle*, 486 U.S. at 412. The act the *Lingle* Court was referencing was "Title VII of the Civil Rights Act of 1964," citing Title VII's two anti-preemption savings clauses that affirmatively endorsed state remedies for employment discrimination. *Id. citing* 42 U.S.C. §§ 2000e-5(c) and 2000e-7. The lower court had "distinguished those laws because Congress has affirmatively endorsed state antidiscrimination remedies in Title VII . . . whereas there is no such explicit endorsement of state workers' compensation laws." *Id.* While this Court found that "distinction is unnecessary for determining whether § 301 pre-empts the state law in question" in the *Lingle* case, it his highly relevant here given that this Court has never concluded that Congress intended § 301 of the LMRA to preempt state claims and remedies by union members against their unions to enforce union constitutions. 486 U.S. at 412. Because no prior Supreme Court precedent hold that Congress intended to preempt state law claims and remedies to enforce union constitutions, the "affirmative endorsement" of Mendoza's state claims by Congress expressed in the LMRDA's savings clauses is of paramount importance.

The Ninth Circuit rejected the argument that the LMRDA savings clauses exempt state claims and remedies by union members against their unions to enforce union constitutions from § 301 complete preemption because "[t]he LMRDA contains no words repealing § 301 or its preemptive effect." (App.155a-156a).

A later labor act does not, however, need to expressly repeal § 301 of the LMRA to affirmatively endorse state law claims and remedies that might also be actionable under § 301 of LMRA. *Lingle*, 486 U.S. at 412 *citing* 42 U.S.C. §§ 2000e-5(c) and 2000e-7. Like the LMRDA, Title VII of the Civil Rights Act of 1964 does not include any words repealing § 301 of the LMRA. Instead, Congress included two broad savings clauses affirmatively endorsing state claims and remedies for employment discrimination. *Id.* Congress did the same thing with the LMRDA, which supplemented the LMRA (*see* 29 U.S.C. § 401), by affirmatively endorsing state claims and remedies by union members against their unions to enforce union constitutions. (App.155a-156a). Like the savings clauses in Title VII, the LMRDA's savings clauses evidence Congressional intent to "preserve state claims and remedies brought by union members against their unions to enforce union constitutions." *Id.*

Mendoza and Garcia brought their state court actions to challenge imposition of a trusteeship over their local unions in breach of international union constitutions, claims affirmatively endorsed by Congress when preserving such claims in 29 U.S.C. § 466. *Id.* Similarly, Mendoza's challenge to the fine and imposition of union discipline by ATU International in breach of the ATU International Constitution falls squarely within the scope of 29 U.S.C. §§ 411 and 413, and were affirmatively endorsed by Congress via the savings clause in § 413. *Id.* This Court has never concluded that union constitution claims are preempted by § 301, nor that Congress intended to preempt the field of labor law that regulates internal union governance and the union-union member relationship.

This Court has, however, repeatedly held that "the 1959 Act . . . reflects congressional awareness of the problems of pre-emption in the area of labor legislation, and which did not leave the solution of questions of pre-emption to inference." *De Veau*, 363 U.S. at 156. This Court has also held that "Congress . . . preserved state law remedies by § 103 of the LMRDA, 29 U.S.C. § 413." *Hardeman*, 401 U.S. at 244 n.11. If § 301 is allowed to preempt state remedies Congress preserved and affirmatively endorsed when passing the LMRDA, the federal scheme established by the LMRDA is frustrated by application of § 301 preemption. *Lueck*, 471 U.S. at 208-09; *Lingle*, 486 U.S. at 412.

In short, it is well established principle of pre-emption that intent of Congress to preempt state law is the ultimate touchstone of any preemption analysis. The Ninth Circuit's decision in this case ignoring clear Congressional intent to "preserve state claims and remedies brought by union members against their unions to enforce union constitutions" when finding these claims were preempted by § 301 of the LMRA is in conflict with this Court's preemption precedent and Congressional intent.

B. The Decision Below Conflicts with the Decisions of This Court That State Claims Are Preempted by § 301 Only If Interpretation of a CBA Is Required.

Just three years after this Court decided *Lueck* it was faced with another novel issue of § 301 pre-emption and granted certiorari. *See Lingle*, 486 U.S. at 413. This Court cited its decision in *Lueck*, holding that "*Lueck* faithfully applied the principle of § 301

preemption developed in *Lucas Flour:* if the resolution of a state-law claim depends upon the meaning of a collective-bargaining agreement, the application of state law . . . is pre-empted." *Id.* at 405-06. This Court then clarified that "an application of state law is preempted by § 301 of the [LMRA] only if such application requires the interpretation of a [CBA]." *Id.* at 413; *see also Livadas*, 512 U.S. at 123-24; *see also Hawaiian Airlines v. Norris*, 512 U.S. 246, 262 (1994).

The Ninth Circuit's decision in this case flouts this long settled legal principle by extending § 301 preemption to all potential "labor contracts" that might be actionable under § 301 in federal court. The Ninth Circuit panel's decision extends this Court's reasoning in *Lingle* and *Lividas* by removing the term "collective-bargaining agreement" from the text of this Court's decisions and replacing it with the broader "labor contract" language used in the earlier case *Lingle* narrowed, *Lueck*. (App.155a-157a).

In short, it is well established by this Court's precedent "that an application of state law is preempted by § 301 of the [LMRA] only if such application requires the interpretation of a [CBA]." *Lingle*, 486 U.S. at 413. It is also well established that "[t]he phrase 'only if' denotes exclusivity; it does not suggest one of multiple options." *FLRA v. Aberdeen Proving Ground*, 485 U.S. 409, 412 (1988). The Ninth Circuit's decision in this case conflicts with this Court's precedent by expanding § 301 complete preemption to state claims and remedies that do not require interpretation or application of the terms of a CBA.

C. The Decision Below Also Conflicts with the Decisions of This Court That Hold That Union Member Suits to Enforce Union Constitutions Are Actionable in State Court.

This Court first addressed the issue of union member suits against their unions to enforce union constitutions in state court in *Machinists v. Gonzales,* 356 U.S. 617 (1958). In *Gonzales*, this Court held that a union member could bring legal action in state court for breach of an international union constitution because internal union disputes were a peripheral concern of the act. *Id.* The Ninth Circuit's holding in this case and the *Garcia* case rejected *Gonzales* as inapplicable, holding that the ruling in *Gonzales* concerned only the scope of *Garmon* preemption. (App.152a-153a n2).

The *Gonzales* case however, dealt expressly with the LMRA, preemption and state claims to enforce union constitutions. *Gonzales*, 356 U.S. at 621. This Court has consistently affirmed the result reached in *Gonzales* that disputes between union members and their unions to enforce union constitutions are actionable in state court under state law. *Scofield v. NLRB*, 394 U.S. 423, 426 n.3 (1969); *see also Amalgamated Ass'n of St., Elec.Ry. & Motor Coach Emps. v. Lockridge*, 403 U.S. 274, 276 (1971); *Farmer v. United Bhd. of Carpenters & Joiners*, 430 U.S. 290, 301 n.10, 97 S.Ct. 1056, 1064 (1977). This Court cited *Gonzales* in *Lockridge*, affirming the decision in *Gonzales* that union constitution claims were actionable in state court so long as they did not implicate *Garmon* preemption. *Lockridge*, 403 U.S. at 294. In *Farmer*, this Court noted that its decision in *Lockridge* "stated that

'*Garmon* did not cast doubt upon the result reached in *Gonzales,*' *id.,* at 295, since *Garmon* cited *Gonzales* as an example of the nonapplicability of the normal pre-emption rule 'where the activity regulated was a merely peripheral concern of the . . . Act.'" *Farmer*, 430 U.S. at 301 n.10.

The Ninth Circuit's decision holds that the union constitution claims at issue in *Gonzales* should have been preempted as "labor contracts" because they are actionable under § 301 of the LMRA, implying a full repeal of the result reached in *Gonzales*. *Farmer*, 430 U.S. at 301 n.10. This Court discussed § 301 preemption extensively in its decisions in *Lockridge* and *Farmer* never once equating union constitutions to CBAs preempted by § 301, which has its own exception to *Garmon* preemption. *Id.* This Court could have overruled *Gonzales* in *Lockridge* and *Farmer* and did not. Importantly, the seminal cases relied on by the Ninth Circuit as supporting union constitution preemption held only that union constitutions can be § 301 contracts actionable in federal court. (App.152a-156a) *quoting Journeymen*, 452 U.S. at 622.

In *Journeymen*, this Court held that "a union constitution is a 'contract' within the plain meaning of § 301(a)." *See Journeymen*, 452 U.S. at 622. This Court's decision in *Journeymen* did not address preemption. This Court did, however, cite *Gonzales* as precedent. *Id. citing Gonzales*, 356 U.S. at 618-619. This Court did not overrule the result reached in *Gonzales* when it decided *Journeymen. Id.* The Ninth Circuit also cited to this Court's holding in *Wooddell* for the principle that a union constitution is actionable under § 301 of the LMRA. (App.83a). Like *Journeymen*, this Court's holding in *Wooddell* did not deal with

preemption, nor did it overrule this Court's precedent that union members may sue to enforce union constitutions in state court. 502 U.S. at 101.

In short, it is a well-established legal principle that union members may sue their unions to enforce union constitutions in state court under state law. The Ninth Circuit's decision conflicts with the decisions of this Court by inferring repeal of *Gonzales* and its progeny in *Journeymen* and *Wooddell*, neither of which addressed preemption.

II. THE QUESTION PRESENTED IS EXCEPTIONALLY IMPORTANT AND WARRANTS REVIEW.

The Ninth Circuit's unprecedented approach to § 301 preemption will have immediate and far-reaching consequences. By extending § 301 preemption to any potential labor contract that might be actionable under § 301 the Ninth Circuit has opened the door to more and more types of contracts being preempted by § 301 without regard to Congressional intent. That is, by replacing the words "collective bargaining agreement" in this Court's decisions in *Lingle* and *Livadas* with the much broader term "labor contract," § 301 preemption is no longer limited to interpretation and application of the terms of a CBA. Any contract that is potentially actionable under § 301 is now preempted under the Ninth Circuit's new rule and lower courts will once again begin expanding on "the principle of § 301 preemption developed in *Lucas Flour:* if the resolution of a state-law claim depends upon the meaning of a collective-bargaining agreement, the application of state law . . . is pre-empted" to more and more state laws and claims that do not require interpretation or application of the terms of a CBA. *Lingle*, 486 U.S. at 405-06.

The Ninth Circuit's new rule expanding § 301 preemption to union constitutions is only the beginning and without this Court's review, more and more types of cases traditionally brought in state court will be found preempted by § 301. (App.155a). The Ninth Circuit's decision also forecloses on the entire state forum expressly preserved by Congress for adjudicating disputes between union members and their unions to enforce union constitutions, forcing union members to proceed in federal court where delays often result in union member claims being mooted, which happened in this case and the *Garcia* case.

As this Court noted in *Hardeman*, the LMRDA provides limited remedies and "State law, in many circumstances, may go further." *Hardeman*, 401 U.S. at 244 n.11. "But Congress, which preserved state law remedies by § 103 of the LMRDA, 29 U.S.C. § 413, was well aware that even the broad language of Senator McClellan's original proposal was more limited in scope than much state law." *Id. citing* 105 Cong. Rec. 6481-6489. By allowing § 301 of the LMRA to preempt union constitution claims, millions of union members lose the state forum and the broader state remedies Congress expressly sought to preserve and endorse with the LMRDA, like Nevada's own law on enforcing union constitutions and reviewing the imposition of union trusteeships by international unions over local union affiliates. *Johnson*, C. J., 52 Nev. at 412; *Hickman*, 71 Nev. at 69. If the LMRDA "reflects congressional awareness of the problems of pre-emption in the area of labor legislation" and intent to "not leave the solution of questions of pre-emption to inference," inferring that the earlier less specific act, § 301 of the LMRA, preempts the same conduct regulated and

saved from preemption by the LMRDA undermines that Congressional awareness and intent. *De Veau*, 363 U.S. at 156.

This case raises one of the significant problems of preemption in the area of labor-legislation Congress was trying to avoid with the LMRDA. By allowing defendants to remove state claims alleging conduct and seeking to enforce union constitutions that were undisputedly saved from preemption by the LMRDA (App.155a-156a) via § 301 of the LMRA, the intent of Congress to "not leave the solution of questions of preemption to inference" in regards to conduct regulated by the LMRDA is undermined and the very claims preserved by Congress have been inferred as preempted simply because a union constitution could also be actionable under the broad language of § 301 of the LMRA.

This case presents an ideal vehicle to address this important issue, which has closed an entire state forum Congress preserved for millions of union members. Because *Mendoza I* was removed as completely preempted by § 301 of the LMRA and then consolidated with *Mendoza II*, which alleged LMRDA claims for some of the same conduct, the Ninth Circuit in this case and the *Garcia* case was forced to reconcile its decision to preempt union constitution claims pursuant to § 301 of the LMRA with the Congressional intent of savings clauses in the LMRDA that it acknowledged was to "preserve state claims and remedies brought by union members against their unions to enforce union constitutions." (App.11a-12a, 155a-156a).

This unique procedural posture makes this case the ideal case to resolve this issue, as all other circuits that have found union constitutions completely preempted by § 301 did not have to analyze the

LMRDA. *Kitzmann v. Local 619-M Graphic Commc'ns Conference of Int'l Bhd. of Teamsters*, 415 F. App'x 714 (6th Cir. 2011); *Wall v. Constr. & Gen. Laborers' Union, Local 230*, 224 F.3d 168 (2d Cir. 2000); *DeSantiago v. Laborers Int'l Union of N. Am., Local No. 1140*, 914 F.2d 125 (8th Cir. 1990); *Pruitt v. Carpenters' Local Union No. 225 of United Bhd. of Carpenters & Joiners*, 893 F.2d 1216 (11th Cir. 1990). These circuits analyzed union constitution complete preemption via § 301 in a vacuum without consideration of the LMRDA, which supplemented the LMRA and preserved these state claims and remedies in this field of labor law.

III. THE DECISION BELOW CONFLICTS WITH THE DECISIONS OF OTHER COURTS OF APPEAL.

The Ninth Circuit's decision holds that union constitutions, which are not CBAs, are completely preempted by § 301 of the LMRA. (App.3a). Under the Ninth Circuit's new rule, Congressional intent to preempt or preserve state law claims and remedies is not the ultimate touchstone and any labor contract potentially actionable under § 301 is completely preempted. (App.155a-157a).

The Ninth Circuit's holding directly conflicts with the decisions of the Third, Fifth, Seventh, and Tenth Circuits, which have faithfully applied that this Court's ruling in *Lingle* limiting § 301 preemption to claims involving the interpretation and application of the terms of CBAs. *Beidleman v. Stroh Brewery Co.*, 182 F.3d 225 (3d Cir. 1999); *Smart v. Local 702 IBEW*, 562 F.3d 798, 809 (7th Cir. 2009); *Contract Servs. Emp. Tr. v. Davis*, 55 F.3d 533, 536 (10th Cir. 1995); *Thomas v. LTV Corp.*, 39 F.3d 611, 620 (5th Cir. 1994).

The Ninth Circuit has aligned itself with the decisions of the Second, Sixth, Eighth and Eleventh Circuits that § 301 preemption applies to non-CBA labor contracts like union constitutions. *Kitzmann v. Local 619-M Graphic Commc'ns Conference of Int'l Bhd. of Teamsters*, 415 F. App'x 714 (6th Cir. 2011); *Wall v. Constr. & Gen. Laborers' Union, Local 230*, 224 F.3d 168 (2d Cir. 2000); *DeSantiago v. Laborers Int'l Union of N. Am., Local No. 1140*, 914 F.2d 125 (8th Cir. 1990); *Pruitt v. Carpenters' Local Union No. 225 of United Bhd. of Carpenters & Joiners*, 893 F.2d 1216 (11th Cir. 1990). This Court's review is necessary to reconcile and resolve this conflict.

CONCLUSION

The petition for writ of certiorari should be granted.

Respectfully submitted,

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