NO. 22-432

In the
Supreme Court of the United States

RIETH-RILEY CONSTRUCTION CO., INC.,

Petitioner,

v.

OPERATING ENGINEERS' LOCAL 324 FRINGE BENEFIT FUNDS, ET AL.,

Respondents.

On Petition for a Writ of Certiorari to the U.S. Court of Appeals for the Sixth Circuit

REPLY BRIEF OF PETITIONER

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CORPORATE DISCLOSURE STATEMENT

Rieth-Riley is not a subsidiary or affiliate of a publicly owned corporation, and no publicly held corporation owns 10% or more of Rieth-Riley's stock. No other publicly owned corporation or its affiliate has a substantial financial interest in the outcome of the litigation.

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REPLY BRIEF OF PETITIONER

This Court should grant Rieth-Riley's petition for writ of certiorari to course-correct the Sixth Circuit, which issued a decision in this case that directly undermines *San Diego Building Trades Council* v. *Garmon*, 359 U.S. 236 (1959), and *Laborers Health & Welfare Trust Fund for Northern California* v. *Advanced Lightweight Concrete Co.*, 484 U.S. 539 (1988). Contrary to decades of this Court's precedent and every other circuit's treatment of the issue, the Sixth Circuit now endorses artful pleading around the well-settled jurisdictional rule of *Garmon* preemption with conclusory labels that are utterly unsupported by fact. The decision below guts *Garmon* and requires labor organizations and employers to litigate their labor disputes outside of the forum Congress created and designated for them, which this Court has long since decried.

The Funds' three grounds of opposition to certiorari and summary reversal are unpersuasive. First, because *Advanced Lightweight* is an application of *Garmon* preemption in precisely this scenario, *Garmon* preemption certainly was raised and addressed in the courts below. Second, the Sixth Circuit's opinion did not correctly apply *Advanced Lightweight* because it ignored its foundation in *Garmon*, in conflict with the Seventh Circuit. Third and finally, the question presented is ripe for this Court's review and does not involve open factual disputes, because the district court—properly—already resolved them.

ARGUMENT

I. Rieth-Riley raised and preserved, and the Sixth Circuit rejected, the issue of *Garmon* preemption.

In arguing that Rieth-Riley "did not argue *Garmon* preemption" below, the Funds confess the same misunderstanding of *Advanced Lightweight* as the Sixth Circuit.[1] *Advanced Lightweight* applies *Garmon* preemption in precisely this circumstance, requiring federal courts to cede jurisdiction to the National Labor Relations Board ("NLRB") when a multiemployer fund seeks to enforce post-contract contribution obligations that "involve either an actual or an 'arguable' violation of § 8 of the NLRA." *Laborers Health & Welfare Tr. Fund for N. Cal.* v. *Advanced Lightweight Concrete Co.*, 484 U.S. 539, 552 (1988) (quoting *San Diego Bldg. Trades Council* v. *Garmon*, 359 U.S. 236, 245 (1959)). And like any other circumstance involving *Garmon* preemption, *Advanced Lightweight* requires federal courts to look beyond a complaint's labels and make factual findings as to the nature of a multiemployer fund's claims, lest they usurp "the exclusive competence" of

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[1] *EEOC* v. *Federal Labor Relations Authority*, 476 U.S. 19 (1986), cited by the Funds in support of their waiver argument, Resp. at 12, is inapplicable here, because it involved a specific section of the Civil Service Reform Act that bars the Court from reviewing certain decisions of the Federal Labor Relations Authority. *EEOC*, 476 U.S. at 23. As set forth in this section, the relevant question is whether the court below "pressed or passed on" the question presented. *United States v. Williams*, 504 U.S. 36, 41 (1992). But under any standard, the Sixth Circuit's rejection of *Garmon* preemption is properly before this Court.

the NLRB. *Garmon*, 359 U.S., at 245; *see also, e.g.*, Pet. at 19-23 (collecting Court's holdings that *Garmon* preemption is jurisdictional, turning on facts, not labels).

This Court may review any question that is "pressed or passed upon below." *United States* v. *Williams*, 504 U.S. 36, 41 (1992) (citation omitted). Rieth-Riley's position in this Court, and in every court below, is and has been that *Advanced Lightweight* controls the Funds' claims and required the courts below to defer to the exclusive jurisdiction of the NLRB because the Funds' claims *in substance* are unfair labor practice claims, despite the Funds' arbitrary labeling of them. The Sixth Circuit held precisely the opposite and allowed the Funds to artfully plead their way into federal court with conclusory labels and factual allegations so unsupported by the record that the district court found them to be "disingenuous." App.32. That the Sixth Circuit did so without a single reference to *Garmon*—thus necessitating the precise question presented by Rieth-Riley's petition—only magnifies the Sixth Circuit's error.

Because *Advanced Lightweight* is an application of *Garmon* preemption, Rieth-Riley's *Advanced Lightweight* argument has always been a *Garmon* preemption argument. The district court understood that. The Sixth Circuit did not. Unprompted by either party[2] and, apparently, blithely unaware of

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[2] *Compare* App.13-14 (citing *Arbaugh* v. *Y & H Corp.*, 546 U.S. 500 (2006), *Daft* v. *Advest, Inc.*, 658 F.3d 583 (6th Cir. 2011), *Tackett* v. *M & G Polymers, USA, LLC*, 561 F.3d 478 (6th Cir. 2009), and *Winnett* v. *Caterpillar, Inc.*, 553 F.3d 1000 (6th

Garmon, it misconstrued *Advanced Lightweight* in a way that necessitated the exact question presented here, framed by *Garmon* as the foundation of *Advanced Lightweight*.

Because the Sixth Circuit held that the label the Funds put on their claims is what determines whether the district court has jurisdiction over them, there is "no doubt in the present case that the [Sixth] Circuit decided the crucial issue" of what *Advanced Lightweight* means in this case and, specifically, whether the district court was entitled to make factual findings as to its jurisdiction. *Williams*, 504 U.S., at 43; *cf. Unicolors, Inc.* v. *H&M Hennes & Mauritz, L.P.*, 142 S. Ct. 941, 949 (2022) (deciding question that was "fairly included" in decision below).

II. The Sixth Circuit's decision clearly contravenes this Court's precedent and the Seventh Circuit's *RiverStone* decision.

The Sixth Circuit's decision is irreconcilable with this Court's longstanding rule under *Garmon* and its progeny that plaintiffs "may not circumvent the primary jurisdiction of the NLRB simply by casting statutory claims" as other claims to avoid *Garmon* preemption. *Commcn's Workers of Am.* v. *Beck*, 487 U.S. 735, 743 (1988). It also clearly conflicts with *RiverStone Group, Inc.* v. *Midwest Operating Engineers' Fringe Benefit Funds*, 33 F.4th 424 (7th Cir. 2022), in which the Seventh Circuit faithfully applied *Garmon* in the context of *Advanced Lightweight* and looked beyond the funds' labeling of

Cir. 2009)) *with* Appellants' Br., Sixth Cir. Doc. No. 22 at 5-6 (citing none of these cases).

their claims to determine their proper forum (a federal court or the NLRB).

A. *Garmon* required the district court to make factual findings to determine its jurisdiction.

Instead of addressing Rieth-Riley's *Garmon* preemption arguments on the merits, the Funds attempt to avoid certiorari and summary reversal by pretending *Garmon* does not exist and divorcing *Advanced Lightweight* from its *Garmon* foundation. They insist that the Sixth Circuit was correct to determine *Advanced Lightweight* does not apply to their claims because they "have never alleged that [Rieth-Riley] engaged in an unfair labor practice or violated the NLRA," Resp. at 14, but that only proves the point. True, the Funds have *pleaded* a claim under ERISA § 515. The question presented for this Court's review is whether the district court must take the Funds' word for it (as the Sixth Circuit held), or whether, instead, as this Court has held in every other context under *Garmon*, the district court must consider the evidence underlying the Funds' claims and determine whether, *as a matter of fact*, the Funds' claim "involve[s] either an actual or an 'arguable' violation of § 8 of the NLRA." *Advanced Lightweight*, 484 U.S., at 552.

Under *Garmon* and its progeny, the answer is obvious, and the Sixth Circuit's opinion cannot stand. *Garmon* preemption is jurisdictional. *See, e.g.*, *Marquez* v. *Screen Actors Guild, Inc.*, 525 U.S. 33, 36 (1998); *Int'l Longshoremen's Ass'n, AFL-CIO* v. *Davis*, 476 U.S. 380, 394 (1986); *Beck*, 487 U.S., at 742. For that reason, this Court has held for decades that it turns on facts and evidence, not conclusory labels or bare allegations. *See, e.g.*, *Davis*, 476 U.S., at 398 (examining record evidence and considering whether party made a "factual … showing" supporting *Garmon* preemption claim); *Beck*, 487 U.S., at 743 (holding that plaintiffs "may not circumvent the primary jurisdiction of the NLRB simply by casting statutory claims" as other claims to avoid *Garmon* preemption); *Marquez*, 525 U.S., at 51 (same).

The district court understood that *Advanced Lightweight*, with its roots in *Garmon*, required it to look beyond the conclusory allegations in the Funds' complaint and determine, as a factual matter, whether the Funds' claims seek to enforce what, in substance, are Rieth-Riley's post-contract statutory obligations under the NLRA. And when it did so, it found that the Funds' allegations of a contractual contribution obligation were so unfounded and baseless as to be "disingenuous." App.32. That is precisely the scenario *Garmon* preemption seeks to avoid.

B. The Sixth Circuit's decision directly conflicts with the Seventh Circuit's *RiverStone* decision.

The Funds strain the Seventh Circuit's *RiverStone* decision beyond credulity to avoid a circuit split. It is untrue that the funds in *RiverStone* did not allege a contract claim. In fact, they argued *two* to the Seventh Circuit. First, they claimed that they had "an independent right to enforce the terms of the collective bargaining agreement relating to the funding of benefits" under ERISA § 515. *RiverStone*, 33 F.4th, at 429. Second, they argued a breach of contract claim under Section 301 of the Labor Management Relations Act ("LMRA"), which provides a cause of action for "[s]uits for violation of contracts between an employer and a labor organization," to enforce the terms of the expired CBA as a matter of "federal common law." *Id.*, at 430-431.

Both claims were thus *labeled* as claims to enforce the expired CBA *as a matter of contract*, just as the Funds' claim here. But unlike the Sixth Circuit, the Seventh Circuit recognized its obligations under *Garmon* and *Advanced Lightweight* to go beyond the Funds' labeling of their claims. Because no contract *in fact* existed, the Seventh Circuit agreed with the district court that "any failure to make payments 'could only constitute a violation of NLRA § 8(a)(5).'" *Id.*, at 428 (quoting *RiverStone Grp., Inc.* v. *Midwest Operating Eng'rs Fringe Benefit Funds*, No. 4:19-cv-04039, 2021 WL 1225865, at *4 (C.D. Ill. Mar. 31, 2021)).

There is no principled basis under *Garmon* and *Advanced Lightweight* for the Sixth Circuit's opposite rule. Indeed, the Sixth Circuit made no attempt to articulate one and instead misread *RiverStone* the same way the Funds do here. A circuit split on such an important question of federal jurisdiction cries out for this Court's intervention.

III. This case is an ideal vehicle for the Court's intervention.

In a final bid to avoid certiorari and summary reversal, the Funds claim that Rieth-Riley's petition involves "factual disputes" and that the question presented is not ripe for review. The Funds are wrong on both counts.

A. The district court properly resolved all factual disputes.

The question presented by Rieth-Riley's petition is whether the district court was bound by the Funds' artful pleading around *Garmon* preemption or whether it could consider the actual facts underlying the Funds' claims. Because the district court understood its obligation under *Advanced Lightweight* (and thus *Garmon*) to "weigh[] the evidence and ma[k]e jurisdictional findings of fact," Resp. at 4, in determining its own jurisdiction, no "factual disputes" remain that preclude this Court's review. To the extent any factual disputes ever existed, the district court has already resolved them.

Importantly, though, there were no factual disputes before the district court. Both sides presented evidence in support of their jurisdictional arguments to the district court, and the Funds did not dispute "any of the facts" Rieth-Riley presented. App.27. They disagree with the district court's factual findings and legal conclusions drawn from those undisputed facts, but they failed to present any evidence to the district court that contradicts them. *See* Pet. at 24.

B. The question presented is ripe for this Court's review.

That the district court has yet to decide the Funds' claims on remand has no bearing on whether the question presented is ripe for this Court's review juncture. In fact, the harm to Rieth-Riley will only increase the longer Rieth-Riley is forced to litigate its labor disputes in the wrong forum.

First, the single inaccuracy the Funds have identified in the district court's ruling is wholly irrelevant to the question presented. True, the district court incorrectly stated that the Funds were pursuing a claim for contributions against Rieth-Riley in the NLRB.[3] But the relevant question under *Garmon* is whether the claims brought *in federal court* should, instead, be in the NLRB, not whether parallel proceedings are already ongoing there. The Funds cannot avoid *Garmon* preemption simply by failing to bring their claims in the forum with jurisdiction to hear them.

Second, the Funds' plea that the Court "wait and see" ignores that *Garmon* preemption is both substantive *and* procedural. The procedural differences between federal court and the NLRB are "fully as disruptive to the system Congress erected as conflict in overt policy." *Amalgamated Ass'n of Street, Elec. Ry. & Motor Coach Emps. of Am.* v. *Lockridge*, 403 U.S. 274, 287 (1971); *see also* Pet. at 24-28. Rieth-Riley is entitled to force the Funds to litigate their claims in the forum Congress created and designated for them, regardless how the district court may resolve them on remand.

[3] The district court was not wrong that Rieth-Riley is responding to unfair labor practice claims in the NLRB regarding its status quo obligations related to fringe benefit contributions. But they were brought by the union, not the Funds. Decl. of Alex Preller ¶ 3, District Court Doc. 19-4, PageID.192-193.

CONCLUSION

For the foregoing reasons, the petition for writ of certiorari should be granted, and the Sixth Circuit should be summarily reversed. In the alternative, the petition for certiorari should be granted and the case should be set for merits briefing and argument.

Respectfully submitted,

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