No. 25-697

IN THE

Supreme Court of the United States

LAS VEGAS SUN, INC.,

Petitioner,

v.

SHELDON ADELSON, *et al.*,

Respondents.

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

REPLY BRIEF FOR PETITIONER

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REPLY BRIEF

Respondents hope to print this future headline on their new solo front page:

> Supreme Court says Las Vegas print readers' loss of competing editorial and reportorial viewpoints is "unimportant" and "nothing worthy of this Court's attention!"[1]

Respondents relegate to their Brief in Opposition's back pages the Ninth Circuit's conflicting interpretation of the Newspaper Preservation Act (NPA). Respondents' lede is the trope that newspapers are "moribund"[2] so the Court should sit in observance while the Nation's 11th most populous county loses one of its two print dailies to a monopoly. But—to paraphrase Nevada's most famous journalist—the report of the print newspaper's death is greatly exaggerated.[3] The obituary has been written for over 50 years but, despite changes in the market, daily print newspapers remain essential to the functioning of our political system.

The NPA certainly contributed in markets like Clark County. Congress foresaw that losing diverse newspapers can have nationwide consequences. Through the NPA, Congress created an environment where First Amendment and competitive values are prolonged, if

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1. BIO.17, 19.

2. *Id*. at 19.

3. Mark Twain, *Chapters From My Autobiography—II*, in 183 North American 460 (George Harvey ed., 1906).

not saved. Even so, Petitioner Las Vegas Sun, Inc., still needs its JOA to offer its unique perspective. The Nation and Nevada will suffer irreparable harm from the *Sun*'s demise.

The NPA remains on the books. Times and technology may have changed, but the national interest has not. It is still in "the public interest [to] maintain[] a newspaper press editorially and reportorially independent and competitive in all parts of the United States."[4] Americans are served by "preserv[ing] the publication of newspapers in any city, community, or metropolitan area where a joint operating arrangement has been heretofore entered into[.]"[5]

Respondents downplay the circuit split by characterizing it as "arguable," "no[t] meaningful," or mere "tension."[6] But the divide is undeniable, significant, and irreconcilable. The Ninth Circuit expressly criticized two other circuits' interpretive approach and reached opposite conclusions.

Respondents try to complicate the question presented by dissecting it into multiple inquiries. But what's newsworthy—and cert-worthy—is that the Ninth Circuit is the first and only appellate court to hold post-NPA JOA amendments need a second round of Attorney General sign-off to be lawful *and* to be antitrust immune. The D.C. and Sixth Circuits have held the opposite. In those

4. 15 U.S.C. §1801.

5. *Id.*

6. BIO.2-3.

circuits, Attorney General consent for original JOAs is only required for the NPA's antitrust immunity.

Like the Ninth Circuit, Respondents take textualism too far. Unlike the D.C. and Sixth Circuits, Respondents ignore the NPA's many ambiguities and the need to consult statutory context and legislative history. This interpretive mode is not passé in this Court or in the circuits. Respondents do not dispute that if Section 1803(b) is ambiguous (it is), the D.C. and Sixth Circuits properly consulted legislative history to reach the correct interpretation.

The Department of Justice's contemporaneous reading of Section 1803(b) squares with those two circuits, the district court, and the Sun. The Ninth Circuit's sua sponte invalidation of DOJ regulations, which Respondents do not meaningfully defend, is important enough alone to warrant this Court's review.

This Court should grant review and reverse the Ninth Circuit.

ARGUMENT

A. The Question Presented is Important to Nevadans and the Nation.

1. Respondents foreshadow—through a footnote—the end of the joint operation if this Court does not grant review and reverse. BIO.21.n.13. Still, Respondents assert that "a ruling in this case would impact no one other than the parties to this case." *Id.* at 20.

Respondents denigrate the public interest at stake. They overlook the significant harm to First Amendment values, competition, and the *Sun*'s readers who will lose access to the newspaper's counterbalancing reportorial and editorial viewpoints. The more than two million Nevadans who call Clark County home will suffer irreparable harm from losing the *Sun*'s "editorial and reportorial voice, the elimination of a significant forum for the airing of ideas and thoughts, the elimination of an important source of democratic expression, and the removal of a significant facet by which news is disseminated in the community." *Hawaii ex rel. Anzai v. Gannett Pac. Corp.,* 99 F. Supp. 2d 1241, 1253-54 (D. Haw. 1999).

Like all cases with constitutional overtones, this case's significance reaches far beyond the parties. The public has an important interest in the "loss of independent editorial and reportorial voices," "jobs and the loss of competition… creators of news, editorial, and entertainment content." *Id.* at 1244-45.

2. Respondents soft-pedal this irreversible damage by trying to embed their competing antitrust market definition—one the district court soundly rejected. Respondents contend the stakes aren't so high because people can access the *Sun*'s views online or substitute the *Sun* with TV, radio, or other sources. BIO.1-2, 20-21. But, as the district court previously ruled, daily print newspapers fill a distinct market with a unique consumer base, which has been recognized throughout the country. *Las Vegas Sun, Inc. v. Adelson*, 2020 WL 7029148, at **5-6 (D. Nev. Nov. 30, 2020). The internet, TV, radio, and apps are not substitutes for a print newspaper. *Id.* In the briefing leading to this Petition, Respondents did

not dispute that daily, print newspapers in Clark County are a standalone market. App.62a. Thus, the harm to Clark County's print newspaper market and the Nation's marketplace of ideas could not be greater.

3. Indeed, Congress foresaw the future nationwide impact of losing local newspapers when it enacted the NPA in 1970. TV and radio weren't new inventions. Yet, despite these other outlets, Congress declared that the "public policy of the United States [is] to preserve the publication of newspapers in any city, community, or metropolitan area" because it is "[i]n the public interest [to] maintain[] a newspaper press editorially and reportorially independent and competitive in all parts of the United States[.]" 15 U.S.C. §1801. Unlike other legislation, Congress did not impose a reauthorization or sunset date on the NPA's goals or the Nation's newspaper policy.

Even so, Respondents proclaim that time and technology have ended the NPA's usefulness. BIO.2. But this Court cannot ignore or repeal statutes based on perceived technological changes. *See Facebook, Inc. v. Duguid*, 592 U.S. 395, 409 (2021) (refusing to reinterpret the TCPA when Congress defined a term using a "senescent technology," *i.e.*, one likely to become outdated quickly).

"Congress alone has the institutional competence, democratic legitimacy, and (most importantly) constitutional authority to revise statutes in light of new social problems and preferences." *Wisconsin Cent. Ltd v. United States*, 585 U.S. 274, 284 (2018). This Court must continue to carry out the NPA until Congress repeals it. *Id.*

4. There is no reason to think that Congress will dispatch the NPA anytime soon. The NPA has been a success in local, at-risk markets. Respondents concede that the *Sun* would have collapsed decades ago without the JOA. BIO.21.n.13. This means Nevadans and the country benefitted from the *Sun*'s reporting and editorials for decades longer than they otherwise would have. The *Sun*'s impact over that span is immeasurable. Nevadans will continue to benefit for the 14 years left under the Amended JOA. For Las Vegans, the NPA is still serving its purpose of preserving competing voices. Respondents cannot credibly point to the decrease in JOAs to imply the NPA does not work. The public reaps a reward for every additional day a newspaper stays above ground.

The *Sun* still relies on the JOA and the *Sun*'s readers still rely on the *Sun* for diverse news and perspectives. Other newspapers may benefit from a JOA too. But the Ninth Circuit's ruling makes future JOAs less attractive by rendering amendments more difficult. The Ninth Circuit's ruling cripples the *Sun*, Nevadans, and the National interest.

5. If all this weren't enough to justify review (it is), the Ninth Circuit's sua sponte invalidation of untold DOJ regulations elevates this case beyond the parties. Respondents contend "the Ninth Circuit did not purport to vacate any regulations," noting "DOJ was not even a party." BIO.21.

But the Ninth Circuit enlisted *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024), and *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984), to declare "that the

reading of §4(b) reflected in the DOJ regulations…is directly contrary to the statutory language *and must be rejected*." App.21a-22a (emphasis added).[7]

The Ninth Circuit's erasure cannot be clearer (except for the exact regulations wiped away). That's why Respondents again repeat the cliché that newspapers are "largely a dead letter" so it doesn't matter "even if an unknown number of NPA regulations were invalidated." BIO.21.

But this Court often grants certiorari, and reverses, when circuit courts invalidate agency regulations. *See*, *e.g.*, *Bondi v. VanDerStok*, 604 U.S. 458 (2025) (reversing vacatur GCA rule); *FCC v. Prometheus Radio Project*, 592 U.S. 414 (2021) (reversing vacatur of Communication Act rules).

The citizens and the government suffer irreversible harm any time a court prohibits an agency from enforcing statutes. *Trump v. CASA, Inc.*, 606 U.S. 831, 861, 930 (2025).

As explained before, the Ninth Circuit should have given more credence to DOJ's contemporaneous NPA interpretation even if it is not dispositive. Pet.28-29. The Ninth Circuit's resort to *Chevron* and *Loper Bright* to invalidate the regulations should have been a hint that the NPA is, at least, ambiguous. The Ninth Circuit was too quick to avoid statutory context and legislative history as guides. Pet.24-26.

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7. Respondents do not dispute that no one sought to declare the regulations invalid. Pet.3. *Loper Bright* was issued after the Sun's response brief below.

B. There is a Circuit Split and It is Meaningful.

1. Respondents necessarily acknowledge that there is a circuit split between the D.C. and Ninth Circuits over whether Section 1803(b) renders it "unlawful to enter a [JOA] without the prior approval of the Attorney General, or [whether] it rather require[s] prior approval only for parties seeking an antitrust exemption for such an agreement?" *Newspaper Guild v. Levi*, 539 F.2d 755 (D.C. Cir. 1976); BIO.22.

The D.C. Circuit held that Attorney General written consent is only needed for antitrust immunity, not overall lawfulness. *Newspaper Guild*, 539 F.2d at 760. The Sixth Circuit adopted the D.C. Circuit's view. *News Wkly. Sys., Inc. v. Chattanooga News-Free Press*, 986 F.2d 1422, 1993 WL 47197, at *2 (6th Cir. 1993). The Ninth Circuit cited both circuits but rejected their interpretation "as squarely foreclosed by the plain language of the statute." App.17a.

Thus, there is a direct and dispositive circuit split. The Sun-RJ Amended JOA would be lawful in the D.C. and Sixth Circuits but it is no longer lawful in the Sun's hometown.

2. Unable to deny that there is a split, Respondents deflect that it "does not warrant this Court's attention" because the D.C. Circuit used legislative history. BIO.22-24. Courts don't do that anymore, Respondents say. *Id.* at 22-24.

Yet, like the Ninth Circuit, Respondents take hyper-textualism to an extreme. They search for unambiguousness in ambiguity. To be sure, courts

must always begin with the statutory text. That's what *Newspaper Guild* did. It recited black-letter principles that courts read statutory sections in context and together. *Newspaper Guild*, 539 F.2d at 757-58.

The D.C. Circuit found the text unclear: "we cannot agree that the District Court's interpretation of section 4(b) is compelled…*by the language of the statute*[.]" *Id.* at 758 (emphasis added). It observed that "[c]areful draftsmanship would have undoubtedly produced a provision whose language *less ambiguously* indicates the intended result." *Id.* at 761 (emphasis added). The ambiguity led the court to dig into legislative history. *Id.*

Newspaper Guild's approach is hardly "anachronistic" or "forbidden." BIO.23, 28. Members of this Court still find legislative history useful to sort unclear statutes. *See Delaware v. Pennsylvania*, 598 U.S. 115, 138-39 (2023) ("Those of us who make use of legislative history believe that clear evidence of congressional intent may illuminate ambiguous text.") (quotations omitted).

Of course, legislative history cannot "muddy clear statutory text," *Azar v. Allina Health Servs.*, 587 U.S. 566, 579 (2019), but the NPA is hardly a model of clarity. Rather than use it to make a mess, the D.C. (and Sixth) Circuit permissibly used legislative history to wash off the mud.

The D.C. Circuit would likely stand by its decision. *Kennedy v. Comm'r of Internal Revenue*, 142 F.4th 769, 781 (D.C. Cir. 2025) (legislative history may be useful "to resolve an ambiguity"). The district court found *Newspaper Guild* convincing so it is not "inconceivable that…other Circuit[s] would find its analysis persuasive." *Cf.* BIO.23.

3. Respondents contort *Mahaffey v. Detroit Newspaper Agency*, 166 F.3d 1214, 1998 WL 739902 (6th Cir. 1998), to avoid worsening the split. BIO.25. But *Mahaffey* is on-point and came out the other way. There, as here, the parties amended a post-NPA JOA. *Id.* at *1. As with the Amended JOA, DOJ confirmed receiving the amendment but took "no further action." *Id.* And like Respondents, the plaintiffs argued that "the amendment… created a new JOA" and "the entire *amended agreement*" "required…approval from the Attorney General." *Id.* at *2.

Mahaffey held that there is "no reason to suppose that Congress intended previously-approved agreements to be stripped of all protection if amended by the addition of provisions for which no approval procedure has been prescribed." *Id.* The *Mahaffey* amended JOA remained lawful. *See id.* In contrast, the Ninth Circuit denuded the Amended JOA of antitrust immunity *and* lawfulness because it did not receive Attorney General written consent. App.33a.

The same issue is present in both cases and the differing result is palpable and intolerable.

4. The Ninth Circuit is wrong for all the reasons the D.C. and Sixth Circuits are right. Section 1803(b) is ambiguous, at minimum. The NPA was a rushed response to this Court's *Citizen Publishing Co.* decision. *Newspaper Guild*, 539 F.2d at 761. "Congress acted swiftly and with less than the desired degree of precision." *Id.* A more measured response would have written "language less ambiguously." *Id.* Even the Ninth Circuit conceded the statute used phrases with "no discernible rhyme or

reason." App.23a. As it stands, the text is unclear about whether an amendment to a post-NPA JOA needs prior Attorney General consent to be lawful or to be immune from antitrust laws. *See Newspaper Guild*, 539 F.2d at 755-58.

Respondents feign ignorance about what the legislative history shows. BIO.29.n.14. But after extensively chronicling the congressional record, the D.C. Circuit found no "statements indicating that it is unlawful to proceed without the Attorney General's written consent." *Newspaper Guild*, 539 F.2d at 758-61. The congressional record led to one conclusion: "simply to put a [JOA] into effect, consent is not required, though absent approval the arrangement remains fully subject to the antitrust laws." *Id*. at 760.

Respondents glibly contend "when Congress wrote that a JOA without Attorney General preapproval 'shall be unlawful,' Congress meant that a JOA without Attorney General preapproval 'shall be unlawful.'" BIO.4. But Respondents pass over that Congress limited the prohibition to only JOAs "not already in effect."

Similarly, Respondents fixate on the definition of "joint newspaper operating arrangement"—a term nowhere in Section 1803(b)—without acknowledging the phrase "not already in effect" adds an additional characteristic to the definition. BIO.4-5, 31.

With no analysis, the Ninth Circuit decreed that "'already in effect' is unmistakably a reference to JOAs that pre-date the enactment of the NPA[.]" App.26a. This interpretation, however, is not unmistakably correct from

the text. "Not already in effect" can reasonably refer to existing post-NPA JOAs before an amendment. Subsection (a)'s heading narrows its scope to JOAs "entered into prior to" the NPA while Subsection (b) concerns itself with "future" JOAs after the NPA's enactment. Subsection (b) outlines when consent is needed for post-NPA JOAs that are "not already in effect." If a post-NPA JOA is "already in effect"—because it has obtained consent once—it does not need consent again. The Ninth Circuit expressly disclaimed relying on the statutory headings. App.30a-31a.

Respondents try to bolster the Ninth Circuit's missing reasoning but they only reinforce the statute's ambiguity and the need for this Court to step in. BIO.30-32.

5. As one last try to avoid the circuit split, Respondents assert the Amended JOA is actually "an entirely new agreement" that does not qualify as "already in effect." BIO.33-34. The Court need not tarry long over this assertion. The district court found no genuine question that the Amended JOA was not "new" and the Ninth Circuit felt no need to reach it. App.32a-33a; App.58a-61a. And even if it were "new," the D.C. and Sixth Circuits hold that unapproved JOAs are lawful but simply lack antitrust immunity. *News Wkly. Sys., Inc.*, 986 F.2d 1422, at *2 ("[T]he mere lack of approval by the Attorney General does not make it unlawful.") (discussing *Newspaper Guild*).

C. There are no Vehicle Problems.

Respondents do not dispute that the Sun has cleanly preserved and presented the statutory interpretation issue that has divided the circuits. Instead, Respondents

argue that this case has "an awkward posture" because the Sun contested the Ninth Circuit's appellate jurisdiction. BIO.5, 34. The Ninth Circuit directed the parties to brief jurisdiction, then held jurisdiction was proper. App.15a. The Sun does not press the objection here. Thus, aside from the Court's general obligation to check its jurisdiction, there is no obstacle. *Plains Com. Bank v. Long Fam. Land & Cattle Co.*, 554 U.S. 316, 324 (2008).

CONCLUSION

For these reasons, this Court should grant the petition for a writ of certiorari.

Respectfully submitted,

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