

OFFICIAL TRANSCRIPT
PROCEEDINGS BEFORE
THE SUPREME COURT
OF THE
UNITED STATES

CAPTION: GUY WOODDELL, JR., Petitioner V.

INTERNATIONAL BROTHERHOOD OF ELECTRICAL
WORKERS, LOCAL 71, ET AL.

CASE NO: 90-967

PLACE: Washington, D.C.

DATE: October 16, 1991

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1 IN THE SUPREME COURT OF THE UNITED STATES

2 - - - - -X
3 GUY WOODDELL, JR., :
4 Petitioner :
5 v. : No. 90-967
6 INTERNATIONAL BROTHERHOOD OF :
7 OF ELECTRICAL WORKERS, :
8 LOCAL 71, ET AL. :
9 - - - - -X

10 Washington, D.C.

11 Wednesday, October 16, 1991

12 The above-entitled matter came on for oral
13 argument before the Supreme Court of the United States at
14 12:59 p.m.

15 APPEARANCES:

16 THEODORE E. MECKLER, ESQ., Cleveland, Ohio; on behalf of
17 the Petitioner.

18 FREDERICK G. CLOPPERT, ESQ., Columbus, Ohio; on behalf of
19 the Respondents.

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1 PROCEEDINGS

2 (12:59 p.m.)

3 CHIEF JUSTICE REHNQUIST: We'll hear argument
4 now in case No. 90-967, Guy Wooddell, Jr. v. International
5 Brotherhood of Electrical Workers.

6 Mr. Meckler.

7 ORAL ARGUMENT OF THEODORE E. MECKLER

8 ON BEHALF OF PETITIONER

9 MR. MECKLER: Thank you, Mr. Chief Justice, and
10 my it please the Court:

11 There are two questions presented in this case.
12 The first question dealt with the right to a jury trial
13 under title I of the Labor Management Relations Disclosure
14 Act, LMRDA, and that particular issue has been conceded by
15 the respondent, and as a result, I don't intend to argue
16 the merits of that issue.

17 QUESTION: Do you want us to rule on it?

18 MR. MECKLER: Well, it seems to me the most
19 appropriate thing to do --

20 QUESTION: Well, what if we disagree with both
21 of you?

22 MR. MECKLER: Well, I understand that's
23 possible. I think the most appropriate thing to do is to
24 remand, reverse and remand on that issue.

25 QUESTION: Hold it, the court below disagreed

1 with you.

2 MR. MECKLER: The court below did disagree with
3 us. I think there's a -- the point I'm trying to make is
4 that the matter should be remanded to the circuit court
5 in light of the concession, and in light of Terry, let
6 them reconsider the issue.

7 QUESTION: Well, I think that we're wanting to
8 deal right now with the argument before this Court. I
9 think you'd be quite justified in saying that you submit
10 that matter on your brief and save a little time for
11 rebuttal.

12 MR. MECKLER: Fine. That's what I'll do, Your
13 Honor.

14 Moving then to the second question presented,
15 which is, does section 301 of the Labor Management
16 Relations Act create a Federal cause of action under which
17 a union member may sue his union for violation of the
18 union constitution. And this is a case where the words of
19 the statute mean something. And what they mean is that a
20 cause of action is created in this particular situation.

21 Now, the language of the statute in pertinent
22 part are as follows; suits for violations of contracts
23 between an employer and a labor organization or between
24 any such labor organizations may be brought in any
25 district court. The first question that must be answered,

1 of course, is whether a union constitution is a 301
2 contract. And that question has been answered already by
3 this Court in the affirmative in the Plumbers case.

4 The second question which we then must move on
5 to is, can a nonsignatory to a 301 contract between unions
6 sue to remedy a violation of that contract, and can they
7 sue under 301. And in essence, I think the Court has also
8 answered that question in *Smith v. Evening News*, and
9 answered it in the affirmative.

10 Admittedly, *Smith v. Evening News* dealt with the
11 other half of this statute, the two halves being contracts
12 between a labor organization and an employer and contracts
13 between labor organizations. *Smith* held that when we're
14 talking about contracts between a labor organization and
15 an employer, a nonsignatory who in that case who had
16 benefits arising out of that contract could bring suit
17 against the employer in that case.

18 The same principle is just as applicable in this
19 case. There is no language in the statute that suggests
20 any basis for differentiation in the treatment of
21 collective bargaining agreements, the first type of
22 statute -- excuse me, the first type of contract defined
23 in this statute, and union constitutions, the second type
24 of contract defined in this statute.

25 Now the *Smith* court made it clear that the

1 between language in the statute, that is between, in this
2 case, any labor organizations referred to contracts and
3 not suits. The statute is very open-ended in its
4 language. It says, suits for violations of contracts
5 between any such labor organizations may be brought in
6 district court. What we have here is a claim that there
7 is a violation of one of these types of contracts.
8 Therefore, a cause of action, a Federal cause of action,
9 exists to remedy that violation.

10 Now there are a number of policy reasons which I
11 suggest to the Court lend weight to our position in
12 addition to the language of the statute, which is clear,
13 Plumbers, which is clear, and Smith v. Evening News, which
14 is also clear. What are some of these policy reasons to
15 hold that union members may bring suit under 301 against
16 their union for violation of union constitutions?

17 First of all, it's been long determined by this
18 Court that when we are in the area of 301, 301 contracts,
19 that substantive Federal law must apply. That was this
20 Court's determination way back in the Lincoln Mills case,
21 and a long line of precedent following Lincoln Mills. And
22 there's good reason for that, particularly in this
23 context, because of the uniformity that applying Federal
24 substantive law brings to the process.

25 Uniformity in the context of the enforcement of

1 a 301 contract, in this case a union constitution, brings
2 to us predictability, it brings to us labor stability.
3 It's far better from a policy perspective to have
4 decisions made on interpretations of union constitutions
5 which may apply to as many as all 50 States, and in this
6 instance, in this case it does, to be determined by a
7 uniform policy of Federal law rather than determined by 50
8 different State courts. If it were determined by 50
9 different State courts, we could have many different
10 interpretations and we would be creating chaos. The whole
11 purpose of the Lincoln Mills concept is to do just the
12 opposite of that.

13 Now in addition, the application of Federal
14 labor law principles should not depend on who happens to
15 file suit. There are different -- if that were to occur,
16 and certainly under Plumbers, a local union has the right
17 to sue an international union on a union constitution, an
18 international union has the right to sue a local union on
19 a union constitution under 301.

20 If that were to occur, and individual members
21 were not permitted the right to sue under 301 on this
22 situation, we would end up with different meanings for the
23 same constitutional provision depending upon who happened
24 to sue. That would also lead, I'm sure, to forum
25 shopping, which is something that we should try to avoid.

1 And it would lead to uncertainty and lack of
2 predictability and a destruction of labor stability.

3 Now another policy consideration that I think
4 the Court should look to is the fact that oftentimes in
5 these kinds of cases, LMRDA claims, and that certainly, in
6 this instance it's the same situation -- LMRDA claims are
7 intertwined with claims of a breach of a union
8 constitution. Frequently, in LMRDA claims, the question
9 of constitutional interpretation, interpreting the union
10 constitution, comes up in many instances. The courts have
11 always assumed that in rendering that interpretation, they
12 must look to Federal law to make a determination.

13 Now if we're in a situation where there is no
14 Federal cause of action in this context, are we going to
15 have claims involving intertwined claims of LMRDA
16 violations, union constitution violations, whereby on some
17 of those provisions, in some instances the court makes a
18 determination based on Federal law, yet on the same
19 constitutional provisions, the court makes a determination
20 based upon State law? It seems to me that doesn't make a
21 lot of sense.

22 QUESTION: Mr. Meckler, do you think Congress
23 had in mind when it passed section 301 an intent to
24 Federalize internal disputes between unions and its
25 members?

1 MR. MECKLER: Yes, I think it did. And I say
2 that because --

3 QUESTION: I would have thought the evidence
4 might be to the contrary.

5 MR. MECKLER: Well, it seems to me the evidence,
6 the main basis of evidence in that regard is the language
7 of the statute itself. And the language of the statute
8 itself is very open, very open-ended. It says if one of
9 these 301 contracts is violated, then there shall be a
10 Federal cause of action. Now, had Congress chosen to
11 exclude some type of 301 contract, or what is now a 301
12 contract, from that scheme of things, it could have easily
13 chosen some language to do so. It did not. It left it
14 very open-ended.

15 QUESTION: If Congress has chosen to indicate a
16 Federal policy, such as Justice O'Connor was inquiring
17 about, to Federalize, they could have equally well done
18 that.

19 MR. MECKLER: Well, I suppose that's true, but
20 as the Court looked at in Plumbers, the -- it's very clear
21 that at the time of the passage of section 301 back in
22 1947, union constitutions were the primary form of
23 contracts between labor organizations. And it was well
24 established at that time that union constitutions were
25 contracts between labor organizations. Congress chose

1 those very words. That choice of words, it seems to me,
2 suggests congressional intent --

3 QUESTION: You think the principal thing
4 Congress had in mind in the Taft-Hartley Act when it
5 defined the term were union constitutions?

6 MR. MECKLER: I don't think that that was the
7 principal thing.

8 QUESTION: I thought from what you said a moment
9 ago, maybe you did.

10 MR. MECKLER: No, Your Honor, I didn't mean to
11 suggest that. I think that it is one of the things that
12 Congress had in mind when it chose the language that it
13 chose in section 301. And I might add there is some
14 additional evidence of that in the statutory language
15 itself, and that is section (1)(b) of the act,
16 29 U.S.C. 141(b), where Congress is talking about the
17 purpose of the statute and indicates that one of the
18 purposes is to protect the right of individual employees
19 in their relations with labor organizations.

20 Now, the document that defines relations with
21 labor organizations of individual employees, the most
22 likely document, at least, is a union constitution. So it
23 seems to me that there is certainly evidence in the
24 legislation itself to suggest that Congress intended to
25 include these types of disputes.

1 QUESTION: I take it under your view that if
2 there were an auto lease or a lease for a building between
3 one labor union and another, that that would be a 301
4 suit, or am I incorrect about that?

5 MR. MECKLER: Well, I think there's a question
6 there, to be sure, but the question is a Federal question.
7 The question of whether there is some benefit that's
8 included in the constitution from which the plaintiff
9 derives some benefit, some term in the constitution --

10 QUESTION: No, no. Just suppose one labor
11 organization sues another over an auto lease.

12 MR. MECKLER: I believe that probably falls
13 within the language of the statute. Of course, here we're
14 here on a union constitution, and this Court has already
15 decided that a union constitution is a 301 contract. The
16 type of contract that Your Honor refers to certainly
17 hasn't been decided by this Court yet.

18 QUESTION: Mr. Meckler, how do you distinguish
19 Lockridge? I mean, the action that's alleged to have
20 occurred here would certainly be a violation of the act in
21 and of itself. So why shouldn't the board have the first
22 chance to pass on it -- the Garmon preemption, in other
23 words?

24 MR. MECKLER: Well, I distinguish Lockridge on a
25 couple basis. First of all, I think Lockridge in fact

1 supports our argument in one respect, and that is that it
2 suggests that matters such as this are matters that are to
3 be committed to the Federal branch of government, not the
4 State branch of government. In that case, of course, it
5 was the NLRB, not the Federal courts.

6 But the difference in Lockridge, it seems to
7 me --

8 QUESTION: But to be committed not as a contract
9 violation, but as a violation of the act.

10 MR. MECKLER: Well, yes, that's true, but I
11 think the important thing there is that the Court
12 indicated that it's a matter of Federal concern. Now
13 that's point number one.

14 Point number two is Lockridge preceded Plumbers.
15 I believe that Plumbers changes the landscape because
16 Plumbers tells us that a union constitution is a 301
17 contract. Now Lockridge never considered the question of
18 301 at all, never considered whether a union constitution
19 was a 301 contract. Now we know that it is. And from
20 that point of view, I would have to distinguish Lockridge
21 on that basis. But I think Lockridge in some respects
22 supports our position.

23 Another point or policy reason, it seems to me,
24 is that the idea of judicial efficiency -- it seems a far
25 better practice for a plaintiff in such a case to litigate

1 the issues all in one forum rather than in two different
2 forums.

3 Finally, I think we need to have a remedy here.
4 We have a union constitution which is the basic document
5 defining the rights of union members, vis-a-vis their
6 union. And it's violated, at least
7 plaintiffs -- petitioners claim it's violated. And the
8 circuit court tells us there's no remedy for that
9 violation. They tell us on the one hand that there's no
10 State contract claim because 301 preempts it. They tell
11 us on the other hand that there's no 301 claim. There has
12 to be a remedy for this kind of a contractual violation.
13 Otherwise the union constitutions aren't worth the paper
14 they're written on, the protections that they may afford
15 union members are worthless.

16 And as this case stands here before the Court
17 today, there is no remedy.

18 QUESTION: Well, maybe they were wrong about 301
19 preempting it.

20 MR. MECKLER: Well, maybe they were. I don't
21 understand logically their inference there. But it seems
22 to me if you look at 301 itself, it's clear that 301
23 includes this type of dispute. 301, as I said, the words
24 of 301 -- as Your Honor was talking about earlier in some
25 of the arguments this morning, the words of 301 I think

1 are the key to this case.

2 QUESTION: Does 301 mention a suit between a
3 union and a member?

4 MR. MECKLER: No. Nor does it mention a suit
5 between an individual member or employee and a employer.
6 Nor does it mention a suit between an individual member
7 and a union.

8 QUESTION: It does mention a suit between two
9 unions.

10 MR. MECKLER: It does mention a suit -- well, it
11 talks about -- no, Your Honor, I beg to differ with you
12 there. It mentions a contract between two unions, and it
13 says that suits may be brought for violations of such
14 contracts.

15 QUESTION: Exactly. But it doesn't mention a
16 contract between a union and a member.

17 MR. MECKLER: No, it talks about contracts
18 between two or more labor organizations, I think, is the
19 language of the statute.

20 QUESTION: Exactly.

21 MR. MECKLER: And the point being this Court has
22 already decided, in Plumbers, that union constitutions are
23 that kind of a contract, are a 301 contract. Therefore,
24 it becomes a matter of 301 concern, it becomes a matter of
25 Federal concern, Federal courts' concern.

1 There are benefits flowing, obviously benefits
2 flowing --

3 QUESTION: Would you be making the same argument
4 if the 301 didn't mention contracts between two or more
5 labor organizations?

6 MR. MECKLER: I don't think so. I mean I think
7 that if it did not mention that language, then Plumbers
8 never would have happened and we wouldn't be here today,
9 probably.

10 QUESTION: Why not? Why not?

11 MR. MECKLER: Because the statutory language
12 defines the bounds here. And the bounds include contracts
13 between labor organizations. And contracts between labor
14 organizations, by definition now, include union
15 constitutions.

16 QUESTION: Yeah, but it still doesn't mention
17 contracts between a union and a member.

18 MR. MECKLER: It doesn't mention contracts
19 between a union and a member, but I would suggest to the
20 Court that a union constitution is a contract between
21 labor organizations by virtue of its usage over years, and
22 more importantly by virtue of Plumbers. That's what
23 Plumbers tells us.

24 I think I'm going to conclude my argument at
25 this point and reserve the remaining time for rebuttal.

1 QUESTION: Very well, Mr. Meckler.

2 Mr. Cloppert, we will now hear from you.

3 ORAL ARGUMENT OF FREDERICK G. CLOPPERT, JR.

4 ON BEHALF OF THE RESPONDENTS

5 MR. CLOPPERT: Thank you, Mr. Chief Justice, and
6 may it please the Court:

7 The issue before this Court is the intent of
8 Congress in enacting section 301 of Taft-Hartley,
9 specifically the provisions for suits for violation of
10 contracts between any such labor organization and its
11 applications to union constitutions in a situation such as
12 we have here.

13 QUESTION: You do concede the jury trial issue?

14 MR. CLOPPERT: That is correct, Your Honor.

15 QUESTION: Although the court of appeals ruled
16 in your favor?

17 MR. CLOPPERT: That is correct. It was before
18 this Court came down with the Terry decision.

19 QUESTION: That's before Terry?

20 MR. CLOPPERT: That is correct, Your Honor.

21 The state of the law in union constitutions is
22 important. In 1947, at the time the Taft-Hartley was
23 passed, a union constitution defined two separate types of
24 relationships. It defined a relationship between the
25 international union and a member, and it defined a

1 relationship between the international union and its
2 subordinate bodies, the local unions, and so forth. And
3 in both instances, these relationships were considered a
4 contract.

5 So 11 years later, in Gonzales, this Court
6 looked at a union constitution. At that time a member had
7 been discharged from the union. He brought a breach of
8 contract suit in California, and the contract being the
9 union constitution. The issue came up, well, was this
10 preempted? Should these issues be Federalized? And the
11 Court at that time said no, that issue should not be
12 Federalized.

13 The next year in 1959, Congress enacted the
14 first comprehensive regulation of the internal affairs of
15 unions in the Landrum-Griffin Act. There, for the first
16 time, was mentioned union constitutions and any kind of
17 regulation of union constitutions.

18 Approximately 12 years later, in Lockridge, this
19 Court revisited Gonzales, essentially the same issue, the
20 union constitution breach of State -- breach of contract
21 in State court. And because there was impacted the union
22 security provision in the collective bargaining agreement,
23 the Court in Lockridge held that there should be Garmon
24 preemption, NLRA preemption. But both the majority and
25 the dissent in Lockridge recognized that a breach of

1 contract of the union constitution could be brought in
2 State court except in this instance there was a possible
3 conflict, and so the Court preempted it.

4 Then 10 years later, in Plumbers, this Court
5 addressed the relationship between the union and its
6 subordinate bodies in union constitution, and held that
7 that relationship was a 301 contract. And that is why we
8 are here today, because of a footnote in Plumbers.

9 Crucial to deciding this case is understanding
10 the nature of a union constitution. It's not a collective
11 bargaining agreement, it's not an employment contract,
12 it's not a lease. A union constitution is a charter of an
13 organization, the same way you would have a charter of the
14 YMCA, the YWCA, the Knights of Columbus, or another
15 organization. Parts of it define the relationship between
16 the international union and the local unions, and part of
17 it defines the relationship between the international
18 union and the individual members. So you have parts of a
19 constitution that deal with a call to the convention in
20 how you run your convention. You have other parts that
21 deal with the merger, consolidation, trusteeship of local
22 unions. You have other parts that deal with the finances
23 of the international union, obviously something important
24 and sacred to the union. And it defines the per capita
25 that a local pays the international and how those dues are

1 to be allocated.

2 All these parts of the constitution go to that
3 relationship between the international union and the
4 subordinate bodies.

5 There are other parts of union constitutions
6 that define the relationship between the union and its
7 members. There are provisions for qualifications for and
8 admission to membership as well as the admission dues or
9 initiation fees. There are provisions that relate to the
10 pension plan, to how many years a member must have to
11 qualify for death benefits. And finally, there are the
12 duties of the local union officers to its members, and
13 that's the part of the constitution that's at issue here.

14 QUESTION: Well, which of the two categories
15 does that fall into? Does that deal with the relation
16 between the international and members?

17 MR. CLOPPERT: Yes, Your Honor.

18 QUESTION: Or does it deal with the relationship
19 between the international and its subordinate unions? It
20 deals with both, it seems to me. It says what the
21 subordinate unions have to do with respect to the members.
22 So it deals with the members and it also deals with the
23 subordinate unions. So maybe there's a third category.

24 MR. CLOPPERT: The international constitution
25 prescribes duties for the local union and the local union

1 officers. And among the duties that are prescribed is the
2 business manager shall do such and such for his -- the
3 members. Now that, to me, is a personal --

4 QUESTION: So it does speak to the rights of the
5 members of the union.

6 MR. CLOPPERT: Right. That speaks to the rights
7 of the members of the union, not to the --

8 QUESTION: But it also speaks to the duties of
9 the officers of the union.

10 MR. CLOPPERT: Those are the local union
11 officers.

12 QUESTION: Right.

13 MR. CLOPPERT: Not the international --

14 QUESTION: So therefore it does --

15 MR. CLOPPERT: Those are the duties of the local
16 unions officers.

17 QUESTION: I understand.

18 MR. CLOPPERT: And that's the
19 relationship -- that's almost a third kind of thing where
20 you have a relationship that I'll get to later between the
21 local union and its members. You have the local union
22 bylaws.

23 QUESTION: It seems to me it says the local
24 union owes a duty to the international to do something for
25 the members of the local union. Right? Isn't that what

1 it basically says?

2 MR. CLOPPERT: No, Justice Scalia. I see that
3 as an obligation in the constitution that governs the
4 officer and the member. It doesn't say anything about the
5 international. Now, if the member -- if the officer
6 doesn't do that, that's obviously a violation of the
7 international constitution, but that doesn't express a
8 relationship between that officer and the international
9 union.

10 We're concerned here with the legislative
11 intent. And it's clear that section 301 of Taft-Hartley
12 has been discussed. It doesn't talk about internal union
13 affairs, it talks about contracts between any such labor
14 organizations. And as this Court saw in the Plumbers
15 case, there is just no legislative history to assist this
16 Court.

17 With that in mind, I think the Court should then
18 look at Landrum-Griffin, which was passed 12 years later,
19 that was the first comprehensive regulation of the
20 internal affairs of the labor unions that dealt with their
21 members. In section 103, in fact in three sections, it
22 specifically said that we do not preempt preexisting
23 rights.

24 And let me address a few of those because I
25 think this is crucial with the understanding of what the

1 state of the law was in '47, '59, and so forth. Let's
2 look at what Landrum-Griffin did as far as not preempting
3 preexisting rights. In section 103 it said, nothing
4 contained in this title shall limit the rights and
5 remedies of any member of the labor organization under any
6 State or Federal law, or before any court or other
7 tribunal, or under the constitution bylaws of any labor
8 organization.

9 Section 403 has essentially the same provisions
10 relative to union elections. Then there is another
11 savings clause in section 603 that provides, nothing in
12 this act shall take away any right or bar any remedy to
13 which members of a labor organization are entitled under
14 such other Federal law or law of any State.

15 This understanding that there was no disturbing
16 the preexisting rights was also had by the commentators at
17 the time, and we have cited Professor Summers' article in
18 our brief. Professor Summers in that article says that
19 one of the minor disputes in Landrum-Griffin during the
20 congressional debates was between whether there would be a
21 complete preemption of other rights or whether there would
22 be a coexistence of rights. And he said there occurred a
23 coexistence of rights.

24 QUESTION: Mr. Cloppert, let me understand what
25 your case is. You're asking us to look at all union

1 international constitutions and to divide their provisions
2 into two types.

3 MR. CLOPPERT: That is correct, Justice Scalia.

4 QUESTION: And you're confident that we can tell
5 as to each of those which of them is type one that
6 involves the relationship between the international and
7 the local, and type two, which involves the relationship
8 between the international and individual members of the
9 local.

10 MR. CLOPPERT: I have all that confidence in the
11 Court. If I may, Justice Scalia, we have a Federal
12 system --

13 QUESTION: And just let me add, and you're
14 confident that a provision that says, a member of the
15 local is entitled to get certain service from a vice
16 president of a local. That falls into the first
17 category -- I'm sorry -- yes, that falls into the first
18 category. That involves the relationship between the
19 inter -- no. The second category, that involves the
20 relationship between the international and the individual
21 member, not the relationship between the international and
22 the local.

23 MR. CLOPPERT: When you're dealing with the
24 individual, those are individual rights. When the
25 international is merging, consolidating, putting into

1 trusteeship, chartering, those are all rights between two
2 labor organizations, and that's what this Court discussed
3 in Plumbers.

4 QUESTION: What other provisions of the
5 constitution do you think are Plumber-type provisions? I
6 mean it seems to me almost everything in the constitution
7 is ultimately designed for the benefit of the individual
8 union member.

9 MR. CLOPPERT: The per capita dues, that's the
10 support of the international union --

11 QUESTION: That involves what? That's type (a)?
12 That's a Plumber-type provision.

13 MR. CLOPPERT: Right. It requires the local
14 unions to pay \$5 per head to the international for the
15 international support.

16 QUESTION: That's an easy one. I agree with
17 that. I can see that one.

18 MR. CLOPPERT: I think our analysis takes care
19 of many of the concerns that counsel mentioned here of the
20 law being different depending on whether it's an
21 individual member bringing the lawsuit or it's an
22 organization.

23 For example, let's go back to the Plumbers case.
24 What if some members in that local that was being
25 consolidated in New Jersey brought the lawsuit instead of

1 the local? Well, you're affecting the relationship of the
2 international and its local, and that's a Plumbers case.
3 The issue should not be who is bringing the lawsuit. And
4 this Court, you know, decided that in Smith, that it's not
5 who's bringing the lawsuit, but it's the nature of the
6 rights or the nature of the relationship. And that's what
7 the Court should focus on.

8 QUESTION: And what is your touchstone? Is your
9 touchstone as to which category it falls into? How do you
10 figure that out? You ask yourself, is the purpose of this
11 duty that is imposed on the local, is the purpose of this
12 duty to benefit a particular member of the local? Is that
13 the criteria?

14 MR. CLOPPERT: The only way I can say it,
15 Justice Scalia, is does it deal with the relationship
16 between the international and the subordinate bodies? And
17 if it does, it's a Plumbers case. If it deals -- the
18 relationship between the international and its individual
19 members, that is an individual right claim, and that's
20 something that, you know -- for example in Gonzales,
21 Lockridge, except the Court found a Garmon preemption in
22 Lockridge -- fines in Allis-Chalmers, the union sued to
23 enforce fines in State court. And the -- under the union
24 constitution. That's individual kind of rights.

25 QUESTION: What about a provision that the local

1 elections shall be conducted in a certain fashion? That's
2 an individual rights one?

3 MR. CLOPPERT: If it regulates -- right,
4 elections.

5 Just as petitioner has indicated, there could be
6 a judicial nightmare if you would accept the distinction
7 that Justice Scalia and I have been discussing. We think
8 there is potential for a great nightmare or quagmire if
9 you accept their argument where you Federalize every claim
10 based on a union constitution.

11 Most international unions have intermediate
12 bodies called district councils. The State of Kentucky
13 might be a whole district council, a place such as Ohio
14 might have three or four district councils. District
15 counsels have bylaws. There are generally 5, 10, 15 local
16 unions within the confines of that district council. Do
17 the district council bylaws then become a 301
18 constitution? What about the local union bylaws? One of
19 the claims in this case is not only for breach of the
20 international constitution, but also for breach of the
21 local union.

22 The constitution of the IBEW provides that this
23 constitution shall become a part of all local union
24 bylaws. So then all the local union bylaws throughout the
25 country that the IBEW has, are they then considered to be

1 301 contracts that this Court's going to be required to
2 address? Now there are some independent local unions out
3 there. Would the Court look at the relationship between
4 that independent local and its members? Since there's not
5 another union involved, would that not be a 301 contract,
6 and would those be the only union constitutions that would
7 be enforceable in State court?

8 We also have the issue of the union suing
9 members. If they're going to Federalize every claim under
10 union constitution, then a claim such as this Court saw in
11 Allis-Chalmers, where the union was enforcing fines
12 imposed for crossing a picket line, the union could go
13 into Federal court and enforce all of those. In
14 Allis-Chalmers they were State court claims.

15 We think there is more problems if the Court
16 makes what appears to be a simple cut and Federalizes this
17 whole thing rather than making a determination based on
18 the relationship.

19 QUESTION: Was that an international in
20 Allis-Chalmers? Was that the international suing for the
21 fines?

22 MR. CLOPPERT: Yes. Yes. We think the
23 touchstone should be does it deal with the relationship
24 between the international union and the local unions. And
25 those are Plumbers-type cases, those are 301 collective

1 bargaining -- let's call them 301 collective bargaining
2 contracts because I want to distinguish it from the
3 301 -- I'm sorry. Those are 301 constitution claims, so I
4 can distinguish it from the collective bargaining.

5 And acts that deal with the relationship between
6 the union, whether it's an international or local union,
7 with the members, those are claims that should be
8 considered in State court.

9 If there are any other questions, I thank you
10 for your time.

11 QUESTION: Thank you, Mr. Cloppert.

12 Mr. Meckler, you have 9 minutes remaining.

13 REBUTTAL ARGUMENT OF THEODORE E. MECKLER

14 ON BEHALF OF THE PETITIONER

15 MR. MECKLER: Thank you, Mr. Chief Justice. I
16 just want to touch on a few points. First of all, with
17 respect to the question that Justice Scalia asked about
18 provisions relating to governing union elections. It
19 seems to me that is a perfect example of a type of
20 provision that the interest flows in all sorts of
21 different ways. I think the international has an interest
22 in local unions' elections being conducted properly.
23 Certainly the local itself has an interest in that.
24 Certainly the members themselves have an interest in that.
25 It goes all three ways there.

1 QUESTION: There wasn't always an interest in
2 it, of course, or it wouldn't be in the constitution. Of
3 course, it always have an interest. But I think it is
4 perhaps possible to draw a line between those in which its
5 interest is purely a selfish one, namely I get \$5 a head,
6 for example, for all of your local members, how much the
7 international is entitled to as membership fees from the
8 local, and those provisions which are not just for the
9 benefit of the international, but really, it's the
10 international being beneficent to the members of the
11 local. You will treat your members this way, that way,
12 and the other way. Can't one draw that distinction?

13 MR. MECKLER: I think you're going to get into
14 all sorts of problems drawing those distinctions, number
15 one. Number two, when we have a union constitution and we
16 know it's a 301 contract, it seems to me it's a Federal
17 question what those categories are, if in fact we can make
18 those kinds of categorizations, and I don't think you can.
19 Because things don't fit into neat labels here.

20 Let me also point out, and --

21 QUESTION: Give me an example of one that really
22 is the hardest to categorize, doesn't fit into a neat one.
23 I'm sorry, I should have thought you would have guessed
24 that somebody might ask you.

25 MR. MECKLER: Well, okay, and I probably should.

1 Let me try to clear my mind a second and think of one. I
2 can think of one where there's a provision in a
3 local -- in a constitution, that requires before a
4 referendum vote is held, before a referendum vote is held,
5 a mail ballot referendum vote, that the local must conduct
6 a meeting. The members must discuss the issue and vote on
7 whether or not that referendum vote should be authorized.
8 Okay?

9 It seems to me if the local were then to go
10 ahead and conduct a referendum for whatever reasons
11 contrary to that provision, that local members would
12 certainly have an interest in that. Certainly the local
13 itself would have a clear interest in that. And the
14 international which would want its local to be run
15 according to one, the written constitution, and two, in an
16 appropriate manner, would have a very strong interest in
17 that.

18 I litigated a similar case like that, and that
19 happens. That kind of stuff happens all the time. And it
20 seems to me that that kind of situation shows us how
21 unworkable these kinds of categorizations are.

22 Let me just make another point as far as that
23 goes. It seems that the proposition put forth by the
24 respondents in this case is directly in contradiction to
25 Smith. Because what Smith tells us is there's you know,

1 there's lots of different provisions in collective
2 bargaining agreements, too. Some of them may flow
3 directly to the union, between the union and the company.
4 Some of them may flow to the individual employee. In
5 Smith, the Court found that the provisions in question
6 flew -- I mean flowed, excuse me, to the individual
7 employee.

8 Now they're suggesting that if they flow to the
9 individual employee, there's no Federal cause of action;
10 if they don't flow to the individual employee, then there
11 is a cause of action. Smith says just the opposite.

12 QUESTION: Yes, but Smith was -- when you're
13 talking about collective bargaining agreements, you kind
14 of have a presumption based on the whole history of labor
15 law that all collective bargaining agreements have an
16 impact on interstate commerce. I'm not sure the same
17 presumption applies to every provision of every union
18 constitution, or every contract between two unions.

19 MR. MECKLER: Well, it seems to me Plumbers
20 answers the question and tells us that union constitutions
21 are contracts within the meaning of 301. And I think, as
22 I understand your question, Justice Stevens, it really
23 goes to the dissent that you wrote in that very case.

24 QUESTION: It goes to positions being rejected.
25 That's right. But I think the arguments that were made in

1 that dissent would be much stronger in case like some of
2 the hypotheticals that have been talked about where it's
3 more clearly -- there's a much more clear absence of
4 legislative history suggesting it. In other words, I can
5 see contracts between unions resolving jurisdictional
6 disputes and so forth would fall right into the
7 whole -- same kind of Federal interest involved in
8 collective bargaining agreements.

9 But when you're talking about leasing
10 arrangements, such as Justice Kennedy identified, and some
11 of these more or less minor disputes, it is kind of hard
12 to see the Federal interest. I guess you argue also
13 there's a Federal authority to create common law in
14 interpreting the relationship among unions and their
15 members.

16 MR. MECKLER: Well, that's correct, although I
17 think the question presented here is a little more limited
18 than that, really.

19 QUESTION: I know, but once you get -- if you
20 win, then that's the next step, obviously. There will be
21 a Federal common law in this whole area of union versus
22 member relationships.

23 MR. MECKLER: I would have to agree with you
24 there. You know, Justice Stevens --

25 QUESTION: Let me just ask one other --

1 MR. MECKLER: I'm sorry.

2 QUESTION: Are you limiting your position to
3 cases in which the union constitution actually defines the
4 relationship between an international or a national and
5 locals? You wouldn't make the same argument if you just
6 had a union which had no subdivisions, would you?

7 MR. MECKLER: I'm not sure -- you mean like an
8 independent local?

9 QUESTION: An independent local has its own
10 constitution.

11 MR. MECKLER: Well, I think you probably fall
12 outside the language of the statute because we've got to
13 back to the language of the statute. The language of the
14 statute says between labor organizations.

15 QUESTION: Right, and your labor organizations
16 are the parent and the subsidiaries, or the --

17 MR. MECKLER: That's right. There are, to just
18 answer your question about, you know, the effect on
19 interstate commerce. It seems to me there are plenty of
20 provisions in constitutions that clearly do have effects
21 on interstate commerce. For example, provisions, I know
22 like in the Teamsters' constitution, there's provisions
23 that govern the ratification of collective bargaining
24 agreements. Obviously those are going to have an effect
25 on interstate commerce.

1 There's provisions that govern hiring halls in
2 this constitution and many other constitutions. Those
3 certainly have an effect on interstate commerce. And, you
4 know, this Court has recognized many cases in the context
5 of collective bargaining agreements, BOCA-type cases in
6 the context of collective bargaining agreements, where I
7 suppose an argument could be made that they really don't
8 have an effect on interstate commerce. We're generally
9 talking in the garden variety BOCA-type case of a
10 discharge of one individual. That's generally what we're
11 talking about.

12 And it seems to me it works both ways with both
13 constitutions and collective bargaining agreements, we
14 have to treat them the same way. If there are some things
15 in there that aren't quite as wide in their reach and what
16 happens because of the language of the statute, they're
17 brought in anyhow.

18 QUESTION: I grant you Plumbers said that there
19 could be a suit on a contract between two unions and that
20 union constitutions are contracts. But the only kind of a
21 suit that 301 authorized with respect to union
22 constitutions was a suit on a contract between two unions.

23 MR. MECKLER: That's true.

24 QUESTION: Well, it didn't mention a suit on a
25 contract between a union and a member.

1 MR. MECKLER: We're not going to a contract
2 between a union and a member. We're going to a union
3 constitution, which Plumbers has told us is a contract --

4 QUESTION: All right, it is a contract, but call
5 it a constitution or a contract -- and it is a contract,
6 Plumbers held that, but 301 doesn't authorize a suit on a
7 contract between a union and its members.

8 MR. MECKLER: Well, I go back, to answer your
9 question, Justice White, to the language of the statute
10 itself, which talks about the between language, which
11 Smith addressed, modifies contracts and not suits. It's
12 suits for violations of contracts between these various
13 entities. And -- I think I've answered your question. I
14 hope I've answered your question.

15 I see my time is up.

16 CHIEF JUSTICE REHNQUIST: Thank you, Mr.
17 Meckler.

18 The case is submitted.

19 (Whereupon, at 1:47 p.m., the case in the
20 above-entitled matter was submitted.)

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CERTIFICATION

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NO. 90-967 - GUY WOODDELL, JR., Petitioner V. INTERNATIONAL

BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 71, ET AL.

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