To be Argued by:
HANAN KOLKO
(Time Requested: 15 Minutes)

New York Supreme Court

Appellate Division—First Department

EDWIN AGRAMONTE, OMER OZCAN and RAPHAEL SEQUIERA,

Petitioners-Appellants,

– against –

LOCAL 461, DISTRICT COUNCIL 37, AMERICAN FEDERATION OF STATE COUNTY AND MUNICIPAL EMPLOYEES, by its President, JASON VELZAQUEZ,

Respondent-Respondent.

Appellate Case No.: 2022-02573

BRIEF FOR RESPONDENT-RESPONDENT

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PRELIMINARY STATEMENT

Respondent-Respondent Local 461, District Council 37, American Federation of State, County, and Municipal Employees ("Local 461" or the "Union") is a labor organization that represents lifeguards for the New York City Department of Parks and Recreation. Petitioners-Appellants ("Petitioners") Edwin Agramonte, Omer Ozcan, and Raphael Sequiera were, at all relevant times, Local 461 members. Agramonte works as a lifeguard year-round, and Ozcan and Sequiera work as "seasonal" lifeguards during the summer.

Local 461 held its most recent officer elections on February 26, 2021. The day before, on February 25, Petitioners filed this action in New York County Supreme Court, alleging that the election violated the Local 461 Constitution. The Supreme Court twice rejected Petitioners' claims. Justice Ramseur denied Petitioners' motion for a temporary restraining order, and after Petitioners filed an Amended Petition, Justice Perry denied Petitioners' request for permanent injunctive relief and granted Local 461's motion to dismiss. Petitioners appeal Justice Perry's ruling.

This Court should affirm Justice Perry's well-reasoned opinion. Petitioners' breach of contract claims are barred by the Court of Appeals' decisions in *Martin v. Curran*, 303 N.Y. 276 (1951) and *Palladino v. CNY Centro, Inc.*, 23 N.Y.3d 140 (2014). Under *Martin* and *Palladino*, Petitioners must allege and

prove that each of Local 461's members authorized or ratified the alleged wrongful conduct. They fail to do so. As a result, their claims must be dismissed.

Petitioners argue that *Martin* applies only to tort claims seeking monetary relief and that, instead, this case is controlled by *Madden v. Atkins*, 4 N.Y.2d 283 (1958). Neither argument holds water. Courts have uniformly held that *Martin* applies where, like here, a union member brings a breach of contract claim seeking injunctive relief concerning a union's internal election procedures. Petitioners do not address *Mounteer v. Bayly*, 448 N.Y.S.2d 582 (3d Dep't 1982), which applied *Martin* in these exact circumstances. Moreover, the cases Petitioners do cite are inapposite; they do not even mention *Martin*, and even if they did, they could not overturn binding precedent Court of Appeals precedent.

Madden similarly has no application here. As the Court of Appeals explained in *Palladino*, *Madden* applies only where a union member is expelled from the union and that expulsion is brought about or ratified by a vote or similar kind of action from the membership. Petitioners were not expelled from Local 461, and there is no allegation (let alone any evidence) that Local 461's members voted on the challenged conduct. The circumstances that caused the *Madden* Court to create an exception to *Martin* are thus completely absent here. And while Petitioners insist that applying *Martin* will produce an unfair result, both the Court of Appeals and the First Department have made clear that these types of policy-

based attacks on the *Martin* rule must be addressed to the Legislature, not the courts.

Further, even assuming *arguendo* that *Martin* does not apply, the Amended Petition should still be dismissed. Petitioners allege that Local 461 breached its Constitution in two ways: (1) by holding the election in February; and (2) by precluding seasonal lifeguards who had not paid their union dues to vote and run in the election. Petitioners are wrong on both accounts. The Local 461 Constitution provides that "[a]ll regular elections shall be held in the month of February." (R. 37). To the extent prior elections were held in the spring, that alleged past practice cannot override the Constitution's plain, unambiguous requirement to hold elections in February.

Further, Local 461's eligibility decisions complied with its Constitution. The Constitution requires that, to vote in an election, a member must be in good standing on the date of the election, and to be eligible for office, a member must be in good standing for either one or three years preceding the election, depending on the office sought. A member is in good standing if they have timely paid their monthly dues. This obligation applies while a member is unemployed, such as during the off-season for a seasonal lifeguard.

Here, at most four days before the February 26 election, three seasonal lifeguards, including Petitioner Ozcan, requested a retroactive, six-month

dues credit so that they could participate in the election. Local 461 reasonably denied this request. It determined that, even assuming the lifeguards' untimely, retroactive request could be granted, they would still be ineligible to vote or run for office because they would have paid their dues for only 10 (not 12) months preceding the February 2021 election. That decision was subsequently affirmed by the American Federation of State, County, and Municipal Employees ("AFSCME"), Local 461's national parent union, and Justice Perry. Thus, because Local 461 complied with its Constitution in concluding that the seasonal lifeguards could not vote or run in the election, Petitioners' breach of contract claims fail as a matter of law.

For these reasons and those more fully set forth below, Justice Perry's decision should be affirmed, and the Amended Petition should be dismissed.

QUESTIONS PRESENTED

1. When an unincorporated association invokes *Martin v. Curran* as a defense to a breach of contract action, does *Martin* mandate dismissal of the action where the petitioner has failed to allege wrongdoing by every member of the union, even where injunctive relief is one of the remedies sought?

The Supreme Court found that it did. Respondent urges this Court to affirm.

2. Did Local 461 adopt an unreasonable interpretation of its Constitution when it concluded that seasonal lifeguards who had not paid their monthly membership dues were ineligible to vote or run for office in the February 26, 2021 election?

The Supreme Court found that it did not. Respondent urges this Court to affirm.

3. Where a union applies its constitution in accordance with that document's express language, and where neither the language of the constitution nor its application is alleged to have violated a right grounded in statute or caselaw, should a court compel the union to apply its constitution in a manner that is inconsistent with its express language?

The Supreme Court found that it should not. Respondent urges this Court to affirm.

STATEMENT OF THE CASE

Local 461

Local 461 is an unincorporated association under the laws of the State of New York. It is an affiliate of District Council 37, American Federation of State, County and Municipal Employees, AFL-CIO ("DC37"). DC37 is an amalgam of 62 local unions representing approximately 125,000 employees in various agencies, authorities, boards, and corporations of the City of New York, plus an additional 25,000 employees in the non-profit sector. (R. 547-48) (Roach Affirm. ¶¶2-4).

Local 461 is the DC37 affiliate that represents New York City Department of Parks and Recreation employees in the Lifeguard title. Typically, employees in the Lifeguard title work seasonally from Memorial Day weekend until Labor Day. Approximately thirty lifeguards work year-round. The year-round lifeguards are assigned to New York City pools that remain open after the peak summer season. (R. 547) (Roach Affirm. ¶3). In 2020, the seasonal lifeguards worked from July to September. (R. 557).

Eligibility to Vote and Run for Local 461 Office

The Local 461 Constitution provides: "To be eligible to vote in the local election, a member must be in good standing at the date of the election." (R. 37) (Article VI, Section 10). To be in good standing, a member must be current on

membership dues, which "shall be payable monthly in advance to the local secretary-treasurer and in any event shall be paid not later than the 15th day of the month in which they become due." (R. 36) (Article IV, Section 4). "Any member who fails to pay dues by the 15th day of the month in which they become due shall be considered delinquent, and upon failure to pay dues for two successive months shall stand suspended." *Id*. However, "any person who is paying his dues through a system of regular payroll deduction shall for so long as he continues to pay through such deduction method, be considered in good standing." *Id*. The Local 461 Constitution does not contain a carveout relieving members engaged in seasonal employment from the obligation to pay dues. Rather, it makes crystal clear that, to have the right to vote in an election, "any member" must make regular, timely payment of dues. *See id*.

AFSCME is Local 461 and DC37's national parent union. The AFSCME Constitution has established a Judicial Panel. (R. 367) (Article XI). The Judicial Panel hears and adjudicates appeals of local union members concerning their local unions' officer elections. (R. 374) (Article XI, Section 17); (R. 392-94) (Section 4). The Judicial Panel must issue a ruling within 40 days after the appeal has been submitted. (R. 393) (Section 4(D)). If the Judicial Panel finds "violations which may have affected the outcome of the election," it has the power to set that election aside and order and supervise a new one. *Id.*

On April 15, 2015, an AFSCME Judicial Panel issued a decision considering eligibility to vote for seasonal employees in connection with another AFSCME local union. (R. 442). In that case, seasonal employees, like Petitioners here, challenged their local union's decision that they were not entitled to participate in an election because they had ceased paying dues upon their layoff from active employment. (R. 444-45). The Judicial Panel rejected the employees' argument that they were not required to pay dues during their layoff to vote or run for union office. (R. 446-48). Analyzing language virtually identical to that in the Local 461 Constitution, the Judicial Panel concluded:

> The protestants erred when they asserted that they were not required to pay dues during their layoff in order to maintain their membership status. Members are required to pay dues. Only through membership dues payment are membership rights conferred.

(R. 447).

Similarly, in a more recent decision—one resulting from charges brought by Petitioners Ozcan and Sequiera against a prior Local 461 President—an AFSCME Judicial Panel concluded that:

> [S]easonal lifeguards should be regarded as members in good standing during their employment period, provided, of course, they meet the requirements set forth in Article IV of the Local 461 Constitution [regarding membership dues].

(R. 60).

The Challenged 2021 Local 461 Officer Election

Article VI, Section 4 of the Local 461 Constitution requires the election of Local 461 officers to be held in the month of February. (R. 37). Officers are elected for three-year terms. (R. 36) (Article VI, Section 2).

On or about January 28, 2021, and pursuant to Article VI, Section 5(d) of the Local 461 Constitution, then-Local 461 President Jason Velasquez appointed an Election Committee charged with the responsibility of managing the nomination and election of the Union's officers. Joshua Frias was appointed Election Committee Chair. Carlos Vitteri was appointed as the other member of the Election Committee. Both members of the Election Committee are year-round Parks Department employees and were at that time in good standing. (R. 548) (Roach Affirm. ¶6).

On February 9, 2021, the Election Committee informed members in good standing that nominations would be held via a virtual meeting on Thursday, February 25, 2021, at 10:00 a.m. A notice of election was mailed on February 10, 2021, informing members in good standing that an election would be held on Friday, February 26, 2021, from 11:00 a.m. to 3:00 p.m. (R. 548) (Roach Affirm. ¶7). The nomination notice and election notice satisfied the fifteen-day requirement set forth in Appendix D of the AFSCME Constitution. (R. 389) (Section 2(D)).

On February 22 and 23, 2021, Ozcan, Robert Butler, and Justin Hausler, all seasonal lifeguards, each emailed DC37 Executive Director Henry Garrido, asking him to transmit their emails and attached letters to Local 461's President. The letters requested that, pursuant to Article III, Section 9 of the AFSCME Constitution, Local 461 provide the members with a retroactive, six-month dues credit so they could run and vote in the February 26 election. (R. 429-432, 566-67); (R. 548-49) (Roach Affirm. ¶9). Petitioners assert, without citation, that "20 or so seasonals" requested dues credits. NYSCEF Doc No. 7 ("Pet. Br."), at 44-45. In fact, other than Petitioners' general allegation that "a number" of requests were submitted, (R. 464) (Amended Petition, ¶21), there is nothing in the record to support the assertion that any seasonal members other than Petitioner Ozcan, Butler, and Hausler submitted a request under Article III, Section 9. The claim that 20 seasonals requested a waiver is also contrary to Agramonte's (unsupported) representation in his April 11, 2021 appeal to the AFSCME Judicial Panel that only "[a]bout a dozen seasonals" asked for a waiver. (R. 561). Finally, although Petitioners claim that, "[i]n no other local of AFSCME do seasonal employees, who are on layoff, have to formally request [a waiver]," Pet. Br. at 15, there is nothing in the record to support this assertion, and their brief cites to nothing in the record to support this assertion.

On February 23, 2021, Executive Director Garrido informed the members that, pursuant to AFSCME's election process, any inquiries or complaints regarding the February 26 election should be filed with Local 461's Election Committee or Executive Board. (R. 549) (Roach Affirm. ¶¶10-12); (R. 553). In response, Petitioners' counsel claimed that Local 461 had not identified an Election Committee and that he did not know how to communicate with Local 461's President. (R. 554). On February 25, 2021, DC37 General Counsel Robin Roach responded to counsel's email on behalf of Executive Director Garrido and advised that she had relayed the individual lifeguards' concerns to Local 461's leadership and that Local 461 would be in touch with the individual lifeguards. (R. 122).

As stated in the nomination notice, nominations were conducted on February 25, 2021. (R. 549) (Roach Affirm. ¶13). On February 25, 2021, at 9:33 p.m., Election Committee Chair Frias issued a written determination finding that Petitioner Agramonte was eligible to run for President but that Petitioners Sequiera and Ozcan were not eligible to run for other offices. (R. 556-57). Regarding the requests for dues credits, the determination found:

> The above-referenced Lifeguards are seasonal employees. Union records show that the typical Lifeguard Season runs from the end of May until on or about the first week of September. The 2020 Lifeguard Season began on or around July 2020, and concluded on or about Labor Day 2020. The above-referenced members, except Edwin

> Agramonte, served as seasonal Lifeguards during the 2020 season. Many of these members have requested dues credit under Article III, Section 9 of the AFSCME International Constitution. However, even if these members are entitled to the maximum amount of allowable dues credit of six months under the International Constitution, all the aforementioned members -- except Edwin Agramonte -- would still be unable to meet the qualifications to run for office under Article VI, Section 5 of the Local 461 Constitution, and are therefore ineligible.

(R. 557).

The Local 461 election was conducted in-person on February 26, 2021. Petitioner Agramonte ran for President but was not elected. (R. 576); (R. 550) (Roach Affirm. ¶14).

Petitioners Seek, But Do Not Obtain, a Temporary Restraining Order Blocking the February 26, 2021 Election.

At 3:45 p.m. on February 25, 2021—the afternoon before the previously set February 26 election—Petitioners' counsel forwarded General Counsel Roach the original papers filed in this action. Those papers included a request for a temporary restraining order and a preliminary injunction halting the Local 461 election scheduled to start at 11:00 a.m. the following day. (R. 470) (Kolko Affirm. ¶3).

At approximately 5:20 p.m. on February 25, 2021, the parties took part in a telephonic conference before Justice Dakota Ramseur. Justice Ramseur ordered the parties to submit briefing and advised that a hearing would take place

at 8:00 a.m. on February 26, 2021, during which the parties could present further argument. (R. 471) (Kolko Affirm. ¶4).

The virtual hearing began shortly after 9:00 a.m. on February 26, 2021, and lasted for approximately two hours. At 1:04 p.m., the parties received an email from Justice Ramseur's court attorney transmitting an Order denying Petitioners' Order to Show Cause. (R. 471-72) (Kolko Affirm. ¶¶6-7). The Order advised: "Petitioners' application for a temporary restraining order is denied. A decision is forthcoming." (R. 84). The election was thus held on February 26, 2021. Justice Ramseur issued her written decision on March 2, 2021, explaining that Petitioners had failed to establish irreparable harm. (R. 22).

Petitioners File Internal Union Appeals Protesting the Local 461 Election.

On March 3, 2021, Petitioner Agramonte filed an internal union appeal with Local 461's Election Committee. In his appeal, Petitioner Agramonte challenged: (a) the decision to hold the election in February; (b) the Election Committee's determinations regarding seasonal members' eligibility to vote; and (c) the Election Committee's determinations regarding seasonal members' eligibility to run as candidates. In his appeal, Agramonte did not argue the nomination or election notices were untimely or otherwise assert that they were deficient. (R. 559); (R. 550) (Roach Affirm. ¶15).

On March 24, 2021, the Election Committee conducted a hearing regarding Agramonte's appeal. Petitioner Agramonte testified and presented the following witnesses: Ivanna Tellez, Petitioner Sequiera, Petitioner Ozcan, Michael Gerhaty, and Hausler. (R. 550) (Roach Affirm. ¶16).

On April 1, 2021, the Election Committee gave an oral report to the Local 461 membership denying Petitioner Agramonte's appeal. (R. 550) (Roach Affirm. ¶16). On April 11, Agramonte appealed that decision to the AFSCME Judicial Panel. (R. 561-62). Agramonte again did not challenge the timing of the mailing of the nomination or election notices or assert that they were deficient. *Id.*

On May 6, 2021, the AFSCME Judicial Panel held a hearing on Petitioner Agramonte's appeal. (R. 564). On May 14, 2021, Carla Insinga, the Chairperson of the Judicial Panel, issued a decision dismissing the appeal in its entirety. (R. 563-73).

The Amended Petition

On April 27, 2021, Petitioners filed their Amended Petition asserting breach of contract and "violation of the common law of elections in New York." (R. 465) (¶¶25-26). Respondents moved to dismiss the Amended Petition. (R. 468). On February 1, 2022, Justice W. Franc Perry, III denied Petitioners' request for injunctive relief, granted Local 461's motion to dismiss, and dismissed the Amended Petition in its entirety. (R. 4-5). This appeal followed.

ARGUMENT

Petitioners contend that the February 2021 election violated the Local 461 Constitution and the "common law of union democracy." Pet. Br. at 34. These claims are foreclosed by *Martin v. Curran*, which held that, in an action against an unincorporated association like Local 461, the plaintiff must plead and prove that each of the association's members authorized or ratified the alleged wrongful conduct. 303 N.Y.at 282. Because Petitioners did not so plead and offered no such proof here, the Supreme Court correctly concluded that *Martin* barred the Amended Petition. (R. 14-16). Further, even assuming *arguendo* that *Martin* does not apply, the Amended Petition should still be dismissed. As the Supreme Court found, Local 461 reasonably complied with its Constitution's plain language in administering the February 2021 election. (R. 16-19). Justice Perry's decision should be affirmed, and the Amended Petition should be dismissed.

I. *MARTIN V. CURRAN* BARS THIS ACTION.

A. *Martin* Forecloses Petitioners' Claims.

Section 13 of the General Associations Law provides that a plaintiff may maintain an action against an unincorporated association's president if the action could otherwise be brought against "all the associates, by reason of their … liability therefor, either jointly or severally."

The Court of Appeals interpreted this provision in *Martin v. Curran*. The plaintiff in *Martin*, like Petitioners here, sued a several union officials in their official capacity. 303 N.Y. at 279. The Court of Appeals held that, whether for "breaches of agreements or … tortious wrongs," suits against an association's officers are limited to "cases where the individual liability of every single member can be alleged and proven." *Id.* at 282. Because the *Martin* plaintiff failed to plead or prove that all of the union's members authorized or ratified the allegedly wrongful conduct, his complaint was dismissed. *Id.* at 279-80.

Martin is now settled law in New York. In 2014, the Court of Appeals declined to overrule *Martin* and reaffirmed that, where a labor union is an unincorporated association, plaintiffs are required to plead and prove that each member authorized or ratified the alleged wrongful conduct. *Palladino*, 23 N.Y.3d at 147, 150. The First Department, as it must, regularly enforces this requirement, *see, e.g.*, *Catania v. Woodruff*, 164 N.Y.S.3d 581, 582-83 (1st Dep't 2022), and courts have applied *Martin* where, like here, a plaintiff challenges a union's election procedures. *Mounteer*, 448 N.Y.S.2d at 583.

Martin is dispositive here. Petitioners bring two substantially identical claims. They contend that, in administering the February 2021 election, Local 461: (1) "breached the Local 461 Constitution, a breach of contract between Local 461 and its members"; and (2) "applied the terms of the Local 461

Constitution in a manner which is unreasonable and undemocratic," violating the so-called common law of elections. (R. 465) (Amended Petition ¶¶25-26). These are both breach of contract claims. The first cause of action is expressly plead as such, and while the second is styled as a claim under the "common law of elections," it relies on the same facts, cases, and underlying argument. *See* Pet. Br. at 34 (arguing both claims simultaneously). Indeed, alleging that Local 461 applied its Constitution unreasonably is nothing but a claim that the Union breached its contractual obligations to its members. *See LaSonde v. Seabrook*, 933 N.Y.S.2d 195, 199 (1st Dep't 2011) (to assess whether union breached its constitution, courts must determine whether union's interpretation of the constitution was reasonable).

Thus, through Local 461's President, Petitioners bring two breach of contract claims against the Union. Both claims are directly foreclosed by *Martin*. Local 461 is an unincorporated association. (R. 548) (Roach Affirm. ¶4). Because Petitioners sue an association's officer for breach of an agreement, pursuant to the *Martin* rule, they must plead and prove that each of Local 461's members authorized or ratified the alleged contract breaches. They failed to do so. The Amended Petition must therefore be dismissed. *See Duane Reade, Inc. v. Local 338 Retail, Wholesale, Dep't Store Union*, 794 N.Y.S.2d 25, 26 (1st Dep't 2005)

(dismissal required where plaintiff failed to plead "objective facts" to support a finding of explicit authorization or ratification).

B. Petitioners' Attempts to Distinguish *Martin* are Unavailing.

Petitioners seek to distinguish *Martin* on several grounds. They contend that *Martin* applies only to a small subset of cases, that their suit falls under a narrow exception created in *Madden v. Atkins*, and that courts frequently allow members to enforce a union constitution. These arguments are unavailing. Petitioners ignore binding precedent, misconstrue *Madden*, and rely on facially inapposite cases. We address each deficiency in turn.

1. *Martin* applies to breach of contract suits seeking injunctive relief regarding a union election.

Petitioners first argue that *Martin* applies only to common law torts, not breach of contract claims. Pet. Br. at 20. They are wrong. *Martin* expressly applies to "breaches of agreements." 303 N.Y. at 282. The First Department has recognized this point, explaining that Section 13 precludes "contract … liability" unless the individual liability of each union member can be alleged and proved. *Catania*, 164 N.Y.S.3d at 582-83. The Second Department, too, has recently stated that *Martin* applies to breach of contract actions. *Bidnick v. Grand Lodge of Free & Accepted Masons*, 72 N.Y.S.3d 547, 549 (2d Dep't 2018). Petitioners' argument to the contrary should be rejected.

Next, Petitioners contend that *Martin* concerns "liability" and that it therefore applies only when the lawsuit targets the union treasury. Pet. Br. at 27. Petitioners appear to argue that *Martin* does not apply to claims seeking injunctive relief. Petitioners again are wrong. "[T]he *Martin* rule applies to claims for injunctive relief." *Cablevision Sys. Corp. v. Commc'ns Workers of Am. Dist. 1*, 16 N.Y.S.3d 753, 754 (2d Dep't 2015). In *Mounteer*, the Third Department used *Martin* to dismiss a complaint that sought injunctive relief regarding a union election. 448 N.Y.S.3d at 583. Similarly, in *Olympic Radio & Television v. Andrews*, the Second Department used *Martin* to vacate an injunction issued against a union's officers in their official capacities. 112 N.Y.S.2d 116, 116 (2d Dep't 1952). Petitioners do not address these cases, and the cases they do cite are inapposite. In *Torres v. Lacey*, for example, the First Department distinguished *Martin* because the plaintiff brought a claim for an unintentional tort; it did not create an exception where the complaint seeks injunctive relief. 163 N.Y.S.2d 451, 452 (1st Dep't 1957). In any event, the Amended Petition seeks an award of fees and costs. (R. 466). Even assuming that *Martin* applies only where the plaintiff targets the union treasury (and it does not), that is exactly what Petitioners did here.

Lastly, Petitioners suggest that *Martin* does not apply to claims challenging a union election. Pet. Br. at 18-19. That is incorrect. *Martin* applies

to breach of contract claims, 303 N.Y. at 282, and a union constitution is a contract between the union and its members. *LaSonde*, 933 N.Y.S.2d at 199. As a result, a lawsuit alleging that a union breached its constitution's election provisions falls squarely within *Martin's* purview. Further, courts have applied *Martin* in these exact circumstances. As noted above, in *Mounteer*, the Third Department dismissed a claim that challenged a union's election procedures. 448 N.Y.S.3d at 583. Petitioners' 45-page brief does not discuss, mention, or even cite *Mounteer*. Nor do they cite a case that addressed *Martin* and found that it does not apply in the election context. That will not do. Their failure to even mention *Mounteer*—a case that is both directly on point and was heavily relied on below—is an implicit acknowledgment that it controls here.

2. The narrow exception created in *Madden v. Atkins* does not apply here.

Petitioners argue that this case is controlled by *Madden v. Atkins*. Pet. Br. at 20. As the Court of Appeals explained in *Palladino*, however, *Madden* created a narrow exception to *Martin* where a union member is expelled from the union by a vote of the membership. That exception does not apply here, and this Court should not extend it to the union election context.

(i) *Madden* created a limited exception to *Martin* where a member is expelled from the union and that expulsion is brought about or approved of by the membership.

In *Madden*, the union president filed internal charges against five members for dual unionism. 4 N.Y.2d at 289. Separate trial committees, elected by the membership, found the members guilty and expelled them from the union. *Id.* at 290. The committees' decisions were presented at a "regular meeting of the local [union's] membership," and for each accused member, the membership approved the committee's determination. *Id.* The expelled members then sued, alleging that their expulsion violated the union constitution.

The Court of Appeals addressed, among other things, whether *Martin* barred the members' damages claims against the union. The Court held that damages may be recovered where a member is: (1) expelled from a union; and (2) that expulsion is "brought about by action on the part of the membership, at a meeting or otherwise, in accordance with the union constitution." 4 N.Y.2d at 296. The second element is key. A member's expulsion is properly considered an "act of the union" only when it is "brought about" by the membership. *Id.* Where the membership is not involved, however, "proof of such union action is lacking, [and] the claim for damages against the organization must fail." *Id.*

In *Madden*, the membership voted to approve the members' expulsion. 4 N.Y.2d at 290. This fact distinguished *Martin* and, at least "[f]or the

wrongs complained of," was a sufficient amount of membership participation to justify liability against the union. *Id.* at 296. The Court thus concluded that the plaintiffs could recover damages caused by their wrongful expulsions. *Id.* at 297.

In *Palladino*, the Court of Appeals made clear what was already apparent from *Madden's* plain language: it is a limited case, inapplicable outside of its specific facts. *See also Morrissey v. Nat'l Mar. Union of Am.*, 544 F.2d 19, 33 (2d Cir. 1976) (rejecting plaintiff's argument that *Madden* "severely restricted" *Martin*).

The *Palladino* Court explained that *Madden* carved out a "narrow exception" to *Martin* where a plaintiff sues their union for wrongful expulsion. 23 N.Y.3d at 147-48. The Court emphasized that, in *Madden*, "the wrongful expulsion was effected through a vote by the membership." *Id.* at 148. Thus, where there is no evidence that the membership voted on the alleged wrongful conduct or took any similar action, *Madden* does not apply. *Id.*; *accord Madden*, 4 N.Y.2d at 298 (Desmond, *J.*, who authored *Martin*, concurring) ("I understand the references … to *Martin* … to mean this: that when an unlawful expulsion has been voted by the membership at a regularly called meeting, it will be considered to be the act of the union so as to sustain a judgment against the union, even though there has not otherwise been any formal authorization or ratification by all the members.").

(ii) Petitioners were not expelled from Local 461 by the membership.

The considerations motivating the *Madden* Court to create an exception to the *Martin* rule are completely absent here. *Madden* established a "rule … in cases of wrongful expulsion." 4 N.Y.2d at 295. That rule does not apply in this case, as Petitioners were not expelled from Local 461. In addition, *Madden* applies only where the expulsion was "brought about by action on the part of the membership." *Id.* at 296. As in *Palladino*, however, there is no evidence that the Local 461 membership voted on or otherwise approved the allegedly wrongful conduct. Even if the *Madden* exception applied (which it does not), Petitioners fail to satisfy its key requirement. *See Bldg. Indus. Fund v. Local Union No. 3*, 992 F. Supp. 192, 194 (E.D.N.Y. 1996) (finding *Madden* was inapplicable because the case "does not involve a claim of wrongful expulsion").

Madden is distinguishable for additional reasons as well. The union there represented deck officers working in the Port of New York. 4 N.Y.2d at 288. Because the union had almost complete control over this type of employment, it was "virtually impossible" for the plaintiffs, who worked in that profession, to find a job after the union expelled them. *Id.* at 294. The Court of Appeals emphasized these facts in creating an exception to *Martin*. The plaintiffs suffered "financial loss and severe hardship," and injuries "as real as these" could not be denied a remedy lightly. *Id.* Given the plaintiffs' significant loss of earnings, prohibiting

suit on those facts would "deter criticism of the leadership by the general membership." *Id.*

The *Madden* Court thus recognized the unique facts before it—that expulsion from the union deprived the plaintiffs of their ability to earn a living and that, if *Martin* applied in such cases, unions could quash internal dissent by threatening members with expulsion and the concomitant loss of their economic security. These facts are not present here. All Local 461 members are employees of the City of New York. (R. 26) (Amended Petition ¶6). Public-sector employees are free to work regardless of whether they belong to a union. *Abood v. Detroid Bd. of Educ.*, 431 U.S. 209 (1977). Local 461 cannot make it "virtually impossible" for Petitioners to work in their chosen profession. Indeed, Petitioners do not allege that they have lost employment opportunities or that Local 461 retaliated against them for opposing the incumbent officers. *Madden's* critical concern—that expulsion from the union will prevent the member from finding work in their profession—does not arise in this case.

Finally, *Madden* followed earlier Court of Appeals decisions that allowed members to challenge their expulsions even if only part of the membership voted for the action taken. 4 N.Y.2d at 295 (citing *Polin v. Kaplan*, 257 N.Y. 277, 281-82 (1931)). Because these cases predated *Martin*, the fact that *Martin* did not address them suggested that they remained good law. No similar inference can be

drawn here. There are no pre-*Martin* Court of Appeals decisions that allow members to bring breach of contract suits challenging a union election. To the contrary, *Martin* noted that its ruling had been "uniformly held … for many years." 303 N.Y. at 280.

Madden is thus completely inapposite. The Court of Appeals created a limited exception to *Martin*—based on unique facts and prior precedent—for members who are expelled from the union by the membership. Here, Petitioners were not expelled from Local 461, the membership was not involved in the conduct at issue, and the surrounding circumstances emphasized in *Madden* are absent. This Court should follow *Martin* and dismiss the Amended Petition.

(iii) *Madden* should not be extended to the union election context.

Madden noted that, if a member has no redress for wrongful expulsion, criticism of the union could be stifled. 4 N.Y.2d at 296. Petitioners seize this language to argue that the "circumstances in union election cases are exactly the same as the reason the Court of Appeals gave in carving out the exceptions it did in *Madden*." Pet. Br. at 31-32. This argument should be rejected. There is no basis to create an exception to *Martin* for challenges to union elections where, like here, members who claim that the union breached its constitution can invoke an effective and expeditious internal appeal process.

Petitioners pay short shrift to *Madden's* actual reasoning. The Court grounded its holding in two facts: that the plaintiffs had been expelled from the union and that the expulsion was "brought about" by the membership. 4 N.Y.2d at 296. *Palladino* confirmed that, where the membership does not approve the alleged wrongful conduct, *Madden* does not apply. 23 N.Y.3d at 148. The circumstances here are thus completely different than those in *Madden*. Petitioners were not expelled from Local 461, and the membership was not involved in any of the challenged conduct regarding the election. Petitioners' analogy to *Madden* falls at the first step.

In any event, the concern raised by the *Madden* Court—that, absent redress for wrongful expulsion, internal dissent would be stifled—is not a factor here. Local 461 has not stifled criticism by threatening members with expulsion and the loss of their ability to earn a living. *See supra* at pp 23-24. Further, unlike the plaintiffs in *Madden*, Petitioners have meaningful redress for the Union's allegedly wrongful conduct. The *Madden* plaintiffs appealed their convictions to the local executive board. 4 N.Y.2d at 290. The board did not act on two of the appeals and denied the remaining three. *Id.* When the plaintiffs filed a second appeal to the national executive committee, the national organization refused to respond. *Id.* Indeed, when one plaintiff asked about a trial, the local president replied: "I am president of this local, I am National president, and I do what I like."

Id. The *Madden* Court was thus concerned that, absent an exception to *Martin*, the plaintiffs had no way to challenge their expulsions at all.

That is not the case here. The AFSCME internal appeals process provided Petitioners a legitimate avenue to challenge the February 2021 election. This process was prompt and efficient; from start to finish, Agramonte's appeals, including two separate hearings, were resolved in less than 11 weeks. (R. 559) (Agramonte's March 3 appeal to the Election Committee); (R. 563) (the Judicial Panel's May 14 decision). Indeed, the AFSCME Constitution required the Judicial Panel to render a decision within 40 days of receiving the appeal. (R. 393) (App. Section 4(D)).

Agramonte also had a meaningful opportunity to substantiate his concerns. In his appeal to the Judicial Panel, he was represented by counsel, (R. 567), he was allowed to present witnesses, (R. 566-67), and there is no allegation or evidence that the Judicial Panel was biased in the Union's favor. To the contrary, just a year earlier, the Judicial Panel removed Local 461's prior president based on charges filed by Petitioners Sequiera and Ozcan. (R. 54, 63).

Accordingly, the AFSCME internal appeals process provides a fair and effective remedy to challenge Local 461's conduct. Petitioners make no claim otherwise; indeed, their complaint is not with the process, but with the result. But a union member's dissatisfaction with an appeal's outcome is no basis to ignore

Martin. The *Madden* Court was concerned that, because the appeals process was a sham, the plaintiffs had no remedy at all. The opposite is true here, and *Madden's* concern does not apply.

Petitioners' argument is thus not about *Madden* at all. What they really mean is that, as a matter of public policy, it is unwise to apply *Martin* in these circumstances. But this Court is not a forum for policy arguments. *Martin* is a statutory interpretation case, rooted in Section 13 of the General Associations Law. *Palladino*, 23 N.Y.3d at 150-51. Courts cannot ignore this "plainly stated, plainly applicable" statute to "eliminate seeming injustices" or "bring the law into accord with modern fact." *Martin*, 303 N.Y. at 280, 282. Rather, to the extent Section 13 produces "anomalous" results, "[i]t is for the Legislature to decide whether … to overhaul these settled rules." *Id.* at 282. And the fact that the Legislature amended Section 13 soon after *Martin* was issued, but declined to overrule *Martin*, strongly suggests that the considerations pressed here have already been heard and rejected. *See Palladino*, 23 N.Y.3d at 151.

For these reasons, courts have consistently refused to carve out an exception to *Martin*. In *Catania*, the plaintiff claimed that *Martin* created "*de facto* immunity" for associations and that it thus did not "serve the public good." 164 N.Y.S.3d at 583. The First Department rejected this argument, explaining that plaintiffs challenged "the wisdom or rationality of a legal concept," which was the

"province of the legislature." *Id.* Similarly, despite acknowledging that *Martin* provides unions almost complete immunity in state court, *Palladino* expressly declined to overrule its prior precedent. *Id.* at 150-51. The Court concluded: "adoption of a rule that does away with *Martin* is best left to the legislature, which has far greater capabilities to gather relevant data and to elicit expressions of pertinent opinion on the issue at hand." *Id.* at 152; *accord Salemeh v. Toussaint ex rel Local 100 Transp. Workers Union*, 810 N.Y.S.2d 1, 2 (1st Dep't 2006) (argument that *Martin's* stringent requirements should be relaxed is "more appropriately directed to the Legislature"); *Modeste v. Local 1199*, 850 F. Supp. 1156, 1168 (S.D.N.Y. 1994) (Sotomayor, *J.*) (although *Martin* "[u]nquestionably" imposes an "onerous and almost insurmountable burden" on individuals seeking to impose liability on labor unions, court was in "no position" to question the wisdom of the Court of Appeals).

People v. Newspaper and Mail Delivers' Union, 683 N.Y.S.2d 488 (1st Dep't 1998) is instructive. There, the First Department held that a union could be criminally liable for enterprise corruption under Article 460 of the Penal Code. *Id.* at 491. The court concluded that *Martin* did not apply because: (1) this was a criminal case; and (2) the Legislature, by passing Article 460, evinced a specific intent to create an exception to the General Associations Law. *Id.* at 492. The second point is key. To justify an exception to *Martin*, Petitioners must identify a

statute that exempts breach of contract claims from the plain language of Section 13. They fail to do so, and their request to extend *Madden* to the union election context should be rejected.

3. The cases cited by Petitioners do not address *Martin* and are inapposite.

Petitioners cite a series of cases which, they contend, create an exception to *Martin* for breach of contract claims based on a union constitution. Pet. Br. at 24-27. These cases do not even mention *Martin*, however, let alone discuss its binding interpretation of the General Associations Law. We address these cases below.

In *Ballas v. McKiernan*, 341 N.Y.S.2d 520 (2d Dep't 1973), *aff'd*, 35 N.Y.2d 14 (1974), a union sued three members to enforce internal union discipline. 35 N.Y.2d at 18. The Court of Appeals did not address *Martin*—and with good reason. *Martin* does not affect a union's ability to sue; rather, it applies when a contract or tort claim is brought against a union, and the plaintiff fails to plead and prove that the union's membership authorized or ratified the conduct at issue. *Ballas* thus provides no support for Petitioners. *See also Maraia v. Valentine*, 801 N.Y.S.2d 608, 609 (2d Dep't 2005) (union sued member to enforce prior discipline; court did not discuss *Martin*, which applies where the union is the defendant, not the plaintiff).

LaSonde is similarly unhelpful. There, in the context of an election, a union member sued the union to enforce the union's constitution and bylaws. 933 N.Y.S.2d at 198-99. The union, however, did not argue that the member's claims were barred by *Martin*. *See* Brief for Respondents-Appellants, 2011 WL 12525103 (July 11, 2011); Reply Brief for Respondents-Appellants, 2011 WL 12484308 (Aug. 19, 2011). Indeed, *Martin* was completely irrelevant: the union was a "not-for-profit corporation," 933 N.Y.S.2d at 199, and *Martin* applies only to unincorporated associations. 303 N.Y. at 280-81; *Palladino*, 23 N.Y.3d at 147. Thus, the First Department did not address whether *Martin* foreclosed the member's suit, and *LaSonde* is of no precedential value here. *See Bldg. Indus. Fund*, 992 F. Supp. at 194-95 (rejecting attempt to distinguish *Martin* because the case cited by the plaintiff did not discuss *Martin*).

Bidnick is also distinguishable. In that case, a union member sued the union and its officers, both in their official and individual capacities, for defamation and wrongful expulsion under the union constitution. 72 N.Y.S.3d at 549. The Second Department concluded that *Martin*: (1) barred the defamation claim against the union and the officers in their official capacities; but (2) did not bar the defamation claim against the officers in their individual capacities, or the breach of contract claim based on the plaintiff's expulsion from the union. *Id.* at 550.

Bidnick has no relevance here. Petitioners sue Respondent Velasquez in his official capacity, not individually. (R. 457) (Amended Petition ¶5). Moreover, as explained *supra* at pp. 23-30, Petitioners were not expelled from Local 461, and *Madden* does not otherwise save Petitioners' claims. This distinction applies to other cases cited by Petitioners as well. *See French v. Caputo*, 240 N.Y.S.2d 494, 494 (1st Dep't 1963) (union officers were disciplined and therefore fell within *Madden* exception); *Fittipaldi v. Legassie*, 184 N.Y.S.2d 226, 229, 231, 234 (4th Dep't 1959) (same). If anything, *Bidnick* supports Local 461. The Second Department made clear that, contrary to Petitioners' argument here, *Martin* applies to "breaches of agreements," not just common law torts. 72 N.Y.S.3d at 549.

Petitioners cite two additional cases issued or affirmed by the Appellate Division: *Litwin v. Novak*, 193 N.Y.S.2d 310 (2d Dep't 1959) and *Lowe v. Feldman*, 168 N.Y.S.2d 674 (N.Y. Sup. Ct. 1957), *aff'd* 174 N.Y.S.2d 949 (mem) (1st Dep't 1958). Neither is relevant here. The defendant-unions did not assert *Martin* as a defense, and the courts accordingly did not address or consider the issue. *Litwin*, 193 N.Y.S.2d at 312; *Lowe*, 168 N.Y.S.2d at 679. These decisions therefore say nothing on whether *Martin* applies to Petitioners' breach of contract claims.

Lastly, Petitioners string cite a series of trial court decisions. Pet. Br. at 27. But none of these cases even mentions *Martin*, let alone attempts to explain why it should not apply to a claimed breach of the union constitution, a contract between the union and its members. In addition, like the appellate division cases cited above, these trial court decisions have no power to overrule the Court of Appeals. *Martin* was based on a "plainly stated, plainly applicable statute," 303 N.Y. at 280, and the Court of Appeals reaffirmed *Martin* in *Palladino*. 23 N.Y.3d at 150-51. Section 13 thus continues to preclude contract liability against a union unless the individual liability of each member can be alleged and proved. *Catania*, 164 N.Y.S.3d at 582-83. Here, because Petitioners assert only contract claims, the Amended Petition is barred by *Martin*.

II. LOCAL 461 DID NOT BREACH ITS CONSTITUTION'S ELECTION PROVISIONS.

Assuming arguendo that *Martin* does not apply, the Amended Petition should still be dismissed. Both Justice Perry and the AFSCME Judicial Panel concluded that Local 461 reasonably complied with its Constitution in administering the February 2021 election. This Court should do the same.

A. Courts Defer to a Union's Reasonable Interpretation of its Constitution.

A union's constitution and by-laws constitute a contract between the union and its members. *Ballas*, 341 N.Y.S.2d at 522 (2d Dep't 1973). Although—

subject to *Martin*—a union member can enforce their rights under these documents, *Mulligan v. Local 365, United Auto Workers*, No. 16910-cv-78, 1978 WL 26575, at *1 (N.Y. Sup. Ct. Dec. 1, 1978), a court should not "substitute its judgment for that of the governing body of an organization" and will examine the record only to "ascertain whether the procedure was in accordance with the constitution and by-laws." *Watkins v. Clark*, 380 N.Y.S.2d 604, 608 (N.Y. Sup. Ct. 1976).

The First Department uses a two-part analysis to determine whether a union has violated its constitution. *LaSonde*, 933 N.Y.S.2d at 199. The court must assess the union's conduct by: (1) independently reviewing the constitution in accordance with the general rules of construction appertaining to contracts; and (2) determining whether the union's interpretation is reasonable. *Id.* Where the constitution is clear and explicit, its terms must be enforced as written. *Blair v. Local 100 of Transp. Workers Union of Am.*, 436 N.Y.S.2d 912, 914-15 (N.Y. Sup. Ct. 1980). In addition, because courts have a "longstanding policy against intervention in the internal affairs of unions," *Newman v. Local 1101, Commc'ns Workers of Am.*, 570 F.2d 439, 446 (2d Cir. 1978), they generally will not interfere with a union's affairs, including its elections, absent a showing of fraud or substantial wrongdoing. *Gilheany v. Civil Serv. Employees Ass'n, Inc.*, 395 N.Y.S.2d 717, 719 (3d Dep't 1977).

Petitioners argue that courts may not defer to a union's interpretation of its constitution. Pet. Br. at 37. That is incorrect. As noted above—and as Petitioners admit just two pages earlier in their brief—in assessing whether a union complied with its constitution, courts must determine whether the union rendered "a reasonable interpretation." *Id.* at 35; *LaSonde*, 933 N.Y.S.2d at 199. Accordingly, courts do not impose their own interpretations of union constitutions; they defer to the union's interpretation so long as it is reasonable.

B. Local 461 Reasonably Complied with its Constitution.

Petitioners challenge three aspects of Local 461's election procedures: the date of the election, the requirements to vote, and the requirements to run as a candidate. In each instance, however, Local 461 reasonably complied with its Constitution's plain language. Petitioners rely on Article III, Section 9 of the AFSCME Constitution, which governs requests for dues credits, and Title IV of the Labor Management Reporting and Disclosure Act ("LMRDA"), a federal law governing private sector unions, to argue that Local 461 acted unreasonably. As explained below, neither argument is persuasive.

1. The date of the election

The Election Committee ruled that the election must be conducted in February 2021. This is consistent—indeed, required—by the plain language of the Local 461 Constitution. Article VI, Section 4 provides that "[a]ll regular elections

shall be held in the month of February." (R. 37). Given this unambiguous command, Local 461 did not breach its Constitution by scheduling the election in February.

Local 461's alleged past practice is irrelevant. *See* Pet. Br. at 12. The Court must review the Constitution "in accordance with the general rules of construction appertaining to contracts." *LaSonde*, 933 N.Y.S.2d at 199. Under contract law, a provision that is "complete, clear, and unambiguous on its face must be enforced according to the plain meaning of its terms." *Willsey v. Giuraj*, 885 N.Y.S.2d 528, 530 (2d Dep't 2009). In other words, when the "terms of a written contract are clear and unambiguous, the intent of the parties must be found within the four corners of the contract." *Id.* Here, past practice does not come into play because the Constitution is clear that elections must be held in February. Indeed, the AFSCME Judicial Panel emphasized that "[p]ast practice cannot replace or supersede what is set forth in the Local Constitution." (R. 573). Justice Perry agreed, (R. 17), and this Court should as well.[1]

[1] Nor did Local 461 breach its Constitution in connection with the timing of the mailing of the nominations and elections notices. (R. 548) (Roach Affirm. ¶¶7-8). In any event, Petitioners waived any challenge to the timing of the mailing of the notices by failing to include these allegations in Petitioner Agramonte's appeal to the AFSCME Judicial Panel. *See supra* pp. 13-14.

2. Eligibility to vote in the election

The Election Committee concluded that, to vote in the election, members must be in good standing. The Election Committee also concluded that, to remain in good standing, members must be current on dues, even if they are not currently working. These conclusions are based on the plain language of the Local 461 Constitution.

The Local 461 Constitution provides: "To be eligible to vote in the local election, a member must be in good standing at the date of the election." (R. 37) (Art. VI, Section 10). To be in good standing, a member must be current on membership dues, which "shall be payable monthly in advance to the local secretary-treasurer and in any event shall be paid not later than the 15th day of the month in which they become due." (R. 36) (Art. IV, Section 4). "Any member who fails to pay dues by the 15th day of the month in which they become due shall be considered delinquent, and upon failure to pay dues for two successive months shall stand suspended." *Id.* Provided, however, that "any person who is paying his dues through a system of regular payroll deduction shall for so long as he continues to pay through such deduction method, be considered in good standing." *Id*.

These provisions are clear and unambiguous. To vote, a member must be in good standing on the date of the election, and to be in good standing,

the member must be current on dues. A member who pays dues by having them automatically deducted from their paycheck remains in good standing only to the extent that the member continues to earn wages from which dues can be deducted through payroll. If, for example, the member is engaged in seasonal employment, and the member does not earn wages after the seasonal work ends and therefore does not have dues deducted after the summer months, the member must, to remain in good standing, continue to remit dues by-hand by the fifteenth day of each month. Otherwise, they are delinquent. After two successive months of delinquency, they are suspended.

The Local 461 Constitution does not contain a carveout relieving members engaged in seasonal employment from the obligation to pay dues. Rather, it makes crystal clear that only through the regular, timely payment of dues is the right to vote conferred. The Election Committee therefore adhered to the Local 461 Constitution when it required members, including seasonal lifeguards, to be current on their dues to vote in the election.

On May 14, 2021, an AFSCME Judicial Panel confirmed the Election Committee's interpretation of the Local 461 Constitution (the "Insinga Decision"). It stated:

> The Constitution is clear, members are required to pay dues; it is through membership dues that rights are conferred. The seasonal lifeguards pay dues and are considered "in good standing" during the months they pay

> dues. Through testimony it was established that the seasonal lifeguards last paid dues in November/December and would not resume paying dues until May/June. Brother Agramonte himself recognizes this in item 4 of his protest when he wrote "in May and June the seasonal lifeguards would resume paying dues and would be eligible to vote."

(R. 571-72). Indeed, the Insinga Decision is consistent with the Judicial Panel's opinion in an earlier case involving seasonal employees. In that case, known as the "Abelson Decision," a different local union concluded that seasonal employees were not entitled to participate in an election because they had ceased paying dues upon their layoff from active employment. (R. 444-45). Analyzing language virtually identical to that in the Local 461 Constitution that requires members to pay dues monthly, in advance, and by the 15th day of the month to remain in good standing, the Panel concluded:

> The protestants erred when they asserted that they were not required to pay dues during their layoff in order to maintain their membership status. Members are required to pay dues. Only through membership dues payment are membership rights conferred.

(R. 447). Thus, two Judicial Panel decisions—the 2015 Abelson decision and the 2021 Insinga Decision—found that members, including those who are not currently working, are required to pay dues to vote in a union election.

In another decision—one resulting from charges brought by two of the Petitioners here—the AFSCME Judicial Panel again considered seasonal

employees' eligibility to vote. In that case, the Tully Decision, a group of seasonal employees alleged that, among other things, they never received notices from Local 461 for a nominations and elections meeting. (R. 56). Franklyn Paige, Local 461's former president, had interpreted the Local 461 Constitution as prohibiting a seasonal lifeguard from paying dues by hand. (R. 59). Under Paige's interpretation, no seasonal lifeguard could ever become a member in good standing because they could neither pay dues by hand nor rely on dues checkoff during the months they were unemployed. *Id.*

The Tully Decision recognized that Paige's interpretation of the Local 461 Constitution deprived the seasonal lifeguards of the rights. Importantly, the Decision set out the correct interpretation of the Local 461 Constitution:

> [S]easonal lifeguards should be regarded as members in good standing during their employment period, provided, of course, they meet the requirements set forth in Article IV of the Local 461 Constitution [regarding membership dues]

(R. 60). This interpretation is consistent with the Election Committee's position here. As discussed above, Article IV requires members to pay dues in advance, on a monthly basis, and by the fifteenth day of the month in which they become due. It does not contain a carveout exempting seasonal employees from the obligation to pay dues during periods when they are not employed. As a result,

seasonal employees can and must pay their dues by hand during such periods to avoid becoming delinquent.

3. The requirements to run as a candidate

The Election Committee made similar conclusions regarding eligibility for office. It determined that, to run as a candidate, members must be in good standing, and that to remain in good standing, members must be current on dues, even if they are not currently working. These conclusions were again based on the plain language of the Local 461 Constitution.

Article VI, Section 5(a) provides: "To be eligible for office (other than that of the president), a member must be in good standing for one year immediately preceding the election." (R. 37). Similarly, Section 5(b) provides: "To be eligible for the office of president, a member must be in good standing for three years immediately preceding the election." *Id.* Good standing means, as it does with respect to eligibility to vote, being current on dues. Therefore, for the reasons discussed in the previous section, the Election Committee's conclusion that all members, including seasonal employees, had to be current in dues for either one or three years to be eligible for office was reasonable and based on the plain language of the Local 461 Constitution.

4. AFSCME's six-month dues credit provision

Petitioners Ozcan and Sequiera are seasonal lifeguards who were not allowed to vote or run for office in the February 2021 election. *See* (R. 556-57). They do not contend that they timely made dues payments for the year preceding the election. Rather, they argue that, based on Article III, Section 9 of the AFSCME Constitution, they were in good standing because they should have received a six-month dues credit. Pet. Br. at 38, 44. Petitioners are wrong.

The AFSCME Constitution provides that, when a member is unemployed, they "shall, upon request, be entitled to credit for membership dues for the period of unemployment … but not to exceed six months within any twelve-month period." (R. 43) (Article III, Section 9). On February 22 and 23, 2021, three seasonal lifeguards requested a dues credit: Petitioner Ozcan, Justin Hausler and Robert Butler. (R. 429-432, 566-67); (R. 548-49) (Roach Affirm. ¶9). These requests were: (1) untimely, as they were received, at most, three days before the February 25 nominations and four days before the February 26 election; and (2) improper, as they sought retroactive, rather than prospective, relief. Nevertheless, on the evening of February 25, the Election Committee determined that, even if the requests were granted, the members would not be eligible to vote or run for office. (R. 556-57).

This decision was reasonable and is no basis for a breach of contract claim. To run for office, a member must be in good standing for at least one year immediately preceding the election. (R. 37) (Article VI, Section 5). Even if the seasonal lifeguards were credited with six months of dues, as a matter of arithmetic, they would not have been in good standing for one year before February 2021. Six months of credited dues, plus: (1) dues from July through September 2020, when the seasonal lifeguards' dues were deducted from payroll, *see* (R. 557), and (2) dues from either November or December 2020, when the lifeguards purportedly received their vacation payouts, (R. 561), equals 10 (not 12) months of dues.[2] The Judicial Panel agreed with the Election Committee's conclusion, (R. 571-72), as did Justice Perry. (R. 18). The Committee thus properly decided that Ozcan, Hausler, and Butler, even assuming they were granted an untimely, retroactive dues credit, were ineligible to run for office.

For similar reasons, the Election Committee also properly decided that Ozcan, Hausler, and Butler were ineligible to vote. To vote in an election, a member must be in good standing on the date of the election. (R. 37) (Art. VI, Section 10). Six months of credited dues would cover March through June 2020, as well as October and November. Deducted dues would cover July through

[2] Petitioners had every opportunity to introduce admissible evidence, such as Ozcan, Hausler, and Butler's 2020 paystubs, to challenge the Election Committee's conclusion. They failed to do so.

September 2020, plus December. But only dues paid by hand would cover January and February 2021. The seasonal lifeguards did not pay dues by hand, and Petitioners do not allege otherwise. As a result, even if their requests had been granted, Ozcan, Hausler, and Butler were not eligible to vote in the election. And even if they had been eligible to vote and were permitted to do so, three votes would not have changed the outcome of the election. *See* (R. 576) (showing Agramonte lost the election for president by 20 votes); (R. 577) (showing that Dominic Hel lost the executive board election by 15 votes).

5. Federal caselaw

Petitioners imply that the Election Committee's determinations would be unlawful if they were evaluated under the LMRDA, the federal law governing private sector unions. Pet. Br. at 43. That is false. The Committee's decisions were entirely consistent with the LMRDA. Indeed, the United States Department of Labor has issued regulations on these exact issues. Although Petitioners claim that federal law is relevant here, they notably do not bring these regulations to the Court's attention, despite Local 461 relying on them before Justice Perry. We outline the pertinent rules below.

A union may "condition the exercise of the right to vote upon the payment of dues, which is a basic obligation of membership." 29 C.F.R. § 452.86. A union rule that "suspends a member's right to vote in an election of officers

while the member is laid off and is not paying dues would not, in ordinary circumstances, be considered unreasonable, so long as it is applied in a nondiscriminatory manner." 29 C.F.R. § 452.86. Thus, where a member on a dues checkoff system has no earnings from which dues can be withheld, the LMRDA "does not relieve the member of the responsibility of paying his dues in order to remain in good standing." *Id.* § 452.37(b). Local 461's voting requirements—which track these regulations to a tee—are thus consistent with the LMRDA.

Similar regulations govern eligibility to run for office. A union can condition office holding on "continuous good standing based on punctual payment of dues" so long: (1) the union provides a "reasonable grace period" for members to make up missed payments without loss of eligibility; and (2) the period of time is reasonable. 29 C.F.R. § 452.37(b). Here, members have a 14-day grace period before they are considered delinquent, (R. 36) (Article IV, Section 4), and unemployed members can, upon request, receive a six-month waiver. (R. 43) (Article III, Section 9). Local 461's rules to run for office are thus consistent with the relevant federal regulations.

Indeed, courts have rejected election challenges where, like here, a member was not able to vote or run for office because their dues were not withheld by their employer since they had no earnings for that month and the member did not otherwise see that their dues were paid. *See, e.g.*, *English v. Cunningham*, 282

F.2d 848, 849-50 (D.C. Cir. 1960); *Dole v. Local 512, Int'l Bhd. of Teamsters, Chauffers, Warehousemen & Helpers of Am., AFL-CIO*, 730 F. Supp. 1562, 1567 (M.D. Fla. 1990); 29 C.F.R. § 452.92 ("Members who are otherwise qualified to vote may not be disqualified from voting merely because they are currently unemployed or are employed on a part-time basis in the industry served by the union, provided, of course, that such members are paying dues.").

The cases cited by Petitioners are distinguishable. In *Wirtz v. Local 6*, 391 U.S. 492 (1968), the union rule at issue barred members who had not held prior elective office from running for a "major elective office." That is clearly different from the rule here, which merely requires members to perform the basic act of membership—paying dues—and grants unemployed members, upon request, a six-month grace period. Similarly, in *Hodgson v. Local Union No. 18*, 440 F.2d 485 (6th Cir. 1971), the union rule required a member of a "sub local" to, in addition to paying regular union dues, pay an extra fee to transfer to the local to run for office. This "additional" fee was unlawful. In contrast, here, all a member has to do is pay a single set of dues and/or get a waiver.

Accordingly, contrary to Petitioners' claims, federal law does not suggest that the Election Committee's decisions were unreasonable. Indeed, it suggests the exact opposite—that the Election Committee acted reasonably when it

decided that three of the seasonal lifeguards, even assuming they were granted six-month dues credits, were ineligible to vote or run in the election.

Petitioners also suggest that the Election Committee's interpretation of the Local 461 Constitution should be unenforceable as a matter of public policy. *See* Pet. Br. at 6. They cite no caselaw for this proposition. But in any event, Local 461's election procedures do not offend public policy. Payment of dues is a basic obligation of union membership, and it is perfectly reasonable to require members to pay dues to vote or run for office. Further, it is reasonable to impose this requirement on seasonal employees. The AFSCME Constitution allows seasonal employees, upon request, to obtain a six-months dues credit while they are unemployed. Given that Local 461 seasonal employees generally work five months a year, and in 2020 worked three months, if they timely request a dues credit, they have to pay only one-to-three months of dues while they are not working. There is nothing unreasonable about requiring union members who want to vote or run for office to understand their constitution, request a dues credit, and pay one-to-three months of dues by hand.[3] Petitioners' public-policy argument should be rejected.

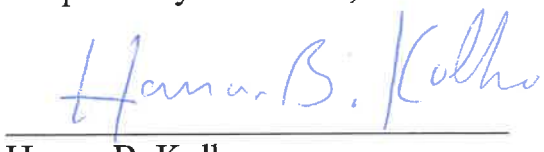
[3] Petitioners claim, without citing the record, that Local 461 has no offices. Pet. Br. at 14. But the Amended Petition specifically alleges that "Local 461 has its offices at 55 Broad Street, New York, New York." (R. 457) (Amended Petition ¶4).

CONCLUSION

For the foregoing reasons, the Supreme Court's decision should be affirmed, and the Amended Petition should be dismissed in its entirety.

Dated: New York, New York
August 10, 2022

Respectfully submitted,



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I certify that, pursuant to 22 NYCRR § 1250.8(j), the foregoing brief was prepared on a computer using Times New Roman, a proportionally spaced typeface, in 14-point font. The brief is double spaced.

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