Motion No. 2022-831
New York County Clerk's Index No. 151950/21
Appellate Division–First Department Case No. 2022-02573

Court of Appeals

of the

State of New York

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.

OPPOSITION TO MOTION FOR LEAVE TO APPEAL

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COURT OF APPEALS
STATE OF NEW YORK

In The Matter of the Application, 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 VELAZQUEZ, Respondent-Respondent.	(New York County Clerk's Index No. 151950/2021) (Appellate Division Case No. 2022-02573) Motion No. 2022-831 **AFFIRMATION OF HANAN B. KOLKO IN OPPOSITION TO MOTION FOR LEAVE TO APPEAL**

HANAN B. KOLKO, an attorney duly admitted to the Bar of the State of New York, and attorney for Respondent-Respondent, declares under penalty of perjury:

1. I am an attorney in this matter representing Respondent-Respondent Local 461, District Council 37, American Federation of State, County and Municipal Employees, by its President, Jason Velazquez ("Local 461"). I submit this affirmation in opposition to the motion for leave to appeal submitted by Petitioners-Appellants Edwin Agramonte, Omer Ozcan, and Raphael Sequiera ("Petitioners").

2. Petitioners' motion for leave to appeal is governed by 22 NYCRR § 500.22(b)(4), which requires a party seeking leave to appeal to explain "why the questions presented merit review by this Court, such as that the issues are novel or of public importance, present a conflict with prior decisions of this Court, or involve a conflict among the departments of the Appellate Division."

3. Because Petitioners do not satisfy Section 500.22(b)(4), their motion for leave to appeal should be denied.

BRIEF OVERVIEW OF THE UNDERLYING LITIGATION

4. Local 461 is a labor union and unincorporated association. It represents only lifeguards who work for the City of New York. Ruling, Record ("R.") at 5, 12.[1]

5. Petitioners sued Local 461 in February 2021, alleging two claims: that in conducting its officer election, Local 461 (a) violated the Local 461 Constitution, a "breach of contract between Local 461 and its members," and (b) "applied the terms of the Local 461 constitution in a manner which [was] … a violation of the common law of elections in New York." Petition, R. at 465, ¶¶ 25, 26.[2]

[1] We refer to the February 1, 2022 ruling by Supreme Court, New York County, which is included in the Appellate Record at 4-19, as "Ruling."

[2] We refer to the First Amended Verified Petition, which is included in the Appellate Record at 453-467, as "Petition."

6. Relying on *Martin v Curran*, 303 NY 276 (1951), New York County Supreme Court granted Local 461's motion to dismiss the Petition. It stated: "the amended petition must be dismissed … as a matter of law, as petitioners failed to sufficiently plead that the individual members of Local 461 authorized or ratified the purportedly unlawful conduct." R. at 14.

7. Petitioners appealed the Ruling to the Appellate Division, First Department.

8. In a decision entered on October 13, 2022, the First Department upheld the Ruling. *Agramonte v Local 461*, 209 AD3d 478 (1st Dept 2022). The First Department stated: "Supreme Court correctly granted the union's motion to dismiss the amended petition. The petition, which interposed claims alleging breach of contract and violation of the common law of elections in New York, failed to plead 'that each individual union member authorized or ratified the [allegedly] unlawful action.'" Citing to and relying on, inter alia, *Martin v Curran*, 303 NY 276 (1951), and *Palladino v CNY Centro, Inc*., 23 NY3d 140, 147-48 (2014), the First Department stated: "the law is well settled that suits for breaches of agreements or for tortious wrongs against officers of unincorporated associations, including unions, are limited to situations in which 'the individual liability of every single member can be alleged and proven.'" 209 AD3d at 478.

9. On November 18, 2022, Petitioners appealed to this Court from the First Department's decision. Petitioners' Notice of Motion erroneously states that they seek leave to appeal a decision and order "of the Appellate Division, Second Department."

THE QUESTIONS PRESENTED IN PETITIONERS' MOTION DO NOT MERIT REVIEW BY THIS COURT BECAUSE PETITIONERS DO NOT SATISFY SECTION 500.22(b)(4)

The Decision Does Not "Present A Conflict with Prior Decisions of This Court."

10. Under 22 NYCRR § 500.22(b)(4), a factor used to determine whether to grant leave to appeal is whether "the issues … present a conflict with prior decisions of this Court." Petitioners cannot meet this standard because the First Department's decision is entirely consistent with decisions of this Court.

11. *Martin v Curran* has been settled law for 71 years. There, this Court held that, "whether for breaches of agreements or … tortious wrongs," suits against an unincorporated association are "limited to cases where the individual liability of every single member can be alleged and proven. 303 NY at 277.

12. In this Court's 2014 *Palladino* decision, it reaffirmed *Martin v Curran* and declined a request to overrule it. There, while acknowledging that *Martin v Curran* "stands as an obstacle to suit against a union" that is "virtually

impossible" to overcome, 23 NY3d at 148, this Court stated that "adoption of a rule that does away with *Martin* is best left to the legislature." *Id.* at 152.

13. Because *Martin v Curran* requires dismissal of suits against unincorporated associations like Local 461 unless the plaintiff pleads and proves that every single member authorized or ratified the alleged wrongful conduct, because this Court reaffirmed *Martin v Curran* in its 2014 *Palladino* decision, and because Petitioners here did not plead that every Local 461 member authorized or ratified the alleged wrongful conduct, the First Department's decision presents no conflict with "prior decisions of this Court."

14. In their motion, Petitioners attempt to evade the rule set out in *Martin* and affirmed in *Palladino* by arguing that "[t]he controlling Court of Appeals case … is *Madden v Atkins*, 4 N.Y. 2d 283, 294-96 (1958)." Petitioners' Affirmation, ¶¶ 7-11.[3] *Madden v Atkins* is not controlling, and it is meaningfully distinguishable. Accordingly, the First Department's application of *Martin* to this case does not conflict with this Court's decision in *Madden*.

15. In *Madden*, this Court ruled that *Martin* did not bar a suit for damages by members claiming that they were wrongfully expelled from their union when the expulsion was "brought about by action on the part of the

[3] We refer to the Affirmation of Arthur Z. Schwartz dated November 18, 2022 as "Petitioners' Affirmation."

membership, at a meeting or otherwise, in accordance with the union constitution." 4 NY2d at 296.

16. This Court has held that *Madden* is a "narrow exception to the *Martin* rule" under which "*Martin* is inapplicable to a suit by a union member against a union arising from a wrongful expulsion." *Palladino*, 23 NY3d at 147-48. Petitioners do not allege that Local 461 expelled them, so the "narrow" *Madden* exception to the *Martin v Curran* rule does not apply to this case. For that reason alone, contrary to Petitioners' assertion, *Madden* is not controlling.

17. Petitioners' reliance on *Madden* must also be rejected because the facts in this case are far different from the facts that led this Court in *Madden* to create a "narrow exception to the *Martin* rule."

18. In *Madden*, the union membership voted to approve the plaintiffs' expulsion from their union. For the *Madden* exception to be available, membership action is key: a member's expulsion is properly considered an "act of the union" only when it is "brought about" by the membership. Where the membership is not involved, "proof of such union action is lacking [and] the claim for damages against the organization must fail." *Madden*, 4 NY2d at 296.

19. In *Madden*, with a single exception, the plaintiffs were "licensed deck officers" who belonged to a New York City local union of the Masters, Mates and Pilots of America. One plaintiff, who was not a member of the

New York City local, was a licensed deck officer from Baltimore who regularly worked out of New York City. *Id.* at 288.

20. Three of the *Madden* plaintiffs ran for office in their local union's 1952 officer election. A fourth was a member of the local's election committee. Local union officials resisted attempts by the local's election committee to adopt and implement certain procedural safeguards, and ultimately appointed a new election committee after the initial election committee refused to conduct the election in the absence of those safeguards. The newly appointed election committee conducted the election without those safeguards, and declared the incumbents to be the winners. *Id.*

21. In the aftermath of the election, a group of members that included some of the plaintiffs formed a political caucus within the union and published a leaflet that said, among other things, that having "two parties within the Union … will be a good and healthy thing for our Local." *Id.* at 289.

22. Shortly after the political caucus distributed its leaflet, the union brought internal disciplinary charges against the plaintiffs. All of the charges related to conduct by the plaintiffs in support of the caucus. At union meetings, the membership voted to elect trial committees. Those committees conducted trials on the charges and, in each instance, found the plaintiffs guilty and voted to expel them from the union. The trial committee's rulings were reported to

the local membership at a local union meeting, and "the membership in each instance affirmatively approved and adopted the trial committees' determination." 4 NY2d at 289-90.

23. Each plaintiff appealed to the local union's executive board, which upheld their convictions and expulsions. They then appealed to the national union, which did nothing. When one plaintiff raised his situation with the local president, who was also the national union's president, he was told that "I am the president of this local, I am National president, and I do what I like." *Id.* at 290.

24. In *Madden*, this Court observed that, "[i]f one wrongfully expelled [from a union] has no redress for damages suffered, little more is needed to stifle all criticism within the union." *Id.* at 296. Pointing to this sentence in *Madden*, Petitioners argue that this Court must grant leave to appeal and reverse the ruling below. They argue that "unless public sector union members, who are not covered by the [Federal] Labor Management Reporting and Disclosure Act, have recourse to the courts to address union elections, those elections are subject to the whims and fancies of union officers seeking to keep themselves in power." Petitioners' Affirmation, ¶ 9.

25. A comparison of the facts in this case and the facts in *Madden* reveals why Petitioners' argument is wrong. First, and critically, unlike the *Madden* plaintiffs, Petitioners here had meaningful redress from their union's

alleged wrongful conduct. Local 461 is a local of the American Federation of State, County, and Municipal Employees ("AFSCME"). AFSCME provides Petitioners — and all of its constituent unions' members — with a prompt and efficient internal appeals process to address member claims that their local unions conducted their officer elections in a way that violated the local and/or AFSCME constitutions. Petitioners admit that they appealed to AFSCME after the Local 461 officer election and that their internal appeal was denied by AFSCME's Judicial Panel, which rejected the appeal within 11 weeks after the election. R. at 6-10.

26. Petitioners were represented by counsel during their appeal to AFSCME. They were allowed to present witnesses and argument to support their appeal. R. at 6-10. And they cannot — and do not — argue that the AFSCME Judicial Panel is biased against them or lacks power to provide them with redress. To the contrary, they admit that, in October 2020, only four months before Local 461's union officer election, AFSCME's Judicial Panel sustained their internal charges against Local 461's then-President, Franklyn Paige, and removed him from office. Petitioners' Affirmation, ¶ 24. Thus, Petitioners had recourse to an internal appeal process that provided them with the opportunity to submit evidence and argument, and to be represented by counsel. The same body that heard their appeal had granted them substantial relief only months before the election. In short, these Petitioners were provided with a full and fair internal appeal process.

27. In contrast, the *Madden* plaintiffs had no meaningful opportunity to appeal their expulsion from their local union. They appealed their expulsions to their union executive board, which did not act on two of the appeals and rejected three others. When the plaintiffs then appealed to the national union — their local union's parent — the national refused to respond. 4 NY2d at 290. Indeed, their local union President told one plaintiff that "I am president of this local, I am National President, and I do what I like." *Id*. Thus, in *Madden*, the Court was faced with a situation where, absent an exception to *Martin v Curran*, the plaintiffs would have had no way to challenge their expulsions. That stands in contrast to Petitioners here, who had and took advantage of the opportunity to appeal to their parent union, AFSCME, which provided them with a fair appeals process.

28. The member expulsions in *Madden* also threatened to stifle dissent in a way not even alleged to be present here. In *Madden*, the union represented deck officers working out of the Port of New York. 4 NY2d at 288. Because the local union had almost complete control over this type of employment, it was "virtually impossible" for plaintiffs, who worked in that profession, to find a job after their union expelled them. *Id*. at 294. The *Madden* Court emphasized these facts in creating an exception to *Martin v Curran*, stating that plaintiffs there suffered "financial loss and severe hardship," and concluded that, given plaintiffs'

significant loss of earnings, prohibiting suit on those facts would "deter criticism of the leadership by the general membership." *Id*.

29. Petitioners do not allege that Local 461 has threatened their ability to earn a living. They do not allege that they have lost employment opportunities. They do not allege that Local 461 retaliated against them for opposing the incumbent local officers or persuading AFSCME to remove Local 461's former President from office. *See* Petition, R. at 457, ¶ 5. Thus, in sharp contrast to *Madden,* where the union punished plaintiffs by making it impossible for them to work in retaliation for their trying to form a political caucus to oppose incumbent leadership, Petitioners here successfully forced the removal of their union's President yet suffered absolutely no retaliation. In short, *Madden* was a product of the unique facts before the Court — the union's unappealable expulsion of the plaintiffs deprived them of their ability to earn a living and sent a message to all other members that, if they dissented, they too would be stripped of union membership and the ability to earn a living. The facts that inspired the *Madden* Court to create an exception to the *Martin v Curran* rule are simply not present here. Accordingly, Petitioners' argument that "[t]he circumstances in union election cases are exactly the same as the reason the Court of Appeals gave in carving out the exception it did in *Madden*," Petitioners' Affirmation, ¶ 56, is plainly wrong and should be rejected.

30. For that reason, the cases cited by Petitioners that rely on *Madden v Atkins* are also inapposite. For example, Petitioners cite *Bidnick v Grand Lodge of Free & Accepted Masons of State of N.Y.*, 159 AD3d 787 (2d Dept 2018). Petitioners' Affirmation, ¶ 49(c). In *Bidnick*, a member of a masonic lodge (an unincorporated association) sued the lodge and its officers in their official and individual capacities, alleging defamation and wrongful expulsion under the organization's constitution. *Id.* at 788. The Second Department concluded that *Martin v Curran* (a) barred the defamation claim against the lodge and the officers in their official capacities, but (b) did not bar the defamation claim against the officers in their individual capacities or the breach of contract claim arising from plaintiffs' expulsion, relying on the exception to the *Martin* rule carved out in *Madden v Atkins*. *Id*. at 789-90. In this case, however, Respondent Velazquez was sued in his official capacity, and Petitioners were not expelled from Local 461. The *Madden* exception thus does not apply here, and *Bidnick* is consistent with the First Department's ruling below.[4]

31. Petitioners also cite *Ballas v McKiernan*, 41 AD2d 131 (2d Dept 1973), *aff'd* 35 NY2d 14 (1974). Petitioners' Affirmation, ¶¶ 49(a), (d). In

4 *See also French v Caputo*, 19 AD2d 594, 594 (1st Dept 1963) and *Fittipaldi v Legassie*, 7 AD2d 521 (4th Dep't 1959), both cited by Petitioners, which are inapposite for the same reason: the plaintiffs in those cases were disciplined by their unions and therefore fell within the *Madden* exception.

Ballas, a union sued three of its members to enforce internal union discipline. 35 NY2d at 18. This case does not involve internal union discipline, and neither the Second Department nor the Court of Appeals in *Ballas* addressed *Martin v Curran*. And with good reason. *Martin* does not affect a union's ability to sue; rather, it applies only to bar a tort or contract claim *against* a union that is an unincorporated association. Thus, *Ballas* does not help Petitioners. Likewise, *Maraia v Valentine*, 21AD3d 934, 935 (2d Dept 2005), *see* Petitioners' Affirmation ¶ 49(f), also involves a union-plaintiff suing to enforce internal discipline. The court in *Maraia* did not cite *Martin*, which does not apply to a suit brought by a union.

32. Finally, Petitioners cite *Litwin v Novak*, 9 D2d 789 (2d Dept 1959) and *Lowe v Feldman*, 6 AD2d 684 (1st Dept 1958). Petitioners' Affirmation, ¶¶ 49(g), (i). Neither case helps them. Because the union defendants in those cases did not assert *Martin v Curran* as a defense, the courts did not consider whether *Martin* applied, and both decisions have no precedential value here. *See Global Reins. Corp. of Am. v Century Indem. Co.*, 30 NY3d 508, 517 (2017) (a "[c]ourt's holding comprises only those 'statements of law which address issues which were presented to the [Court] for determination,'" *quoting Village of Kiryas Joel v County of Orange*, 144 AD3d 895, 900 (2d Dept 2016)); *Wellbilt Equipment Corp. v Fireman*, 275 AD2d 162, 168 (1st Dept 2000) ("a case is

'precedent only as to those questions presented, considered, and squarely decided.'")

There Is No Conflict Among The Departments Of The Appellate Division

33. Under 22 NYCRR § 500.22(b)(4), another factor used to determine whether to grant leave to appeal is whether "the questions presented … involve a conflict among the departments of the Appellate Division." Petitioners cannot meet this standard because the First Department's decision is consistent with the only other Appellate Department decision on point.

34. The issue presented here is whether *Martin v Curran* applies in cases where a petitioner sues a union for breach of contract based on the union's conduct during an officer election. Before the First Department issued its October 13, 2022 ruling in this case, there was a single reported Appellate Department decision on point: *Mounteer v Bayly*, 86 AD2d 942 (3d Dept 1982). There, the Appellate Division, Third Department relied upon *Martin v Curran* to dismiss a union member's claim challenging her union's election procedures. No other reported Appellate Division case addresses the issue. Thus, both the First Department and the Third Department have held that *Martin v Curran* applies to union member suits arising out of their union's officer election, and no Appellate Division has held to the contrary. For that reason, there is no "conflict among the departments of the Appellate Division" on the question presented here.

35. Petitioners cite a number of Appellate Department cases, but none hold that *Martin v Curran* does not apply to union member suits arising out of a union's handling of an officer election. Indeed, none even address the issue. We briefly discuss those cases here.

36. Petitioners cite *Matter of LaSonde v Seabrook*, 89 AD3d 132 (1st Dept 2011). Petitioners' Affirmation, ¶ 5. The plaintiffs in that case — like Petitioners here — sued to enforce their union constitution in the context of alleged officer misconduct. *Id.* at 136-37. However, because the union defendant there was a "not-for-profit corporation," *Id.* at 137, and because *Martin v Curran* is an affirmative defense available only to unincorporated associations, *Martin v Curran* was unavailable to the union defendant, and the union did not raise it. Thus, the First Department did not address the issue in *LaSonde*. And because the issue was not presented, considered, or decided, *LaSonde* has no precedential value here. *Wellbilt*, 275 AD2d at 168.

37. Petitioners also cite *Daley v Stickel*, 6 AD2d 1 (3d Dept 1958). Petitioners' Affirmation, ¶ 5. The decision there did not consider whether *Martin v Curran* barred the plaintiffs' claims, and it is thus not inconsistent with the First Department's decision in this case or the Third Department's decision in *Mounteer v Bayly*.

38. In short, the Appellate Departments to address the issue have uniformly held that the *Martin* rule applies in suits against a union arising out of the union's officer election. No Appellate Department decision holds otherwise. Indeed, the cases cited by Petitioners do not address *Martin v Curran* at all, foreclosing any argument that there is a conflict among the lower courts justifying Petitioners' motion for leave to appeal.

The Issues Presented in Petitioners' Motion Are Neither Novel nor of Public Importance

39. Under 22 NYCRR § 500.22(b)(4), another factor used to determine whether to grant leave to appeal is whether "the issues … are novel or of public importance." Petitioners cannot meet this standard.

40. As we explained above, *Martin v Curran* has been settled law for 71 years, and *Mounteer v Bayly*, which applied *Martin* to the union election context, has been settled law for 40. This Court has had occasion since to reexamine *Martin* and has declined to do so, most recently in 2014 in *Palladino v CNY Centro, Inc*. Thus, the issues presented here — *Martin*'s application to unincorporated associations like Local 461, and whether *Martin* should apply in the union election context — are not novel. And, to the extent that Petitioners are making a policy argument — that it is a matter of "public importance" that *Martin v Curran* not be applied to cases arising out of union officer elections — this Court

has already held in *Palladino* that any changes to the *Martin v Curran* rule are "best left to the legislature." 23 NY 3d at 152.

41. Petitioners claim that "if the courts cannot intervene to prevent union elections which have been run improperly . . . union democracy in all unions will be stifled." Petitioners' Affirmation, ¶ 57. However, the premise of this argument — that the *Martin v Curran* defense to a suit against a union must, for policy reasons, be modified because otherwise a party faced with that defense will be denied important relief — has already been considered and rejected by this Court in *Palladino v CNY Centro, Inc.* 23 NY3d at 152.

42. Petitioners' reference to Title IV of the Labor-Management Reporting and Disclosure Act ("LMRDA"), 29 USC § 481, is unavailing. Title IV is a federal law that governs officer elections for unions representing at least some private sector employees. *London v Polishook.* 189 F3d 196, 198 (2d Cir 1999). In elections governed by LMRDA Title IV, judicial intervention is restricted. Union members may not sue to enforce Title IV. Instead, only the Secretary of Labor may do so. *Calhoon v Harvey,* 379 US 134, 140 (1964). And such lawsuits may typically be brought only after the election is completed, not before. *Id.* (in enacting Title IV, Congress "decided not to permit individuals to block or delay union elections by filing federal court suits for violation of Title IV.") Title IV imposes two additional hurdles before the Secretary of Labor can sue to overturn a

union election: first, the protesting union member must utilize the union's internal remedies for a period of at least one month, 29 USC § 482(a), and second, the Secretary of Labor must, after investigating the protesting member's complaints, determine that the election violated LMRDA Title IV and that the violation "may have affected the outcome of the election." 29 CFR § 452.136. Pending the completion of the investigation and the litigation, the challenged election is "presumed valid." *Id*. This scheme, which applies to every private sector worker, reflects the fact that "[c]ourts have no special expertise in the operation of unions which would justify a broad power to interfere." *Gurton v Arons,* 339 F2d 371, 375 (2d Cir, 1964). In short, even the detailed federal statutory scheme that protects private sector union members allows for only limited judicial intervention.

43. Unions that represent only public sector employees — like Local 461 — are not subject to LMRDA Title IV. *London v Polishook*, 189 F3d at 198; 29 CFR § 451.3(a)(4). However, contrary to their contention, Petitioners had a meaningful opportunity to protest their local union's election. They had the right to appeal to the Local 461 election committee, and Petitioner Agramonte did, on March 3, 2021. That committee rejected his appeal. R. at 8-9.

44. Petitioner Agramonte then had the right to appeal to the AFSCME Judicial Panel, and he did, on April 11, 2021. R. at 9. The AFSCME Judicial Panel held a hearing on the appeal on May 6, 2021. At that hearing,

Petitioner Agramonte was "represented by counsel, testified, and had the other petitioners testify." R. at 6. Petitioner Agramonte argued to the Judicial Panel that Local 461 "unfairly refused to allow seasonal members to vote … or run for office, [that] those members should have been granted [dues] waiver requests …[and that] … the election should have been conducted in May or June." R. at 6.

45. On May 14, 2021, the AFSCME Judicial Panel issued a written ruling on Petitioner Agramonte's appeal, rejecting it "in its entirety." R. at 9. It addressed and rejected each specific prong of the appeal. R. at 9-10.

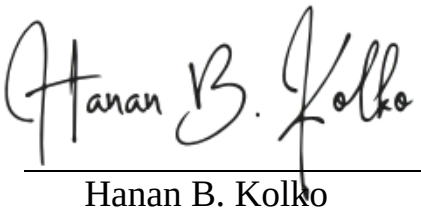
46. Thus, contrary to Petitioners' claim, they have not been deprived of the right to an appeal. They submitted a protest to the Local 461 election committee, and they appealed that committee's decision to the AFSCME Judicial Panel, which provided them with a hearing replete with the hallmarks of due process — the opportunity to present testimony and argument, and the opportunity to be represented by counsel. Their unhappiness is not with the lack of an appeal. Instead, it is with the results of their appeal. They appealed, and they lost.

47. Petitioners cannot — and do not — claim that the AFSCME Judicial Panel is biased, or incapable of providing complete relief. To the contrary, in an October 19, 2020 decision, the Judicial Panel sustained charges filed by

Petitioners Ozcan and Sequiera against former Local 461 President Paige and removed him from office. R. at 10. n. 2.

48. In sum, Petitioners' attempt to transform their personal unhappiness with the AFSCME Judicial Panel's decision into a matter of "public importance" should be rejected. Parties who lose on appeal often want another "bite at the apple," but that desire is no basis to grant leave to appeal here. *Martin v Curran* is well established law. The First Department followed it. There is no split in decisions from different departments of the Appellate Division, and the Third Department's *Mounteer v Bayly* decision, which applied *Martin v Curran* to union elections, has not been questioned in the 40 years since its issuance. Local 461 respectfully urges this Court to deny the motion for leave to appeal.

Dated: December 12, 2022
New York, New York



Hanan B. Kolko

STATE OF NEW YORK)		**AFFIDAVIT OF SERVICE**
)	ss.:	**BY OVERNIGHT FEDERAL**
COUNTY OF NEW YORK)		**EXPRESS NEXT DAY AIR**

I, Tyrone Heath, 2179 Washington Avenue, Apt. 19, Bronx, New York 10457, being duly sworn, depose and say that deponent is not a party to the action, is over 18 years of age and resides at the address shown above or at

On December 9, 2022

deponent served the within: **OPPOSITION TO MOTION FOR LEAVE TO APPEAL**

upon:

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the address(es) designated by said attorney(s) for that purpose by depositing **1** true copy(ies) of same, enclosed in a properly addressed wrapper in an Overnight Next Day Air Federal Express Official Depository, under the exclusive custody and care of Federal Express, within the State of New York.

Sworn to before me on December 9, 2022

Mariana Braylovskiy

MARIANA BRAYLOVSKIY
Notary Public State of New York
No. 01BR6004935
Qualified in Richmond County
Commission Expires March 30, 2026

T. Heath

Job# 317308