No. 26-2128

IN THE

Supreme Court of the United States

OCTOBER TERM 2026

UNITED OLD MATES WORKERS OF AMERICA,
Petitioner,

v.

MARION MOSEBY AND NATIONAL LABOR RELATIONS BOARD,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Fourteenth Circuit

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THE RECORD

NEW YORK LAW SCHOOL MOOT COURT ASSOCIATION
51ST ANNUAL ROBERT F. WAGNER NATIONAL LABOR AND EMPLOYMENT LAW MOOT COURT COMPETITION

United Old Mates Workers of Am. v. Moseby, No. 55-2026 (14th Cir. 2025)

UNITED STATES COURT OF APPEALS FOR THE FOURTEENTH CIRCUIT

ARGUED: OCTOBER 1, 2025

DECIDED: NOVEMBER 1, 2025

No. 55-2026

UNITED OLD MATES WORKERS OF AMERICA

***Petitioner*,**

v.

MARION MOSEBY and NATIONAL LABOR RELATIONS BOARD

***Respondents*.**

On Appeal from the United States District Court for the District of Wagner

***Chief District Judge*, COSTANZA.**

Before: RAMANA, *Chief Judge,* and CRAFT and GUMPEL, *Circuit Judges*.

Opinion for the Court by: *Chief Judge*, RAMANA, and *Circuit Judge*, CRAFT.

Dissent by: *Circuit Judge*, GUMPEL.

RAMANA, *Chief Judge*:

BACKGROUND

Good labor relations, like good housekeeping, cannot be achieved by sweeping things under the rug. This appeal follows the United States District Court for the District of Wagner's grant of summary judgment in favor of Respondent Marion Moseby (hereinafter "Moseby") on his Labor-Management Reporting and Disclosure Act (hereinafter "LMRDA") claim, and its dismissal of Petitioner United Old Mates Workers of America's (hereinafter the "Union") suit to enjoin proceedings before Respondent National Labor Relations Board (hereinafter "NLRB") for failure to show irreparable harm. Set forth below are the undisputed facts, as determined by the District Court.

The Tipton Hotel and United Old Mates Workers of America

Moseby is a bellhop at the Tipton Hotel (hereinafter the "Hotel"). The Hotel is located within the federal judicial District of Wagner, in the Fourteenth Circuit. Millions of travelers flock to the Hotel every year for a chance to sit in the lap of luxury—enjoying lavish accommodations, exceptional service, and run-ins with A-list celebrities.

The Hotel, however, has not always made headlines for such positive reasons. Twenty years ago, the Hotel found itself at the center of a scandal after an investigative journalist, posing as a guest, released a bombshell exposé revealing that employees were allegedly paid meager wages while being expected to work grueling hours in substandard conditions, often without proper breaks. Meanwhile, the Tipton family, who owned the Hotel, were jet-setting around the world, reaping the benefits of their employees' labor. Capitalizing on the momentum generated by the publicity, employees of the Hotel organized and formed an independent union, which filed a representation petition with the NLRB pursuant to Section 9(c) of the National Labor Relations Act (hereinafter "NLRA") seeking certification as the employees' exclusive bargaining representative. Officially, the Union was formed, representing Hotel employees, including bellhops, concierges, housekeeping staff, and valets.

An old Union legend credits Moseby, then a new employee, as a driving force behind the unionization movement. Today, Moseby remains employed at the Hotel, where he is approaching his twentieth anniversary. Before joining the Hotel as a bellhop, Moseby was a paralegal for the American Civil Liberties Union. He continues to pursue his passion for advocacy by serving as a Union delegate, a position to which he was elected by the Union's membership. Moseby is well-respected amongst his peers and has become a favorite of guests, known for his hard work and dedication.

Hostile Negotiations in 2021

For years, the Union and the Hotel's management have held diverging views regarding labor conditions. These tensions came to a head in 2021, when the 2018 Collective Bargaining Agreement (hereinafter "2018 CBA") between the Union and the Hotel was set to expire amid severe understaffing at the Hotel, prompting the Union's members to prepare to strike. During this period, Moseby assumed additional employment responsibilities, including parking cars, checking

guests into the Hotel, and bringing guests' luggage to their rooms. Moseby had always been a diligent employee and took the additional work in stride. Maintenance worker Arwin Hochauser, however, was outraged by the increased workload placed on employees. Hochauser also serves as President of the Union. In that role, he oversees and leads the Union's Executive Board, which votes on matters concerning the removal of Union delegates, and heads the Union's negotiation committee. In his capacity as President of the Union, President Hochauser vigorously negotiated with the Hotel's management, demanding that the Hotel hire additional employees.

Just three days before the expiration of the 2018 CBA, negotiations between the Union and the Hotel reached a stalemate, prompting the Union's rank-and-file members to prepare to strike. Although Moseby supported the strike, other employees remained torn. One such employee was Esteban Ramirez, the Hotel's night concierge, who had likewise been elected by the Union's membership to serve as a delegate. Mr. Ramirez developed familiarity with labor matters through his pursuit of a Juris Doctor at Wagner School of Law while working at the Hotel. Nevertheless, Mr. Ramirez harbored reservations about the Union's leadership and its approach to collective bargaining. In particular, he viewed the Union's wage demands as excessive and unrealistic, and questioned whether the Union had engaged in good-faith negotiations with the Hotel.

Two days before the expiration of the 2018 CBA, the Union held a strike vote meeting. At the meeting, Mr. Ramirez spoke out and voiced his concerns regarding the proposed work stoppage. He questioned the Union's bargaining strategy and whether members had received sufficient information about the potential risks and outcomes of a strike. Mr. Ramirez remarked that "members should have as much information as possible before deciding whether to authorize a strike" and questioned whether the Union's bargaining objectives were likely to be achieved through continued negotiations. While some Union members viewed his comments as encouraging informed deliberation, others believed they could undermine confidence in the Union's bargaining position and leadership. The Union, however, did not discipline Mr. Ramirez for his remarks.

On the final day before the 2018 CBA expired, the Union and the Hotel reached a new Collective Bargaining Agreement (hereinafter "2021 CBA"), thereby averting the looming strike.

2024 Changes to the Tip System and Hiring of New Employees

For years, guests at the Hotel left discretionary cash tips for bellhops and valets, which supplemented their modest hourly wages. The bellhops and valets participated in an informal tip pool, distributing the tips equitably among front-of-house staff who directly served guests. However, in 2024, one year before the 2021 CBA was set to expire, the Hotel implemented two significant changes that substantially reduced employees' take-home tip income.

First, the Hotel effectively restructured its tip pool by adding newly hired "guest experience associates"—a hybrid front-desk and porter role—to the pool. Moseby, Mr. Ramirez, and the other veteran employees of the tip pool were outraged. The guest experience associates spent less time interacting with guests than the veteran employees, yet they were included in the tip pool. Their inclusion substantially reduced the take-home tip income of veteran employees, including Moseby.

Second, the Hotel introduced a new "guest convenience charge," a mandatory eighteen-percent charge automatically added to every guest's bill for "porterage and valet services." The

Hotel characterized the charge as an industry-standard administrative fee, rather than a gratuity, and retained all revenue generated from the charge as income.

According to Moseby and other long-time employees, managers verbally explained during the hiring process that tips would constitute a substantial portion of employees' compensation. Some employees recall being told that tips were "a big part of what you will take home here." These discussions were informal and undocumented, and witnesses differ as to the precise terms used. The employee handbook is silent regarding the distribution of tips and service charges.

2025 Strike Talks

As the 2021 CBA approached expiration in early 2025, the Union and the Hotel began negotiating a successor agreement. At the time, veteran employees like Moseby were receiving the lowest total compensation of their careers. Against this backdrop of declining compensation and longstanding tensions, the Union once again prepared to strike.

Over the following three weeks, while negotiations continued, President Hochauser held a series of private meetings with London Tipton, the heiress and owner of the Hotel, and Maddie Fitzpatrick, the Hotel's Director of Labor Relations. President Hochauser characterized these meetings to the rest of the Union as "exploratory conversations" rather than formal bargaining sessions. He did not invite the full bargaining committee to attend, citing scheduling conflicts, and instead attended each meeting alone. In total, President Hochauser met privately with Ms. Tipton and Ms. Fitzpatrick four times over the three-week period. No written minutes or summaries of the meetings were circulated to the Union's membership.

At the Union's next general membership meeting, which was held after the four private meetings had concluded, Moseby inquired about President Hochauser's discussions with Hotel management. President Hochauser described them only in general terms, stating, "We are making progress, and I think the Hotel understands our concerns." When Moseby asked about the specific proposals exchanged during the meetings, President Hochauser declined to provide details, stating that "premature disclosure could compromise our position at the table." President Hochauser further advised the Union's membership that a strike was becoming increasingly necessary and urged members to remain united in support of the Union's bargaining strategy. Moseby was frustrated by Hochauser's refusal to disclose the substance of the private meetings.

Around the same time, discussion began circulating among Union members on Beddit, a chatroom accessible only to verified Union members. Some Beddit posts suggested that President Hochauser had privately discussed potential concessions with Hotel management before formal bargaining sessions. No evidence of financial misconduct or personal benefit to Hochauser ever emerged. Nevertheless, some members questioned whether the private meetings were part of the ordinary course of collective bargaining or instead indicated that President Hochauser's interests had become misaligned with those of the Union's membership.

Four weeks after the Union's previous general membership meeting, the Union held another such meeting during which Moseby openly questioned President Hochauser's leadership and the lack of transparency surrounding the bargaining process. Moseby stated that "the President cannot tell us they are fighting for every dollar while privately discussing concessions with

management." He further expressed his belief that Hochauser had at least considered modifying portions of the Union's wage proposals during his private meetings with Hotel management. Moseby explained that his concerns were based on information already circulating among Union members, including discussions on Beddit.

Moseby was not the only Union delegate to express concern. At the same general membership meeting, Muriel Harris, a member of the Hotel's housekeeping staff and fellow elected Union delegate, echoed concerns about the transparency of the bargaining process and questioned whether President Hochauser's private meetings with Hotel management were consistent with the interests of the Union. Ms. Harris criticized Hochauser's leadership and suggested that members were entitled to greater candor regarding the negotiations. Reactions among Union members to Moseby's and Ms. Harris's statements were mixed. Some viewed their comments as appropriate internal advocacy on behalf of the Union membership, while others believed the comments further undermined confidence in the Union's bargaining strategy at a critical stage of negotiations.

In the two weeks that followed, as the 2021 CBA's expiration approached, the Union and the Hotel remained unable to reach an agreement. When the 2021 CBA expired without a successor agreement, negotiations broke down. The Union then called for a strike vote, and, as required by the Union's bylaws, a supermajority of members voted in favor of a strike. Hotel employees subsequently walked off the job. Although losing their regular pay was difficult, many employees, including Moseby, remained committed to the Union and picketed across the street from the Hotel each day throughout the strike.

Moseby's Removal

Three days into the strike, several Executive Board members requested that the Board consider whether Moseby's statements warranted review under Article I, Section 4 of the Union Constitution. That provision states:

> "Delegates shall conduct themselves in a manner consistent with the interests, objectives, and integrity of the Union. Delegates shall not engage in any conduct, communication, or activity that is inconsistent with their responsibilities as representatives, contrary to the Union's interests or purposes, or otherwise detrimental to the Union, as determined under these governing documents or applicable Union processes."

The Executive Board subsequently convened a special session to determine whether Moseby's conduct violated Article I, Section 4, and, if so, whether Moseby should be removed from his position. The Executive Board then held a vote on Moseby's removal, with President Hochauser participating in the vote. In its written decision, the Executive Board concluded that "Moseby's public accusations against Union leadership, together with statements that the Board determined either disclosed or appeared to draw upon internal bargaining strategy, materially interfered with the Union's collective bargaining efforts and constituted a violation of Article I, Section 4 of the Union's Constitution." Based on that finding, the Board removed Moseby from his position as a Union delegate.

Moseby was furious. He maintained that the Board's stated justification was merely pretext for punishing him because he criticized President Hochauser's leadership during negotiations. Moseby also pointed to what he viewed as inconsistent treatment among Union delegates. Ms. Harris, who had criticized President Hochauser's leadership and questioned the transparency of the bargaining process at the same general membership meeting, was not removed from her position as a Union delegate. Similarly, Mr. Ramirez had strongly criticized Union leadership during the 2021 negotiations and questioned whether the Union had negotiated in good faith, yet the Union did not discipline him for his remarks. Following Moseby's removal, one Executive Board member allegedly remarked that Moseby had "embarrassed President Hochauser in front of the entire membership." Another Board member reportedly stated that "delegates cannot publicly undermine Union leadership during negotiations." Moseby contends that these statements demonstrate that the Executive Board's true concern was his public criticism of President Hochauser, rather than any alleged violation of Article I, Section 4 of the Union Constitution.

The Union, however, maintains that these remarks reflected concern about the effect Moseby's statements had on member confidence and the Union's bargaining position, rather than disagreement with his criticism itself. The Union further maintains that Moseby's removal was based on the Executive Board's determination that his conduct violated Article I, Section 4 of the Union Constitution.

Two weeks after the strike began, the Union and the Hotel reached an agreement on the terms of the 2025 CBA, bringing the strike to an end.

PROCEDURAL HISTORY

Moseby's Retaliation Claim under the LMRDA

After being removed from his position as Union delegate, Moseby filed suit in the District Court of Wagner, alleging that his removal violated § 101(a)(2) of the LMRDA.[1] He asserted that his removal was not based on legitimate Union concerns but was instead retaliatory and taken in response to his protected speech, including criticism of Union leadership and expressing dissenting views on Union affairs, such as bargaining strategies. The District Court granted summary judgment in favor of Moseby, holding that the motivating-factor causation standard applies and thus, Moseby's protected speech was a substantial factor in the Union's decision to remove him. The Union timely appealed, arguing that the District Court applied the incorrect causation standard and that Moseby was required to prove that, but for his protected speech, he would not have been removed as Union delegate.

The Union's Attempt to Obtain an Injunction against the NLRB

Moseby also filed an unfair labor practice charge against the Union with the NLRB. He alleges that the Union's disciplinary action violated § 8(b)(1)(A) of the NLRA by prohibiting the

[1] The statute of limitations for claims brought under the LMRDA is determined by reference to the forum state's general or residual personal-injury statute of limitations. *Shivers v. Int'l Bhd. of Elec. Workers Local Union 349*, 262 F. App'x 121, 127 (11th Cir. 2008) (citing *Hester v. Int'l Union of Operating Eng'rs*, 878 F.2d 1309, 1310 (11th Cir. 1989)). Because the forum state's residual personal-injury statute of limitations is ten years, Moseby's LMRDA claim, brought within ten years of the alleged violation, is timely.

exercise of his § 7 rights "to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection." Moseby asserts that the Union prevented him from engaging in advocacy on behalf of the bargaining unit regarding the Union's opaque negotiations with the Hotel. The Regional Director of Region 33, which covers the District of Wagner, issued a complaint, and a hearing was set to be held before an NLRB Administrative Law Judge. The hearing has been stayed during the pendency of this litigation.

Subsequently, the Union filed suit against the NLRB in the District Court of Wagner, seeking to enjoin the NLRB proceeding. The Union did not contest the merits of Moseby's unfair labor practice complaint; rather, it argued that the NLRB's structure is unconstitutional because the NLRB board members are insulated from at-will removal by the President of the United States. The Union theorized that for-cause tenure protection in this role violates the President's authority under Article II of the U.S. Constitution. In response, the NLRB argued that the Norris-LaGuardia Act, 29 U.S.C. § 101, bars the District Court from issuing an injunction in "any case involving or growing out of a labor dispute" and that the Union's suit, regardless of its constitutional framing, necessarily grows out of the underlying labor dispute between the Union and the Hotel.

The NLRB moved to dismiss the Union's suit for lack of subject matter jurisdiction. The District Court granted the NLRB's motion and dismissed the Union's suit, denying injunctive relief, because the Union failed to show that it would suffer irreparable harm. The District Court did not resolve the merits of the NLRB's defense under the Norris-LaGuardia Act. The Union timely appealed that decision to this Court.

The Union's separate appeals from the District Court's decision have been consolidated for consideration by this Court, which has jurisdiction pursuant to 28 U.S.C. § 1291.

STANDARDS OF REVIEW

Moseby's Retaliation Claim under the LMRDA

As to the LMRDA claim, the Court reviews the District Court's grant of summary judgment *de novo*, viewing all facts in a manner most favorable to and drawing all reasonable inferences for the nonmoving party. *Marshall v. Local 701 Int'l Bhd. of Elec. Workers*, 387 F. App'x 623, 627 (7th Cir. 2010) (citing *Goelzer v. Sheboygan Cnty.*, 604 F.3d 987, 992 (7th Cir. 2010)). Summary judgment is appropriate "if the pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law." *Marshall*, 387 F. App'x at 627 (quoting Fed. R. Civ. P. 56(c)(2) (2009), now codified at Fed. R. Civ. P. 56(a)); *see also Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986) (holding that summary judgment is appropriate where the nonmoving party fails to make a sufficient showing on an essential element of its case on which it bears the burden of proof).

The Union's Suit to Enjoin the NLRB Proceeding

Whether the Norris-LaGuardia Act applies is a question of law that we review *de novo*. *Amazon.com Servs., LLC v. Teamsters Amazon Nat'l Negotiating Comm.*, 163 F.4th 624, 629 (9th Cir. 2025) (other citations omitted); *see also Spring Creek Rehab. & Nursing Ctr. LLC v. NLRB*,

160 F.4th 380, 383 (3d Cir. 2025) (stating that conclusions of law underlying a preliminary injunction decision are reviewed *de novo*).

THE LABOR-MANAGEMENT REPORTING AND DISCLOSURE ACT

I. The District Court correctly applied the motivating-factor causation standard to Moseby's claim under LMRDA § 101(a)(2).

The question before this Court is what causation standard a plaintiff must satisfy to prevail on a retaliation claim under the LMRDA. Moseby contends that the motivating-factor standard governs, while the Union argues that a plaintiff must establish but-for causation. Although our sister circuits are divided on this issue, the District Court correctly applied the motivating-factor standard to Moseby's retaliation claim.

Accordingly, the decision of the District Court is AFFIRMED.

II. Analysis

a. Purpose of Title I of the LMRDA

The purpose of Title I of the LMRDA is central to determining the appropriate causation standard. Congress enacted the LMRDA in 1959 in response to widespread corruption and undemocratic practices within labor unions uncovered during the McClellan Committee investigations. *Barger v. United Bhd. of Carpenters & Joiners of Am.*, 3 F.4th 254, 263 (6th Cir. 2021) (citing *Black v. Ryder/P.I.E. Nationwide, Inc.*, 970 F.2d 1461, 1466 (6th Cir. 1992)). Title I of the LMRDA, commonly referred to as the union members' "Bill of Rights," was enacted to ensure democratic governance by protecting the rights of rank-and-file members to participate meaningfully in union affairs, openly debate union policies, criticize union leadership, and hold union officials accountable. *Barger*, 3 F.4th at 263 (quoting *Black*, 970 F.2d at 1466).

Central to these protections is § 101(a)(2), codified at 29 U.S.C. § 411(a)(2), which provides that "[e]very member of any labor organization shall have the right to . . . express any views, arguments, or opinions" and to express those views at union meetings concerning business properly before the membership, subject only to the union's reasonable rules governing the conduct of meetings. *Bastani v. Am. Fed'n of Gov't Emps., AFL-CIO*, 70 F.4th 563, 566 (D.C. Cir. 2023). Congress enacted § 101(a)(2) to guarantee union members meaningful freedom of expression while preserving unions' ability to govern themselves. As the Ninth Circuit explained, "Congress sought to provide certain basic and fundamental rights to union members, while at the same time avoiding undue judicial interference with the mechanics of union self-governance." *Teamsters Joint Council No. 42 v. Int'l Bhd. of Teamsters, AFL-CIO*, 82 F.3d 303, 305 (9th Cir. 1996) (quoting *Ackley v. W. Conf. of Teamsters*, 958 F.2d 1463, 1475 (9th Cir. 1992)). Accordingly, the statute strikes a careful balance between protecting members' rights and permitting unions to adopt reasonable internal rules. *Id.* (citing *United Steelworkers of Am. v. Sadlowski*, 457 U.S. 102, 110 (1982)).

Consistent with that purpose, courts have recognized that § 101(a)(2) protects union members from retaliation for exercising their rights of free expression. Specifically, the provision

"protects union members from direct interference with union membership rights in retaliation for their expression of opinions concerning union activities." *Tusino v. Int'l Bhd. of Teamsters*, 38 F. App'x 91, 94 (2d Cir. 2002) (quoting *Maddalone v. Local 17, United Bhd. of Carpenters & Joiners of Am.*, 152 F.3d 178, 183 (2d Cir. 1998)). These protections ensure that union members may speak freely on matters affecting their union without fear of reprisal, thereby advancing Congress's central objective of promoting democratic and accountable labor organizations.

b. Standard to Prove Causation

The parties agree that § 101(a)(2) does not identify the causation standard a plaintiff must prove to prevail on a retaliation claim. The provision simply guarantees that "[e]very member of any labor organization shall have the right . . . to express any views, arguments, or opinions." 29 U.S.C. § 411(a)(2). From that silence, our sister circuits have drawn different conclusions.

Several courts have concluded that but-for causation governs retaliation claims under statutes that do not expressly adopt a motivating-factor standard. That approach is reflected in *University of Texas Southwestern Medical Center v. Nassar*, 570 U.S. 338, 352–53, 360–62 (2013), which held that Title VII retaliation claims require but-for causation because Congress did not extend Title VII's motivating-factor provision to the statute's retaliation provision, and *Gross v. FBL Financial Services, Inc.*, 557 U.S. 167, 176–78 (2009), which held that the Age Discrimination in Employment Act requires but-for causation because the statute prohibits adverse actions taken "because of" an employee's age. Further, the D.C. Circuit recently adopted that approach in *Hudson v. American Federation of Government Employees*, 151 F.4th 456, 463 (D.C. Cir. 2025), holding that retaliation claims under § 101(a)(2) of the LMRDA require proof of but-for causation. The Seventh Circuit has likewise held that "a mixed-motive theory of liability is never proper in a suit brought under the LMRDA." *Serafinn v. Local 722, Int'l Bhd. of Teamsters*, 597 F.3d 908, 914 (7th Cir. 2010) (rejecting application of the mixed-motive framework to LMRDA retaliation claims).

We are not persuaded. Although the D.C. Circuit held in *Hudson* that an LMRDA retaliation claim requires but-for causation, its application of that standard turned on facts materially different from those presented here. 151 F.4th at 461. In *Hudson*, the plaintiff's removal followed an alleged violation of union rules governing conduct separate from the substance of his protected speech. *Id.* at 459–61. Here, by contrast, the Executive Board expressly relied on the content of Moseby's criticism of Union leadership and his statements concerning the ongoing bargaining process, while similarly situated delegates who voiced comparable criticisms were not disciplined. Those facts permit a reasonable inference that the stated constitutional violation was pretextual and that, but for Moseby's protected criticism of Union leadership, he would not have been removed from his delegate position.

Further, *Nassar* and *Gross* interpreted statutes that differ in both structure and purpose from Title I of the LMRDA. In *Nassar*, 570 U.S. at 352–53, the Court's analysis turned on Title VII's unique statutory framework. Congress amended Title VII's substantive anti-discrimination provision in 1991 to expressly allow liability when discrimination was a "motivating factor," 42 U.S.C. § 2000e-2(m), but left the neighboring retaliation provision unchanged. The Court treated that deliberate distinction as evidence that Congress intended the motivating-factor standard to

apply only to discrimination claims, not retaliation claims. Title I of the LMRDA has no comparable structure. Congress did not amend one provision to adopt a lower causation standard while leaving an adjacent retaliation provision untouched. Because the statutory feature that drove the Court's reasoning in *Nassar* is absent here, the inference on which *Nassar* relied does not apply.

Additionally, the reasoning of *Nassar* and *Gross* does not readily extend to Title I of the LMRDA. Those decisions interpreted statutes primarily concerned with defining employer liability in the employment-discrimination context. Title I of the LMRDA serves a different purpose. Rather than limiting liability, Congress enacted Title I because "the rights enumerated in Title I were deemed 'vital to the independence of the membership and the effective and fair operation of the union as the representative of its membership' and Congress wanted to protect the rights of rank-and-file union members and to promote their 'full and active participation . . . in the affairs of the union.'" *Hall v. Cole*, 412 U.S. 1, 7 (1973) (quoting *Cole v. Hall*, 462 F.2d 777, 780 (2d Cir. 1972)).

Section 101(a)(2) reflects that purpose. Congress modeled the provision on the First Amendment, not Title VII. *See Sadlowski*, 457 U.S. at 111 ("First Amendment principles may be helpful, although they are not controlling."). Consistent with that foundation, courts have long analyzed retaliation claims brought by union dissidents under the mixed-motive, burden-shifting framework developed for First Amendment retaliation claims by public employees. *See Mt. Healthy City Sch. Dist. Bd. of Educ. v. Doyle*, 429 U.S. 274, 287 (1977) (holding that a plaintiff must show protected conduct was a substantial or motivating factor in the adverse action, after which the defendant may avoid liability by showing it would have taken the same action absent the protected conduct); *accord Petramale v. Local No. 17 of Laborers' Int'l Union*, 736 F.2d 13, 16–17 (2d Cir. 1984) (holding that union discipline violates the LMRDA where protected speech is included as an essential basis for discipline and is inextricably intertwined with alleged misconduct); *see also Black*, 970 F.2d at 1469–70 (applying a mixed-motive analysis to an LMRDA retaliation claim); *Bradford v. Textile Workers Local 1093*, 563 F.2d 1138, 1143 (4th Cir. 1977) (recognizing that retaliatory motive may be established where protected union activity contributes to the adverse action).

Under this framework, a plaintiff need only show that protected speech was a substantial or motivating factor in the challenged action. The burden then shifts to the union to prove that it would have taken the same action even in the absence of protected activity. *Mt. Healthy*, 429 U.S. at 287. The Sixth Circuit reaffirmed the substantial-factor test in *Barger*, 3 F.4th at 268–69, even after considering *Nassar* and *Gross*. The court recognized that the LMRDA's remedial purpose counsels against importing a heightened causation standard from materially different statutory schemes, particularly because union leadership often controls much of the evidence a member needs to prove retaliation.

The dissent argues that the holding in *Sheet Metal Workers' International Ass'n v. Lynn*, 488 U.S. 347 (1989), that a union member's removal violated the LMRDA because it occurred as a direct result of his decision to express disagreement with the trustee's dues proposal, should compel this Court to adopt but-for causation as the appropriate standard. *Id.* at 354. That argument is misplaced. Although *Lynn* described the plaintiff's removal as occurring "as a direct result of his decision to express disagreement" with the trustee's dues proposal, the case did not present a

mixed-motive claim. *Id.* at 354. Rather, the case involved a single asserted basis for Lynn's removal, his dissenting vote on the dues proposal, leaving no occasion for the Court to distinguish between motivating-factor and but-for causation. *Id.* at 353–54. The Court's description of the facts as a "direct result" cannot be read as resolving a causation question that was never before it. *Id.* at 354.

What *Lynn* does establish is that § 101(a)(2) of the LMRDA is principally concerned with the chilling effect of retaliation on protected speech, not only on the member who is punished, but also on other union members who witness the retaliation. *Id.* at 354–55 (explaining that Lynn's removal "presumably discouraged him from speaking out in the future"). A substantial-factor standard best advances that purpose. It protects members' statutory rights without requiring them to eliminate every alternative explanation a union may later offer for its actions.

Applying that standard, we conclude that the record supports the District Court's judgment. Moseby's criticism of President Hochauser's secrecy surrounding the 2025 negotiations constituted protected speech under § 101(a)(2). His remarks concerned "business properly before the membership" at a general membership meeting. *Bastani*, 70 F.4th at 566. The record supports the District Court's determination that Moseby's protected speech was, at a minimum, a substantial factor in his removal. The Executive Board convened a special session shortly after Moseby spoke. Its written decision mentioned Moseby's "public accusations against Union leadership" as a basis for his removal. Board members later stated that Moseby had "embarrassed President Hochauser in front of the entire membership" and that "Union delegates cannot publicly undermine Union leadership." President Hochauser oversees and leads the Executive Board, which voted to remove Moseby, and he participated in that vote. Because Moseby's statements criticized Hochauser's leadership, his participation in the removal decision provides additional evidence from which retaliatory motive may be inferred. Together, this evidence supports the inference that Moseby's protected speech was not merely incidental to the Board's decision but played a significant role in his removal. *See Dolan v. Transp. Workers Union*, 746 F.2d 733, 740–41 (11th Cir. 1984) (recognizing that union rules may not be applied as a pretext to suppress protected member speech).

The evidence of selective enforcement reinforces that conclusion. At the same meeting at which Moseby spoke, Ms. Harris voiced similar criticism of President Hochauser's leadership yet faced no discipline. Likewise, Mr. Ramirez openly questioned the Union's bargaining strategy and the leadership's good faith in 2021 without consequence. The Union may enforce rules designed to protect legitimate institutional interests, but it may not selectively invoke those rules to punish protected expression. *See Dolan*, 746 F.2d at 740–41. Differential treatment of Union members who engaged in comparable criticism therefore provides additional evidence that the Union's stated justification was pretextual. Taken together with the Board's contemporaneous references to Moseby's criticism of Union leadership, Hochauser's participation in the removal vote, and the evidence of selective enforcement, this evidence supports the District Court's conclusion that Moseby's protected speech was a substantial factor in his removal.

Because Moseby established that his protected speech was a substantial factor in the Union's decision to remove him, and because the Union failed to raise a genuine dispute of material fact as to whether it would have reached the same decision absent that protected activity, the decision of the District Court is affirmed.

THE NORRIS-LAGUARDIA ACT

I. We affirm the District Court's ruling because the lawsuit between the Union and the NLRB does indeed "grow out of" a labor dispute between the Hotel and its employees.

Federal courts must dismiss cases over which they do not have subject matter jurisdiction. Fed. R. Civ. P. 12(h)(3). On appeal, the Union contends that the District Court has subject matter jurisdiction to rule on the merits of this case because its constitutional challenge to the NLRB's structure is distinct from the underlying labor dispute. In response, the NLRB submits that the District Court does not have jurisdiction to hear this suit. We find the Union's contention unavailing because the matter before the Court is inextricably intertwined with the strike stemming from the employer-employee relationship between the Hotel and its employees.

The Norris-LaGuardia Act (hereinafter "NLGA") strips the District Court of subject matter jurisdiction to issue the injunction sought by the Union. Furthermore, the NLGA prohibits district courts from enjoining labor disputes when a case does not involve arbitration or invoke any federal statutory rights, and no other exception applies. *See Jacksonville Bulk Terminals, Inc. v. Int'l Longshoremen's Ass'n*, 457 U.S. 702, 708 (1982) (citing *Boys Markets, Inc. v. Retail Clerks Union, Loc. 770*, 398 U.S. 235, 249–53 (1970)); *Lukens Steel Co. v. United Steelworkers of Am.*, 989 F.2d 668, 678 (3d Cir. 1993).

This holding is rooted in Supreme Court precedent and aligned with jurisprudence from the Third and Ninth Circuits. *See Jacksonville Bulk Terminals, Inc.*, 457 U.S. at 720 (upholding the NLGA's expansive prohibition against judicial interference with labor disputes); *see also Spring Creek*, 160 F.4th at 389 (barring a district court from enjoining an NLRB proceeding when the proceeding arose out of an underlying labor dispute); *Amazon.com Servs.*, 163 F.4th at 636 (citing 29 U.S.C. § 101) ("Subject to exceptions not at issue here, Congress displaced the federal judiciary's power to issue injunctive relief in cases 'involving or growing out of a labor dispute.'").

Accordingly, the decision of the District Court is AFFIRMED.

II. Analysis

In reviewing the Union's appeal, we first examine the text and scope of the NLGA. The Act provides:

> No court of the United States . . . shall have jurisdiction to issue any restraining order or temporary or permanent injunction *in a case involving or growing out of* a labor dispute, except in a strict conformity with the provisions of this chapter; nor shall any such restraining order or temporary or permanent injunction be issued contrary to the public policy declared in this chapter. 29 U.S.C. § 101 (emphasis added).

Just because a case "involve[s] or grow[s] out of a labor dispute" does not mean that jurisdiction is automatically withdrawn from a district court. We must also consider the exceptions laid out in 29 U.S.C. § 107 (hereinafter "Section 7"). Precedent from the Supreme Court further directs us to review two additional exceptions to the NLGA. First, federal courts do have jurisdiction to provide injunctive relief in labor disputes when necessary to accommodate the

federal policy favoring arbitration. *Jacksonville Bulk Terminals, Inc.*, 457 U.S. at 708 (citing *Boys Markets*, 398 U.S. at 249–53). Second, courts have jurisdiction "to reconcile the [NLGA] with other federal statutes." *Lukens Steel Co.*, 989 F.2d at 678.

First, we review whether the NLGA applies. Second, we look to whether any exceptions still provide the District Court with subject matter jurisdiction to issue the injunction. Finally, we address whether the *Thunder Basin* factors should be utilized to resolve this issue.

a. The Norris-LaGuardia Act deprives the District Court of jurisdiction to rule on the merits of the Union's suit.

Federal courts may not enjoin labor disputes unless a specific exception applies. *See Burlington N. Santa Fe Ry. Co. v. Int'l Bhd. of Teamsters Loc. 174*, 203 F.3d 703, 709 (9th Cir. 2000) (citing *Milk Wagon Drivers' Union v. Lake Valley Farm Prods.*, 311 U.S. 91, 102 (1940)) (explaining that federal labor injunctions are unambiguously "abuses of judicial power"). The NLGA defines "labor dispute" to include "any controversy concerning terms or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment." 29 U.S.C. § 113(c). This language is patently broad, but it is so "because Congress was intent upon taking the federal courts out of the labor injunction business except in . . . very limited circumstances." *Marine Cooks & Stewards v. Panama S.S. Co.*, 362 U.S. 365, 369 (1960). As such, the Supreme Court has honored congressional intent and repeatedly construed the NLGA broadly. *See Jacksonville Bulk Terminals, Inc.*, 457 U.S. at 708. The breadth of construction, however, is not boundless. To be sure, the critical inquiry in determining whether the NLGA removes jurisdiction from a federal court hinges on whether "the employer-employee relationship . . . [is] the matrix of the controversy." *Columbia River Packers Ass'n v. Hinton*, 315 U.S. 143, 147 (1942).

Here, an employer-employee relationship is indeed the matrix of the controversy. Strike negotiations between the Union, representing Tipton Hotel employees, and the Tipton Hotel sparked the internal dispute between Moseby and Union leadership. While the Union advocated on behalf of its members to combat the changes to the tip system, Moseby was removed from his Union delegate position for speaking out against Union leadership. Judge Gumpel and the Union would lead us to believe that the employer-employee dispute is too attenuated to be the "matrix of the controversy." But the statutory language renders their argument inapposite. 29 U.S.C. § 113(c) explains that "[t]he term 'labor dispute' includes any controversy concerning terms or conditions of employment . . . ." The underlying controversy between the Union and the Hotel was assuredly a "labor dispute," as contemplated by the Act.

The force of the NLGA is not extinguished by the fact that this lawsuit arises from a dispute between a Union and a Union member. *See Bodecker v. Loc. Union No. P-46*, 640 F.2d 182, 185 (8th Cir. 1981) (holding that the statutory language of the Norris-LaGuardia Act encompasses an intraunion dispute); *see also Barnes & Tucker Co. v. United Mine Workers of Am.*, 338 F. Supp. 924, 925–27 (W.D. Pa. 1972) (determining that an injunction could not be issued in a "disagreement between the union members and the upper echelons of the union hierarchy"). Even if the disputants in this lawsuit do not stand in the "proximate relation of employer and employee," the NLGA will still apply when the cause of action is rooted in a "labor dispute." *See* § 113(c). As the Supreme Court declared, and as we adopt today, "[t]hese [statutory] definitions plainly

embrace the controversy which gave rise to the instant suit and classify it as one arising out of a dispute defined as a labor dispute." *New Negro All. v. Sanitary Grocery Co.*, 303 U.S. 552, 560 (1938).

Yet, the Union argues that its constitutional challenge is distinguishable because it is detached from Moseby's unfair labor practice complaint. We find this argument unavailing.

True, a "degree of separation" does exist between this case and the underlying labor dispute. *Spring Creek*, 160 F.4th at 385. But precedent forecloses the argument that this separation is enough to stretch the constitutional challenge outside the boundaries of the NLGA's reach. Unquestionably, district courts may not enjoin "secondary activity" that arises out of a labor dispute. *See Burlington N. R.R. Co. v. Bhd. of Maint. of Way Emps.*, 481 U.S. 429, 443 (1987).

In *Burlington*, the Supreme Court analyzed the NLGA's legislative history. *See id.* at 440. The Court determined that "[t]he historical background of the Norris-LaGuardia Act . . . reveals that Congress intended to preclude courts from enjoining secondary [activity] as well as primary activity." *Id. Burlington* concerned a union on strike that extended its picketing to other railroads that supported the union's employer. *Id.* at 433. These "secondary" railroads sought an injunction, arguing that the NLGA was inapplicable because their lawsuit did not involve a labor dispute; rather, it involved unlawful picketing by non-employees. *Id.* at 433–34. The Court found this argument unpersuasive, holding that the breadth of the NLGA could not be narrowed to exclude "those battles involving secondary activity." *Id.* at 443.

It is inconsequential that the Union brings a constitutional challenge to the NLRB's structure. Without the underlying strike, this lawsuit would not be before us. As Judge Easterbrook explained: "That the . . . [matter] is not itself a 'labor dispute' does not make this suit less one 'growing out of' a labor dispute." *AT&T Broadband, LLC v. Int'l Bhd. of Elec. Workers*, 317 F.3d 758, 760 (7th Cir. 2003). Congress intended the NLGA to be broad; precedent has applied it as such, and we follow suit with today's holding.

We further take this opportunity to address the Supreme Court's recent holding in *Trump v. Slaughter*, 146 S. Ct. 2283 (2026). As it pertains to the present matter, *Slaughter* stands for the proposition that the NLRB board members' tenure protections are likely unconstitutional. *Id.* at 2305 (declaring that for-cause removal protections of an executive agency's members are unconstitutional when the agency "[falls] well within the heartland of executive power"). This case reaches beyond what we must consider. Today, we only decide the jurisdictional issue triggered by the Norris-LaGuardia Act. *Slaughter* bears no weight on our discussion.

b. No exceptions to the NLGA apply because this case does not concern arbitration or any federal statutory rights.

We next consider whether an exception to the NLGA applies. To retrace our steps, these exceptions are (1) to accommodate federal policy favoring arbitration, and (2) to reconcile the application of the NLGA with other statutes. *See Jacksonville Bulk Terminals, Inc.*, 457 U.S. at 708 (citing *Boys Markets*, 398 U.S. at 249–53); *Lukens Steel Co.*, 989 F.2d at 678. Neither exception applies. This case does not involve arbitration, and the Union's claim for injunctive relief does not implicate any federal statutory rights. *See Spring Creek*, 160 F.4th at 388–89

(establishing that when a case does not involve arbitration, and is not based on federal statutory rights, the exceptions to the NLGA's bar on injunctive relief do not apply).

Furthermore, Section 7 allows district courts to retain jurisdiction over labor disputes under certain enumerated exceptions. However, "we need not address . . . [Section 7] because the District Court in our case denied injunctive relief without considering whether the case involves or grows out of a labor dispute." *Id.* at 384 n.1.

c. We need not conduct a *Thunder Basin* analysis because the NLGA's plain text forecloses this inquiry.

By way of background, a *Thunder Basin* analysis arises when Congress prescribes "a statutory-review scheme of agency action that implicitly divests district courts of subject-matter jurisdiction." *Amazon.com Servs.*, 163 F.4th at 635 (other citations omitted). Congress generally delegates the responsibility of reviewing agency actions to the agency first, and then a court of appeals. *See Axon Enter., Inc. v. FTC*, 598 U.S. 175, 185 (2023). Courts rely on *Thunder Basin* to determine whether the claim asserted by the party is "of the type Congress intended to be reviewed within this statutory structure." *Thunder Basin Coal Co. v. Reich*, 510 U.S. 200, 212 (1994). If a party's claim satisfies this test, it must be funneled through the agency and then a court of appeals; however, if the claim is not "of the type Congress intended to be reviewed within this statutory structure," then it can be heard outright by a district court. *See Axon*, 598 U.S. at 185–86 (explaining that not all claims against executive agencies need to follow the statutorily assigned route of being heard by the agency, and then a court of appeals, if a claim fails *Thunder Basin* scrutiny).

The application of *Thunder Basin* is not necessary in the instant matter. This is because the NLGA explicitly withdraws jurisdiction from district courts. *See Babb v. Wilkie*, 589 U.S. 399, 413 (2020) ("[W]here, as here, the words of a statute are unambiguous, the 'judicial inquiry is complete.'") (alteration omitted) (quoting *Desert Palace, Inc. v. Costa*, 539 U.S. 90, 98 (2003)). The Ninth Circuit, with which we align in today's decision, provides insightful discussion on this point. *See Amazon.com Servs.*, 163 F.4th at 635 (instructing that the invocation of *Thunder Basin* is improper because the text of the Norris-LaGuardia Act explicitly bars district courts from enjoining matters derived from labor disputes). Courts are only required to engage with *Thunder Basin* when Congress enacts a review scheme that *implicitly* removes jurisdiction from district courts. *Id.* (citing *Thunder Basin Coal Co.*, 510 U.S. at 207).

Reliance on *Space Exploration Technologies Corp. v. National Labor Relations Board* is fatal to the dissent's argument. 151 F.4th 761 (5th Cir. 2025) (hereinafter "*SpaceX*"). The Fifth Circuit conceded in *SpaceX* that the "[Norris-LaGuardia] Act is not a 'special statutory review scheme . . . .'" *Id.* at 771. Thereafter, the *SpaceX* court circumvented this incongruity by deciding that the NLGA operates similarly to these schemes because it "divests district courts of their ordinary jurisdiction over the covered [types of] cases." *Id.* Mere acknowledgement of similarities, however, does not justify deploying a *Thunder Basin* analysis. Nor does the Fifth Circuit's analogical reasoning justify an end-run around the fact that a district court may not enjoin a matter arising out of a labor dispute.

Today, the dissent reaches beyond relevant case law and the legislative history of the NLGA to rule on this jurisdictional question. Congress was clear in its command that district courts do not have jurisdiction to enjoin labor disputes. This truth leads us to conclude that *Thunder Basin* has no place in our analysis.

We affirm the ruling of the District Court in accordance with precedent, congressional intent, and proper judgment.

GUMPEL, *Circuit Judge*, dissenting:

THE LABOR-MANAGEMENT REPORTING AND DISCLOSURE ACT

I. The District Court erred when it applied the motivating-factor causation standard to Moseby's claim under LMRDA § 101(a)(2).

I part ways with the majority's first holding as readily as its second. Section 101(a)(2) of the Labor-Management Reporting and Disclosure Act (hereinafter "LMRDA") guarantees union members "the right . . . to express any views, arguments, or opinions." 29 U.S.C. § 411(a)(2). The provision, however, says nothing about causation, much less adopts the relaxed "motivating factor" standard Congress has expressly employed elsewhere when it intended to depart from traditional causation principles. *See* 42 U.S.C. § 2000e-2(m). That silence does not authorize courts to depart from traditional causation principles based on the statute's remedial purpose. Under the Supreme Court's settled framework, silence means the traditional default, but-for causation, applies.

It is well established that, absent statutory language providing otherwise, a plaintiff alleging retaliation must prove but-for causation, meaning that the challenged action would not have occurred absent the alleged unlawful motive. *Gross v. FBL Fin. Servs., Inc.*, 557 U.S. 167, 176–78 (2009); *Univ. of Tex. Sw. Med. Ctr. v. Nassar*, 570 U.S. 338, 360 (2013). While *Gross* concerned the Age Discrimination in Employment Act (hereinafter "ADEA") and *Nassar* concerned Title VII, both cases are instructive because they establish the Supreme Court's approach to but-for causation where Congress has not adopted a mixed-motive standard. As the Court explained in *Nassar*, this requires proof that "the unlawful retaliation would not have occurred in the absence of the alleged wrongful action." 570 U.S. at 360.

The majority attempts to distinguish *Nassar* by emphasizing Title VII's unique statutory structure, particularly Congress's 1991 decision to add "motivating factor" language to § 2000e-2(m). But that reasoning overlooks *Gross*. There, the Court reached the same conclusion for the ADEA—a statute that has never contained motivating-factor language in either its discrimination or retaliation provisions. *Gross*, 557 U.S. at 174–75. *Gross* thus refutes the notion that but-for causation applies only when Congress has expressly adopted a motivating-factor standard in one provision, while withholding it from another. The governing principle is broader: when a statute is silent as to causation and Congress has not expressly prescribed a lesser standard, courts presume that but-for causation governs.

Section 101(a)(2) fits squarely within the rule established in *Gross* and subsequently applied in *Nassar*. *See Gross*, 557 U.S. at 176–78 (holding that absent statutory language

authorizing a motivating-factor standard, the ADEA requires but-for causation); *Nassar*, 570 U.S. at 347–53, 360–62 (applying *Gross*'s reasoning to Title VII's retaliation provision and requiring but-for causation). Unlike Title VII's amended discrimination provision, it contains no motivating-factor language. Indeed, like the ADEA, it is silent as to causation. The default rule therefore applies—absent express statutory language providing otherwise, a plaintiff must establish but-for causation.

The majority nevertheless relies on First Amendment retaliation doctrine, principally *Mt. Healthy City School District Board of Education v. Doyle*, 429 U.S. 274 (1977). But *Mt. Healthy* involved a constitutional claim under 42 U.S.C. § 1983 against a public employer, not a statutory claim under the LMRDA. The Supreme Court has cautioned against treating those bodies of law as interchangeable. In *United Steelworkers of America v. Sadlowski*, the Court explained that "First Amendment principles may be helpful" in interpreting § 101(a)(2) because they illuminate the meaning of free speech, but emphasized that those principles are "not controlling." 457 U.S. 102, 111 (1982).

The majority's approach disregards that limitation. Rather than drawing interpretive guidance from First Amendment doctrine, it imports wholesale the burden-shifting framework developed for constitutional retaliation claims against public employers. A First Amendment claim under § 1983 and a statutory retaliation claim against a private labor organization under Title I of the LMRDA involve different defendants, different legal rights, and different institutional concerns. Nothing in § 101(a)(2)'s text suggests that Congress intended the same causation framework to govern both.

Nor do the pre-*Gross* decisions on which the majority relies compel a different conclusion. *Petramale v. Local No. 17 of Laborers' International Union*, 736 F.2d 13 (2d Cir. 1984), *Bradford v. Norfolk Southern Corp.*, 54 F.3d 1412 (8th Cir. 1995), and the Sixth Circuit's original decision in *Black v. Ryder/P.I.E. Nationwide, Inc.*, 970 F.2d 1461, 1466 (6th Cir. 1992), were decided well before *Gross*, 557 U.S. 167 (2009), and *Nassar*, 570 U.S. 338 (2013). Those decisions therefore do not account for the Supreme Court's subsequent clarification that, when Congress is silent regarding causation, courts presume the ordinary but-for standard. This pre-*Gross* persuasive force is accordingly diminished in light of that intervening precedent.

As the D.C. Circuit recently observed, pre-*Gross* cases applying a reduced causation standard necessarily failed to account for the Supreme Court's subsequent clarification that statutory silence does not itself justify a motivating-factor test. *See Hudson v. Am. Fed'n of Gov't Emps.*, 151 F.4th 456, 462 (D.C. Cir. 2025) (explaining that pre-*Gross* precedent applying a motivating-factor standard was undermined by *Gross*'s holding that statutory silence does not itself justify that standard). The Seventh Circuit recognized this point in holding that "a mixed-motive theory of liability is never proper in a suit brought under the LMRDA." *Serafinn v. Local 722, Int'l Bhd. of Teamsters*, 597 F.3d 908, 914 (7th Cir. 2010). By contrast, the Sixth Circuit's decision in *Barger v. United Brotherhood of Carpenters & Joiners of America*, 3 F.4th 254 (6th Cir. 2021), reaffirmed earlier circuit precedent without meaningfully addressing *Gross*'s broader holding that but-for causation applies even where Congress has never adopted motivating-factor language anywhere in the statute.

The majority's reliance on *Barger* and pre-*Gross* precedent is likewise unpersuasive in light of *Lynn*. In *Sheet Metal Workers' International Ass'n v. Lynn*, 488 U.S. 347 (1989), the Supreme Court explained that Lynn was removed "as a direct result of" his protected speech. *Id.* at 354. The majority dismisses that language because *Lynn* did not involve a mixed-motive dispute. But *Lynn* does not suggest that § 101(a)(2) adopts a motivating-factor standard in cases that do. To the contrary, the Court described the causal relationship between Lynn's protected speech and his removal in terms consistent with ordinary but-for causation. Nothing in *Lynn* suggests that Congress intended to depart from traditional principles of causation where a plaintiff alleges that protected speech was one of multiple motives for an adverse action.

Applying a but-for standard also better preserves the balance Congress struck between protecting union members' speech and respecting legitimate union self-governance. The majority warns that requiring but-for causation will permit unions to evade liability by advancing pretextual explanations. That concern is overstated. But-for causation does not require a plaintiff to eliminate every conceivable alternative motive, nor does it require protected speech to be the sole cause of the challenged action. It requires only proof that the action would not have occurred absent the protected speech. *Nassar*, 570 U.S. at 360.

Put differently, but-for causation asks whether the protected speech was a necessary condition of the challenged action, not whether it was the only factor that influenced the decision. Multiple considerations may each qualify as but-for causes when the decision would not have been made in the absence of any one of them. *See Burrage v. United States*, 571 U.S. 204, 211–12 (2014) (recognizing that an act need not be the sole cause of a result to constitute a but-for cause); *Nassar*, 570 U.S. at 350–51, 360 (explaining that but-for causation does not mean an act must be the sole cause of an injury and recognizing that events often have multiple but-for causes). A union therefore cannot escape liability merely by identifying some additional, legitimate consideration; it avoids liability only if it can show the same action would have occurred even without the protected speech. That is the ordinary meaning of causation in our law.

At the same time, a but-for standard avoids unnecessary judicial interference with internal union affairs. Congress's goal with § 101(a)(2) was to "provide certain basic and fundamental rights to union members, while at the same time avoiding undue judicial interference with the mechanics of union self-governance." *Teamsters Joint Council No. 42 v. Int'l Bhd. of Teamsters*, 82 F.3d 303, 305 (9th Cir. 1996) (quoting *Ackley v. W. Conf. of Teamsters*, 958 F.2d 1463, 1475 (9th Cir. 1992)); *see also Sadlowski*, 457 U.S. at 110 (recognizing that courts must balance enforcement of union members' statutory rights with Congress's intent to avoid undue interference in union self-governance). Unions retain broad authority to enforce reasonable internal rules, including rules protecting confidential bargaining strategy. *NLRB v. Allis-Chalmers Mfg. Co.*, 388 U.S. 175, 194 (1967). A motivating-factor standard unduly constrains that authority by imposing liability whenever protected speech played some role in discipline, even where the union would have imposed the same discipline for an independent and legitimate reason.

Summary judgment for Moseby cannot stand under this proper standard. Genuine disputes of material fact remain as to whether the Union would have removed him absent his protected speech. The Executive Board's written decision did not rely solely on Moseby's criticism of President Hochauser. It also found that Moseby's remarks "disclosed or appeared to draw upon internal bargaining strategy [and] materially interfered with the Union's collective bargaining

efforts." That constitutes a separate and independently legitimate basis for discipline under Article I, Section 4—a proposition Moseby does not dispute. The dispositive question, then, is whether the Union would have removed Moseby based on the disclosure of confidential bargaining information alone. That is a classic question of fact.

The evidence on which the District Court relied does not resolve that question. Under the proper but-for standard, however, the evidence does not compel that conclusion. The statements attributed to Board members, that Moseby had "embarrassed" President Hochauser and that Union delegates could not "publicly undermine Union leadership," certainly support an inference of retaliatory motive. President Hochauser's participation in the removal vote likewise bears on motive because Moseby's statements criticized Hochauser's leadership. But that fact does not establish that Moseby's protected speech was a but-for cause of his removal. The Board's decision identified Moseby's violation of Article I, Section 4 as an independent basis for discipline, and the record does not establish that the Board would have declined to remove Moseby absent his protected criticism. Nor do those statements conclusively establish that the Union's stated rationale was pretextual. The Union disputes both the meaning of those statements and the role that Moseby's criticism played in its decision. The record therefore leaves unresolved whether Moseby's protected speech was necessary to the Board's decision to remove him.

Because a reasonable factfinder could conclude that the Union would have removed Moseby even absent his protected criticism, summary judgment was inappropriate. The majority reaches the opposite conclusion by adopting a causation standard untethered to § 101(a)(2)'s text, importing a constitutional framework the Supreme Court has cautioned is "not controlling," and relying on pre-*Gross* and pre-*Nassar* precedent that does not account for the Court's intervening causation jurisprudence. *Sadlowski*, 457 U.S. at 111. I would hold that but-for causation governs retaliation claims under § 101(a)(2) of the LMRDA, reverse the District Court's grant of summary judgment to Moseby, and remand for further proceedings under the proper standard.

THE NORRIS-LAGUARDIA ACT

I. Both the plain text of the Norris-LaGuardia Act and precedent from the Supreme Court confirm that the District Court has jurisdiction to preside over the dispute between the Union and the NLRB.

The majority confuses the issue before this Court. There is no question: the Norris-LaGuardia Act (hereinafter "NLGA") withdraws jurisdiction from federal courts with respect to matters "involving or growing out of" labor disputes. *Marine Cooks & Stewards v. Panama S.S. Co.*, 362 U.S. 365, 369 (1960); 29 U.S.C. § 101. And the effect of the NLGA must be applied broadly. *See Jacksonville Bulk Terminals, Inc. v. Int'l Longshoremen's Ass'n*, 457 U.S. 702, 708 (1982). Today, however, the majority extends the Act's reach far beyond the labor dispute context. The matter before us is not an employer-employee dispute. This case involves the separation of powers doctrine and the President's implicit authority under Article II. For these reasons, I respectfully dissent.

a. The plain text of the Norris-LaGuardia Act confirms that the District Court retains jurisdiction over constitutional challenges to the NLRB's structure.

We need not look further than the plain text of the NLGA to resolve this matter. The NLGA displaces federal courts' jurisdiction to issue injunctions in "labor disputes," and the case before us today is not one. "Labor dispute" is defined as "any controversy concerning terms or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment." 29 U.S.C. § 113(c). Moreover, a case is said "to involve or to grow out of a labor dispute when the case involves persons who are engaged in the same industry, trade, craft, or occupation; or have direct or indirect interests therein; or who are employees of the same employer; or who are members of the same or an affiliated organization of employers or employees . . . ." *Id.* § 113(a).

The Fifth Circuit correctly determined that a suit challenging the constitutional structure of the NLRB does not fall into any of these categories. *Space Expl. Techs. Corp. v. NLRB*, 151 F.4th 761, 770 (5th Cir. 2025) (declaring "these suits fall outside that definition" when discussing why constitutional challenges are categorically not labor disputes) (hereinafter "*SpaceX*"). In a similar fashion to the Third Circuit, the Fifth Circuit also broke down the NLGA's legislative history.

The Act was instituted to remedy a power struggle between employers and employees. Prior to its implementation, employers could swiftly obtain injunctions from federal courts to subdue employees. *Jacksonville Bulk Terminals, Inc.*, 457 U.S. at 715 (explaining that the NLGA was enacted "in response to federal-court intervention on behalf of employers through the use of injunctive powers against unions and other associations of employees") (other citations omitted). This understanding is grounded in the Act's legislative history. Congress fought to expand the NLGA's definition of "labor dispute" because of how the Supreme Court interpreted the Clayton Act's labor exemption. *See, e.g.*, *Duplex Printing Press Co. v. Deering*, 254 U.S. 443, 469–71 (1921) (opining that courts could enjoin a labor dispute when the employees' goals were not legitimate and there was no employer-employee relationship between the disputants), *superseded by statute*, Norris-LaGuardia Act, ch. 90, 47 Stat. 70 (1932), *as recognized in United States v. Hutcheson*, 312 U.S. 219, 235–36 (1941) ("The underlying aim of the Norris-LaGuardia Act was to restore the broad purpose which Congress thought it had formulated in the Clayton Act but which was frustrated, so Congress believed, by unduly restrictive judicial construction.").

Even considering Congress's motive for implementing the Act and subsequent interpretations by the Supreme Court, one thing is obvious: the injunction sought by the Union is not covered by the NLGA. Take, for example, the "matrix of the controversy" test promulgated by the Supreme Court. *Columbia River Packers Ass'n v. Hinton*, 315 U.S. 143, 147 (1942). While construing the employer-employee relationship broadly, the Court noted that the force of the Act cannot extend to "controversies upon which the employer-employee relationship has no bearing." *Id.* at 146–47. We have before us a lawsuit in which a union is challenging an administrative agency's constitutional authority to be insulated from Presidential removal. An employer-employee relationship does exist in the realm of this controversy. But the dispute surrounding the Hotel's wage practices "has no bearing" on a constitutional challenge to the NLRB's structure. *Id.*

b. A *Thunder Basin* jurisdictional analysis confirms that the District Court may rule on the merits of the Union's constitutional challenge.

Foreclosing judicial review of the NLRB's structure raises an entirely separate jurisdictional issue which the majority discredits but is nonetheless critical to the case at hand. The NLGA functions as a statutory review scheme that inherently deprives district courts of jurisdiction to hear cases within their purview under 28 U.S.C. § 1331, otherwise known as federal question jurisdiction. *See Axon Enter., Inc. v. FTC*, 598 U.S. 175, 185 (2023) (citing *Thunder Basin Coal Co. v. Reich*, 510 U.S. 200, 207 (1994)). Therefore, we must decide whether the Union's claims are "of the type Congress intended to be reviewed within this statutory structure." *Thunder Basin*, 510 U.S. at 212. The *Thunder Basin* Court provided a three-factor framework for us to determine whether the District Court retains jurisdiction to adjudicate the merits of this case.

The factors are as follows: (1) would divesting the district court of jurisdiction "foreclose all meaningful judicial review" of the claim, (2) is the claim "wholly collateral to [the] statute's review provisions," and (3) does the claim lie outside the agency's expertise. *Thunder Basin*, 510 U.S. at 212–13. If the answer to these three questions is "yes," then "we presume that Congress did not intend to limit [the district court's] jurisdiction." *Free Enter. Fund v. Pub. Co. Acct. Oversight Bd.*, 561 U.S. 477, 489 (2010). Put simply, the District Court would have jurisdiction to hear the Union's case.

Justice Kagan's discussion of the first element in *Axon* offers direction that clearly favors the Union. The Union submits, just as Axon did, that it is being subjected to "an illegitimate proceeding, led by an illegitimate decisionmaker" in the NLRB. *Axon*, 598 U.S. at 191. The harm may not, on its face, sound tangible, but precedent says otherwise. *See Seila Law LLC v. CFPB*, 591 U.S. 197, 212 (2020) (concluding that subjecting a party to an unconstitutional process, orchestrated by an unconstitutional body, is "a here-and-now injury"). Because NLRB board members enjoy dual for-cause removal protection, and "[s]ubordinates who exercise the President's power are subject to [at-will] removal by him," the NLRB's structure is unconstitutional. *Trump v. Slaughter*, 146 S. Ct. 2283, 2310 (2026). In light of this holding, the Union cannot be subjected to an NLRB proceeding without suffering substantial injury at the hands of an unconstitutional body.

The injury is the process itself. The Union cannot seek the type of "meaningful review" contemplated in *Thunder Basin* if we bar a judicial body from reviewing its constitutional challenge *before* the NLRB issues a ruling on the unfair labor practice claim. *See SpaceX*, 151 F.4th at 771. With this understanding, the first factor clearly favors the Union.

As for the second factor, constitutional challenges to the NLRB's structure are collateral to any decision the NLRB might render. The Union does not challenge actions taken "in the agency proceedings." *Axon*, 598 U.S. at 192. Rather, the Union is challenging the NLRB's authority to proceed in its entirety. This challenge does not concern the outcome of a proceeding, but the very proceeding itself. Given this reality, the claims are indeed wholly collateral.

Finally, the third factor also weighs in favor of the Union. The NLRB certainly boasts expertise in the field of employment and labor law—not so with constitutional law. The agency lacks the proficiency to properly evaluate whether tenure protections for its Board Members violate

Article II. These claims, like the one brought before us today, raise "standard questions of administrative and constitutional law, detached from considerations of agency policy." *Axon*, 598 U.S. at 194 (citation and internal quotation marks omitted). The Union's challenge should be reviewed by a judicial body with expertise in these areas. The District Court categorically fits the bill.

The majority takes great pains to extend the reach of the Norris-LaGuardia Act. Their efforts are understandable; precedent speaks volumes about the statute's breadth. But the law, the legislative history, and the statutory text do not contemplate the Union's challenge brought before the District Court. The NLRB seeks to flee responsibility behind the veil of the NLGA. The majority errs as a matter of law in allowing it to do so. I respectfully dissent.

No. 26-2128

IN THE SUPREME COURT OF THE UNITED STATES

UNITED OLD MATES WORKERS OF AMERICA,

Petitioner,

-against-

MARION MOSEBY and NATIONAL LABOR RELATIONS BOARD,

Respondents.

ORDER GRANTING PETITION FOR WRIT OF CERTIORARI

The petition for a *writ of certiorari* is GRANTED. The parties are directed to address only the following questions:

I. Whether a plaintiff alleging retaliation under § 101(a)(2) of the Labor-Management Reporting and Disclosure Act must prove that protected union speech was a motivating factor in the adverse action, or instead must demonstrate that the adverse action would not have occurred but for the protected speech?

II. Whether a district court has jurisdiction to adjudicate the merits of a union's constitutional challenge to the National Labor Relations Board's structure when an underlying labor dispute is connected to the challenge?