

IN THE SUPREME COURT OF THE STATE OF NEVADA

ROBERT CLARKE, an individual,

Appellant,

v.

SERVICE EMPLOYEES
INTERNATIONAL UNION, a nonprofit
cooperative corporation; and CLARK
COUNTY PUBLIC EMPLOYEES
ASSOCIATION, A/K/A SEIU 1107, a
non-profit cooperative corporation,

Respondents.

Electronically Filed
Jun 07 2021 10:50 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

Supreme Court No. 80520
District Case No. A764942

SERVICE EMPLOYEES
INTERNATIONAL UNION, an
unincorporated association; and NEVADA
SERVICE EMPLOYEES UNION A/KA
CLARK COUNTY PUBLIC
EMPLOYEES ASSOCIATION, SEIU
1107, a non-profit cooperative corporation,

Appellants,

v.

DANA GENTRY, AN INDIVIDUAL; and
ROBERT CLARKE, an individual,

Respondents.

Supreme Court No. 81166
District Case No. A764942

**CERTIFICATE OF SERVICE FOR
JOINT OBJECTION TO APPELLANT
ROBERT CLARKE'S RESPONSE FILED JUNE 3, 2021**

I hereby certify that the attached Joint Objection to Appellant Robert Clarke's
Response Filed June 4, 2021 was served as follows:

1. Through the Court's eFlex electronic filing service on June 4, 2021 to the
following:

Jonathan M. Cohen: jcohen@rsglabor.com

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2. Via United States First Class Mail on June 7, 2021 to the following:

Rothner, Segall & Greenstone
Glenn Rothner
510 South Marengo Avenue
Pasadena, California 91101

DATED: June 7, 2021

CHRISTENSEN JAMES & MARTIN
EVAN L. JAMES

By /s/ Evan L. James

Evan L. James / Jonathan Cohen
Attorneys for Respondents and Appellants
Nevada Service Employees Union

CERTIFICATE OF SERVICE

The above Certificate of Service and attachment thereto were served as follows on June 7, 2021:

1. Through the Court's eFlex electronic filing service to the following:

Jonathan M. Cohen: jcohen@rsglabor.com

Maria K. Myers: mmyers@rsglabor.com

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Respondents.

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Supreme Court No. 80520
District Case No. A764942

Supreme Court No. 81166
District Case No. A764942

**JOINT OBJECTION TO APPELLANT
ROBERT CLARKE'S RESPONSE FILED JUNE 3, 2021**

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Respondents jointly object to part of the document filed by Appellant Robert Clarke on June 3, 2021 and titled “Response to Defendant’s Asserted ‘New’ Precedent Raised for the First Time During Oral Argument” (hereinafter “the Response”). Specifically, Respondents object to everything asserted in the Response under Subheading II, which is titled “The Recent Michigan Supreme Court Decision in *Foster*.” *Foster* was never discussed.

Clarke’s attorney exceeds the scope of the Court’s license to provide a response to Mr. Cohen’s update.¹ He does so by completely misstating Mr. Cohen and then proceeds to use the misstatement as a vehicle to present additional briefing and argument unrelated to Mr. Cohen’s update. Mr. Cohen cited to the Michigan Supreme Court case of *Henry v. Laborers’ Local 1191*, 848 N.W. 2d 130 (Mich. 2014) as an update on LMRDA preemption in the state of Michigan. Respondents had cited in their brief to the Michigan Appeals Court case of *Packowski v. United Food & Commercial Workers Local 951*, 796 N.W. 2d 94 (Mich. Ct. App. 2010).

Clarke’s attorney wrongly asserts, “Defendants raised a change in precedent in the state of Michigan....” Mr. Cohen never asserted that Michigan changed precedent. Rather, he stated that *Henry* applied an exception to LMRDA preemption

¹ Mr. Cohen’s comments regarding the Michigan Supreme Court case of *Henry v. Foster*, 848 N.W. 2d 130 (Mich. 2014) start at 16:30 and end at 17:07 of the oral argument recording.

but “does not endorse *Packowski* or overturn *Packowski*. It just leaves *Packowski* as is, so I don’t think it changes any of our briefing. I just want to bring it to the Court’s attention.” Identification of how the higher Michigan Supreme Court had treated LMRDA preemption in light of *Packowski* was candor to the Court.

Clarke’s attorney also wrongly asserts, “The case Defendant was actually referring to was the Michigan Supreme Court’s 2020 holding in *Foster v. Foster*, which cites to *Henry*, and is significant to their arguments in this case.” Mr. Cohen did not and was not citing to nor referring to *Foster* nor is *Foster v. Foster* significant to Respondent’s arguments. The Respondents vehemently object to the attribution of caselaw to Mr. Cohen that he neither cited nor addressed, and they object to Clarke’s expanded argument and briefing that never actually addresses the Michigan Supreme Court’s recognition of LMRDA preemption in the *Henry* case.

DATED: June 4, 2020

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