

Nos. 12-99 & 12-312

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IN THE  
**Supreme Court of the United States**

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UNITE HERE LOCAL 355,  
*Petitioner and Respondent,*

v.

MARTIN MULHALL,  
*Cross-Petitioner and Respondent,*

and

HOLLYWOOD GREYHOUND TRACK, INC. d/b/a  
MARDI GRAS GAMING,  
*Respondent.*

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**On Petitions for Writ of Certiorari to the  
United States Court of Appeals  
for the Eleventh Circuit**

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**CROSS-PETITIONER MARTIN MULHALL'S  
REPLY TO RESPONDENTS' BRIEFS IN  
RESPONSE TO THE CROSS-PETITION  
FOR CERTIORARI**

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Cross-Petitioner Martin Mulhall hereby submits this reply to the briefs filed by Mardi Gras Gaming and Unite Here Local 355 in response to his cross-petition for certiorari.

1. Contrary to Mardi Gras’ assertion, the expiration of the Memorandum of Agreement does not moot this case because Unite has not ceased its demands for the employer’s assistance with unionizing Mulhall and his co-workers. Section 302(b)(1) of the Labor Management Relations Act makes it unlawful for unions to not only “agree” to accept a “thing of value” from employers—as Unite did in its Agreement with Mardi Gras—but also to “request” or “demand” a thing of value from employers. 29 U.S.C. § 186(b)(1) (emphasis added). Here, Mulhall alleges that Unite “has violated § 302(b)(1) by requesting and demanding that Mardi Gras deliver ‘thing[s] of value’ to [Unite] in the form of Information, Access, and a Gag Clause,” Complaint, ¶ 37 (Dkt. 1), and seeks a “permanent injunction that enjoins [Unite] from . . . requesting, demanding, or receiving from Mardi Gras [these] things of value.” *Id.* at Prayer for Relief (A)(1).

Notwithstanding the expiration of the Agreement, there is no evidence in the record that Unite has ceased its unlawful demands for these types of organizing assistance. Accordingly, Mardi Gras has not met its “heavy burden” of proving that it is “absolutely clear that the allegedly wrongful behavior could not reasonably be expected to recur.” *Adarand Constructors, Inc. v. Slater*, 528 U.S. 216, 222 (2000) (citations omitted).

Nor could Mardi Gras satisfy its burden of proof. First, this case is before the Court on a motion to dismiss. The facts for purposes of the mootness inquiry are, therefore, those stated in the pleadings, which must be accepted as true. *See Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992). There is nothing in the Complaint, and hence the record, to support the proposition that Unite no longer seeks

from Mardi Gras information about its nonunion employees, use of its property for organizing, and control over its communications regarding unionization.

Second, this Court can take judicial notice that Unite is currently pursuing legal actions against Mardi Gras (1) to retroactively enforce provisions of the Agreement, see *Unite Here Local 355 v. Hollywood Greyhound Track, Inc. d/b/a/ Mardi Gras Gaming*, No. 12-CV-61135 (S.D. Fla. 2012),<sup>1</sup> and (2) that regard the union's attempts in late 2011 to access Mardi Gras' property and contact its employees at their homes, see *Hartman & Tyner, Inc., d/b/a Mardi Gras Casino & Hollywood Concessions, Inc.*, 2012 WL 4101899, JD(ATL)-21-12, pp. 4-5, 23-24 (NLRB Div. of Judges, Sept. 18, 2012). Unite also continues to actively litigate this case, having filed the original Petition for Certiorari here. These actions show that Unite does not consider its campaign against Mardi Gras' employees to be over or the subject matter of this suit to be moot.

In short, Mardi Gras has failed to prove that Unite no longer seeks its organizing assistance and that the threat to Mulhall's associational interests found by the Eleventh Circuit has abated. See *Mulhall v. Unite Here*, 618 F.3d 1279, 1286-89 (11th Cir. 2010) ("*Mulhall I*") (Pet. 42a-49a). Accordingly, this action continues to present a live case and controversy.

2. In its response brief, Unite agrees that Mulhall's cross-petition should be granted. However, it also reiterates its arguments on the merits from its petition for certiorari. These arguments, which are

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<sup>1</sup> Mardi Gras acknowledges that it is possible that an arbitrator will extend the duration of the Agreement as a result of this lawsuit. See Mardi Gras' Response Br., 4.

almost all inapposite to the narrow issue presented in the cross-petition, were rebutted in Mulhall's Response to the Petition for Certiorari, which is incorporated herein by reference.

For these reasons and those previously stated, the cross-petition for certiorari should be granted.

Respectfully submitted,

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