No. 23-1111

IN THE
Supreme Court of the United States

GLENN LAIRD,
Petitioner,

v.

UNITED TEACHERS LOS ANGELES, ET AL.,
Respondents.

On Petition for a Writ of Certiorari to the
United States Court of Appeals for the Ninth Circuit

BRIEF IN OPPOSITION

IRA L. GOTTLIEB
LISA C. DEMIDOVICH
LUKE TAYLOR
BUSH GOTTLIEB, a Law Corp.
801 N. Brand Blvd., # 950
Glendale, CA 91203

SCOTT A. KRONLAND
Counsel of Record
EMANUEL WADDELL
ALTSHULER BERZON LLP
177 Post Street, #300
San Francisco, CA 94108
(415) 421-7151
skronland@altber.com

Counsel for Respondent United Teachers Los Angeles

Mosaic - (301) 927-3800 - Cheverly, MD

QUESTION PRESENTED

Whether a union engaged in "state action" for purposes of 42 U.S.C. § 1983 when the union violated state law by failing to inform petitioner's public employer that he had cancelled his authorization for continued payroll deductions.

CORPORATE DISCLOSURE STATEMENT

Respondent United Teachers Los Angeles has no parent corporation, and no company owns any stock in Respondent.

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PRELIMINARY STATEMENT

Petitioner was a public employee in California who joined a union and signed a voluntary written authorization permitting his employer to deduct union dues from his paychecks. Petitioner claims that, after he validly revoked his authorization for continued deductions, the union violated state law by failing to process the revocation and, as a result, his employer erroneously continued to deduct dues for several months. The union subsequently sent petitioner a refund.

Petitioner asks the Court to grant review of the non-precedential decision below to resolve a purported "split of authority" about whether, consistent with the First Amendment, the government may deduct union dues from the paychecks of public employees "who have rescinded their prior consent to union dues deductions." Pet. i, 8. But petitioner's own 42 U.S.C. § 1983 claims were dismissed for threshold reasons, not because the Ninth Circuit ruled that the government may deduct union dues for public employees who have not authorized those deductions.

Moreover, there is no split of authority. "Every circuit to consider the matter"—including the Ninth Circuit—"has concluded that the deduction of union dues *under a valid contract* between the union and a member does not violate the First Amendment." *Burns v. Sch. Serv. Emps. Union Loc. 284*, 75 F.4th 857, 860 (8th Cir. 2023) (emphasis supplied), *cert. denied,* 144 S. Ct. 814 (2024); *see also Belgau v. Inslee*, 975 F.3d 940, 950–52 (9th Cir. 2020), *cert. denied*, 141 S. Ct. 2795 (2021). No court has held that the government may, consistent with the First Amendment,

require public employees to pay union dues that they have not agreed to pay.

Petitioner contends that this Court's decision in *Janus v. AFSCME, Council* 31, 585 U.S. 878 (2018), requires the application of a heightened "waiver" standard to voluntary agreements to pay union dues. Pet. i. To the contrary, *Janus* addressed mandatory agency fees that public employers required their employees to pay as a condition of employment, not voluntary dues deductions. This Court has denied more than a dozen petitions for certiorari that advanced the same meritless argument about *Janus*. *See infra* at 12–13. There have been no developments since that time that would make the issue worthy of review—even if it were presented by this case.

Petitioner also asks the Court to grant review of the non-precedential decision below to resolve a purported "split of authority" about whether unions are Section 1983 state actors. Pet. i, 11. Again, however, there is no split of authority.

The circuits agree that when state law permits only voluntary dues deductions, an employee's claim that a union violated state law by providing incorrect information to a public employer about whether the employee has authorized deductions is actionable under state law, not Section 1983. That conclusion follows from this Court's precedents that distinguish between private misconduct and misconduct for which the government is responsible.

The cases that petitioner erroneously claims create a conflict on the state action issue are cases like *Janus*, in which the government required employees to

pay fees to a union as a condition of employment. In those cases, *the government's mandatory fees requirement* was the First Amendment infringement. The unions' conduct in those cases was attributable to the government because the unions were acting jointly with the government in implementing the government's mandatory fees requirement.

Here, there was no government requirement to pay fees to a union—state law permits deductions only with the employee's affirmative authorization. If petitioner's allegations are correct, the union violated state law by failing to process his revocation, and petitioner has a state law remedy against the union for the union's private misconduct.

Petitioner's state action analysis would flood the federal courts with run-of-the-mill payroll disputes. State and local public employers process millions of voluntary employee payroll deductions every month for union dues, charitable contributions, insurance programs, and other purposes. The lower courts have wisely rejected a state action analysis that is inconsistent with this Court's precedents and would make the federal courts responsible for addressing payroll disputes that state labor boards and state courts are competent to resolve.

This Court recently denied another petition for certiorari, filed by the same advocacy organization, that made the same state action argument. *See infra* at 18. There have been no developments since then that would make the question worthy of review.

In the absence of a split of authority, there is no good reason for granting review of the non-precedential decision below. The petition should be denied.

STATEMENT OF THE CASE

A. Background

1. Under California law, public school employees have the right to decide whether to become members of the union that represents their bargaining unit. Cal. Gov't Code § 3543. Employees who choose to join the union may authorize the deduction of union dues from their paychecks by providing "written authorization for payroll deductions." Cal. Educ. Code § 45060(a), (e). Employees may cancel their dues deductions in accordance with "the terms of the written authorization." *Id.* § 45060(a); *see also id.* § 45060(c).

"Employee requests to cancel or change authorizations for payroll deductions" must "be directed to the employee organization," and "[t]he employee organization [is] responsible for processing these requests." *Id.* § 45060(e). Public employers must "rely on information provided by the employee organization regarding whether deductions … were properly canceled or changed." *Id.* § 45060(e). The employee organization must indemnify the public employer for any errors made in reliance on that information. *Id.*

California law prohibits public employers and unions from interfering with public employees' rights to choose whether to join or support labor unions. Cal. Gov't Code §§ 3543, 3543.5, 3543.6(b). A union's failure to process the revocation of an employee's written dues deduction authorization in accordance with the

terms of that authorization would violate this state law. California's Public Employee Relations Board ("PERB") has jurisdiction to remedy violations of public employees' rights. Cal. Gov't Code § 3541.3(i).

2. Petitioner Glenn Laird was a high school teacher employed by the Los Angeles Unified School District ("LAUSD") in a bargaining unit represented by United Teachers Los Angeles ("UTLA"). App. 3a ¶¶4–5. Petitioner voluntarily chose to become a UTLA member when he became an LAUSD employee. App. 3a–4a ¶¶4, 8.

On February 11, 2018, petitioner executed a new UTLA membership agreement. App. 10a ¶51. In the agreement, petitioner first confirmed that he "want[ed] to join with [his] fellow employees and become a member of UTLA." App. 52a. Petitioner then separately "(1) agree[d] to pay regular monthly dues uniformly applicable to members of UTLA" and "(2) request[ed] and voluntarily authorize[d] [his] employer to deduct from [his] earnings and to pay over to UTLA such dues." *Id.*

In the membership agreement, petitioner acknowledged that his "agreement to pay dues shall remain in effect … unless [he] revoke[d] it by sending written notice … to UTLA." App. 10a ¶51, 52a. The printed agreement provided that it could be revoked only during an annual window period. *See* App. 52a. Petitioner alleges that, before signing the agreement, he used a Sharpie marker to strike out language defining the annual "opt out window" for submitting such a revocation. App. 10a ¶¶50–51. Petitioner did not strike out separate language providing that his agreement to pay dues via payroll deduction "shall be

automatically renewed from year to year unless [he] revoke[s] it in writing during the window period, irrespective of [his] membership in UTLA." *Id.*; App. 52a.

On June 12, 2020, Petitioner sent a letter to UTLA resigning from union membership and instructing UTLA to terminate his membership dues deductions. App. 10a ¶55. His letter did not say anything about the alteration he had made in Sharpie marker to the printed UTLA membership agreement. *See* Ninth Cir. Dkt. 21 at 9. Petitioner alleges that UTLA did not immediately honor his request to terminate his dues deductions because the request had been submitted outside the window period set forth in his printed membership agreement. App. 11a ¶57. Petitioner alleges that, as a result of UTLA's failure to process his revocation of dues deductions, LAUSD erroneously deducted UTLA membership dues from his pay from May 2020 through December 2020. App. 12a ¶68. Petitioner's subsequent communications with UTLA and LAUSD did not mention the Sharpie marker issue. *See* Ninth Cir. Dkt. 10 at 26, 28–29.

On December 14, 2020, within the window period on his printed membership agreement, petitioner sent another request to UTLA to terminate his dues deductions. App. 12a ¶70. UTLA processed the request and the deductions ended. App. 12a–13a ¶¶71–73, 34a; Ninth Cir. Dkt. 21 at 6 ¶14.

B. Proceedings below

On March 16, 2021, several months after his dues deductions had ended, petitioner filed suit in federal court against UTLA, LAUSD, and the California Attorney General. App. 1a–20a, 30a. Petitioner claimed

that the deduction of membership dues following his June 12, 2020 resignation violated his rights under the First Amendment and the Due Process Clause and gave rise to claims under 42 U.S.C. § 1983. App. 14a–18a. After reviewing petitioner's complaint, UTLA became aware of the Sharpie marker issue and sent petitioner a refund of his post-resignation dues. 9th Cir. Dkt. 21 at 6–7, 25–26.

The district court granted the defendants' motions to dismiss petitioner's claims. App. 27a–47a. The district court concluded that petitioner lacked standing to pursue prospective relief because his deductions already had ended and his complaint "d[id] not contain any allegations of future injury." App. 35a–36a. The district court held that sovereign immunity barred petitioner's claims for damages against LAUSD and the Attorney General. App. 38a–41a. The district court held that petitioner's Section 1983 claims against UTLA failed because UTLA's alleged misconduct was not state action. App. 41a–47a.

A Ninth Circuit panel unanimously affirmed the district court's decision in a short, non-precedential memorandum. App. 23a–25a. Petitioner did not challenge on appeal the district court's dismissal of his claims for prospective relief or the dismissal of his claims against LAUSD, so the Ninth Circuit did not address those issues. The Ninth Circuit agreed with the district court that petitioner's damages claims against the Attorney General were barred by sovereign immunity. App. 25a. The Ninth Circuit also agreed with the district court that petitioner's claims against UTLA were properly dismissed because, on the facts alleged by petitioner, UTLA did not engage

in the state action required for a Section 1983 claim. App. 24a.

With regard to state action, the Ninth Circuit reasoned that petitioner's allegations about UTLA failed to satisfy either prong of the two-prong test. First, if petitioner were correct that he validly had revoked his dues authorization in June 2020, then UTLA's request that LAUSD continue deducting those dues violated state law and was thus "antithetical to any right or privilege created by the State." App. 24a–25a (*quoting Wright v. SEIU Loc. 503*, 48 F.4th 1112, 1118 n.3 (9th Cir. 2022), *cert. denied*, 143 S. Ct. 749 (2023)). Second, neither "the mere fact that a state transmits dues payments to a union" nor LAUSD's "ministerial processing of payroll deductions pursuant to [e]mployees' authorizations" would "give rise to a section 1983 claim against the union under the 'joint action' test." App. 25a (*quoting Belgau*, 975 F.3d at 947–49 & n.2).

The Ninth Circuit denied petitioner's request for rehearing en banc with no judge calling for a vote on the request. App. 26a. In his petition to this Court, petitioner does not dispute that his claims against the Attorney General are barred by sovereign immunity.

REASONS FOR DENYING THE PETITION

Petitioner asks the Court to grant review to resolve a purported split of authority about whether the First Amendment permits the government to require public employees to pay union dues if the employees have rescinded their consent to dues deductions. But the Ninth Circuit did not address that issue here, and there is no split of authority. No court has held that the government may, consistent with the First

Amendment, require public employees to pay any money to unions that the employees have not voluntarily agreed to pay. Petitioner also asks the Court to grant review to resolve a purported split of authority about whether unions that receive voluntary dues through payroll deduction are Section 1983 state actors. Again, there is no split of authority. Nor is there any other reason for the Court to grant review of the non-precedential ruling below.

I. Petitioner's first question presented was not addressed below and is not worthy of this Court's review.

Petitioner asks the Court to grant review to decide whether "nonmember public employees who have rescinded their prior consent to union dues deductions enjoy the same right to freedom from compelled speech as employees who never affirmatively consented." Pet. i (first question presented). According to petitioner, there is a "split of authority" on this question. Pet. 8–11. But the Ninth Circuit did not address this question below, so this case would not be a suitable vehicle for addressing the question. There also is no split of authority. The circuits, including the Ninth Circuit, agree that the government cannot require public employees to pay union dues that the employees have not voluntarily and affirmatively agreed to pay.

A. The Ninth Circuit did not rule that the First Amendment permits the government to require public employees to pay any union dues they have not affirmatively agreed to pay. Petitioner's Section 1983 claims against the government defendants were dismissed on threshold grounds that the petition does not dispute.

See supra at 7. Petitioner's section 1983 claims against UTLA were dismissed because UTLA's alleged misconduct (violating state law by failing to inform his public employer that he had validly cancelled dues deductions) was not state action. *Id.* at __.

Petitioner asserts that "the [Ninth Circuit] panel *implied* that the mere existence of a union membership card, no matter [his] contractual ability to end the deductions without restriction, and his release from membership, was sufficient to bar [him] from bringing a First Amendment claim for compelled speech." Pet. 4 (emphasis added). The Ninth Circuit's short, unpublished memorandum decision does not say this or imply this. *See* App. 24a–25a.

The Ninth Circuit already held in *Belgau* that the First Amendment permits only voluntary agreements to pay union dues and that, in the absence of compulsion, state contract law governs the enforceability of such voluntary agreements. 975 F.3d 950–52. Under Ninth Circuit precedent, if petitioner validly revoked his consent to pay union dues, then the government could not, consistent with the First Amendment, compel him to continue to pay union dues.

Moreover, California law does not require public employees to pay dues after they have revoked their voluntary authorizations for dues deductions in accordance with the terms of their own authorizations. Cal. Educ. Code § 45060(a), (c). As the Ninth Circuit stated: "[A]ssuming that [petitioner] validly revoked his dues deduction authorization in June 2020, UTLA's request that LAUSD continue making deductions violated state law." App. 24a–25a. The Ninth Circuit also did not leave petitioner "without the

ability to seek relief." Pet. 10. Petitioner would have a claim against UTLA under state law. *See infra* at 20.

That being so, this case would not be a suitable vehicle for addressing petitioner's first question presented.

B. In any event, petitioner is wrong that a "split of authority exists concerning the First Amendment's application to public employees alleging compelled union speech." Pet. 8 (capitalization omitted). "[E]very circuit to consider the matter has concluded that the deduction of union dues under a valid contract between the union and a member does not violate the First Amendment." *Burns,* 75 F.4th at 860.[1] Petitioner does not cite any decisions that permit the government to require that public employees pay any money to unions that the employees have not voluntarily agreed to pay.

Petitioner argues that all these decisions are wrong because this Court's decision in *Janus* created a heightened constitutional "waiver" standard for voluntary agreements to pay union dues that makes such agreements different from all other contracts. Pet. i,

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[1] *See Wheatley v. N.Y. State United Tchrs.*, 80 F.4th 386, 390–91 (2d Cir. 2023); *Ramon Baro v. Lake Cnty. Fed'n of Tchrs. Loc. 504*, 57 F.4th 582, 586 (7th Cir.), *cert denied*, 143 S. Ct. 2614 (2023); *Hoekman v. Educ. Minn.*, 41 F.4th 969, 978 (8th Cir. 2022); *Hendrickson v. AFSCME Council 18*, 992 F.3d 950, 961 (10th Cir.), *cert. denied*, 142 S. Ct. 423 (2021); *Bennett v. Council 31 of the AFSCME, AFL-CIO*, 991 F.3d 724, 729–33 (7th Cir.), *cert. denied*, 142 S. Ct. 424 (2021); *Fischer v. Governor of N.J.*, 842 F. App'x 741, 753 & n.18 (3d Cir.), *cert. denied*, 142 S. Ct. 426 (2021); *Oliver v. SEIU Loc. 668*, 830 F. App'x 76, 80 (3d Cir. 2020); *Belgau*, 975 F.3d at 951.

8–10. To the contrary, this Court held in *Janus* only that public employers cannot require non-members to pay agency fees to a union as a condition of employment. 585 U.S. at 929. *Janus* did not involve voluntary union membership agreements, and this Court explained that, beyond eliminating compulsory non-member agency fees, "States can keep their labor-relations systems exactly as they are." *Id.* at 928 n.27.

Petitioner is wrong that the Third Circuit reached a contrary conclusion about *Janus* in *Lutter v. JNESO*, 86 F.4th 111 (3d Cir. 2023). Pet. 6, 9–10. The public employee in *Lutter* argued that a new state statute impermissibly restricted her right to cancel her authorization for dues deductions—even though she never agreed to the restriction. *Lutter,* 86 F.4th at 120, 131. The Third Circuit held in *Lutter* only that the plaintiff had standing and her claim for damages was not moot. *Id.* at 124–35. The Third Circuit said nothing about the enforceability of the terms of *voluntary* union membership and dues authorization agreements.

This Court has denied petitions for certiorari in more than a dozen cases raising the same basic argument about *Janus* that petitioner presses here.[2] There

[2] *Alaska v. Alaska State Emps. Ass'n/AFSCME Loc. 52, AFL-CIO*, No. 23-179, 144 S. Ct. 682 (2024); *Ramon Baro v. Lake Cnty. Fed'n of Tchrs. Loc. 504*, No. 22-1096, 143 S. Ct. 2614 (2023); *O'Callaghan v. Drake*, No. 22-219, 143 S. Ct. 2431 (2023); *Savas v. Cal. Statewide Law Enf't Ass'n*, No. 22-212, 143 S. Ct. 2430 (2023); *Polk v. Yee*, No. 22-213, 143 S. Ct. 405 (2022) (denying petition covering two cases); *Cooley v. Cal. Statewide Law Enf't Ass'n*, No. 22-216, 143 S. Ct. 405 (2022); *Yates v. Hillsboro Unified Sch. Dist.*, No. 21-992, 142 S. Ct. 1230 (2022); *Woods v.*

have been no developments since then that would make the question worthy of review even if it were presented by this case.

II. The state action issue is not worthy of this Court's review.

Petitioner also asks the Court to grant review to decide whether the lower courts correctly dismissed his Section 1983 claims against UTLA because UTLA's alleged misconduct was not state action. Pet. 11–15. Contrary to petitioner's contention, there is no "split of authority" about state action in the union dues context. Pet. 11. The Ninth Circuit's case-specific application of state action caselaw in the non-precedential decision below was entirely correct and, in any event, is not worthy of the Court's review.

A. Section 1983, which provides a cause of action for constitutional deprivations that occur under color of state law, "protects against acts attributable to a State, not those of a private person." *Lindke v. Freed*, 601 U.S. 187, 194 (2024). "This limit tracks that of the Fourteenth Amendment, which obligates *States* to

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Alaska State Emps. Ass'n, No. 21-615, 142 S. Ct. 1110 (2022) (denying petition covering two cases); *Anderson v. Serv. Emps. Int'l Union Loc. 503*, No. 21-609, 142 S. Ct. 764 (2022) (denying petition covering four cases); *Grossman v. Hawaii Gov't Emps. Ass'n*, No. 21-597, 142 S. Ct. 591 (2021); *Smith v. Bieker*, No. 21-639, 142 S. Ct. 593 (2021); *Wolf v. UPTE-CWA 9119*, No. 21-612, 142 S. Ct. 591 (2021); *Hendrickson v. AFSCME Council 18*, No. 20-1606, 142 S. Ct. 423 (2021); *Bennett v. AFSCME, Council 31, AFL-CIO*, No. 20-1603, 142 S. Ct. 424 (2021); *Troesch v. Chicago Tchrs. Union*, No. 20-1786, 142 S. Ct. 425 (2021); *Fischer v. Murphy*, No. 20-1751, 142 S. Ct. 426 (2021); *Belgau v. Inslee*, No. 20-1120, 141 S. Ct. 2795 (2021).

honor the constitutional rights that §1983 protects." *Id.* at 194–95 (emphasis in original). "[T]he statutory requirement of action 'under color of state law' and the 'state action' requirement of the Fourteenth Amendment are identical." *Lugar v. Edmundson Oil Co.*, 457 U.S. 922, 929 (1982).

1. Unions are private parties. The circuit courts agree that, when state law permits only *voluntary* dues deductions, a union does not engage in state action when the union enters into private membership agreements with its members or when the union provides information to public employers about which employees have voluntarily authorized dues deductions. Misconduct by a union in those contexts is therefore actionable under state law, not Section 1983.

The Ninth Circuit addressed this issue in *Belgau* and *Wright*. *Belgau* held that a union was not engaged in state action when the union entered into private agreements with its members that included "allegedly insufficient consent for dues deduction." 975 F.3d at 946–49. *Wright* held that a union's alleged forgery of a public employee's dues authorization, in violation of state law, was not attributable to the government. 48 F.4th at 1123–25. In both cases, the employee's remedy against the union would be under state law, not Section 1983. This Court denied petitions for certiorari in both cases.

The Eighth Circuit reached the same conclusion in *Hoekman v. Education Minnesota*, 41 F.4th 969 (8th Cir. 2022). In that case, a public employee (Piekarski) alleged that his union failed to promptly process his resignation request and that the delay resulted in the

deduction of additional membership dues. *Id.* at 978. Judge Colloton, writing for the Eighth Circuit panel, explained that "[w]hether or not the union officials were correct in declining to honor the e-mail request, the decision was made by the union officials alone, and does not constitute state action. That the State continued to deduct dues from Piekarski as long as he remained on the union rolls does not make the State responsible for the decision of union officials…." *Id.*

The Sixth Circuit reached the same conclusion in *Littler v. Ohio Ass'n of Pub. Sch. Emps.*, 88 F.4th 1176 (6th Cir. 2023). The Sixth Circuit held that the plaintiff's allegations that a union "improperly instructed the state to withhold union dues after she withdrew her union membership" did not state a Section 1983 claim against the union because the union's alleged misconduct was not attributable to the State. *Littler*, 88 F.4th at 1181.

2. The decisions that petitioner relies upon as showing an alleged conflict about state action (Pet. 6, 12–15) involve a very different situation. In those cases, as in this Court's *Janus* decision, a state law or policy required non-members to provide financial support to a union as a condition of employment. The alleged First Amendment infringement was *the government's mandatory fees requirement*, so it was attributable to the government. The union was a state actor because the union was acting jointly with the government in implementing that government requirement.

In *Janus v. AFSCME, Council 31*, 942 F.3d 352 (7th Cir. 2019) (*Janus II*), for example, the government required non-members to pay compulsory

agency fees to a union. The union was a state actor because it was "a joint participant with the state in the agency-fee arrangement." *Id.* at 361. *See Littler*, 88 F.4th at 1182 n.2 (distinguishing *Janus II* because the deductions were required by a "fair-share statute[]"); *Wright*, 48 F.4th at 1122 n.7 (distinguishing *Janus II* for the same reason).

The same is true of this Court's agency fee precedents, which assumed sub silentio that public employee unions were proper Section 1983 defendants in those cases. *See* Pet. 6–7, 11–12 (citing cases). Those cases all involved government requirements that non-members provide financial support to unions as a condition of public employment.[3]

Petitioner misreads the Third Circuit's decision in *Lutter v. JNESO* as showing a conflict about the proper analysis of state action. Pet. 7, 14. It is not true that the Third Circuit "found state action" in *Lutter*. Pet. 14. Rather, as stated above, the Third Circuit held only that the plaintiff had standing and her claim was not moot. *Lutter,* 86 F.4th at 124–35; *see supra* at 12. The Third Circuit expressly did not decide whether the union defendant in that case qualified as a Section 1983 state actor. *See* 86 F.4th at 135 n.27 ("[W]hether JNESO was a state actor subject to suit under § 1983

[3] See *Janus,* 585 U.S. at 929–930 (mandatory agency fees); *Harris v. Quinn*, 573 U.S. 616, 625–26 (2014) (same); *Knox v. Serv. Employees Intern. Union, Loc. 1000*, 567 U.S. 298, 302 (2012) (same); *Chicago Tchrs. Union, Loc. No. 1 v. Hudson*, 475 U.S. 292, 295 (1986) (same); *Abood v. Detroit Bd. of Ed.*, 431 U.S. 209, 212 (1977) (same). Petitioner relies upon *Ellis v. Bhd. of Ry., Airline & S.S. Clerks, Freight Handlers, Exp. & Station Emps.*, 466 U.S. 435 (1984), but this Court's decision addressed the interpretation of the Railway Labor Act.

[is] properly addressed in the first instance by the District Court on remand."). There is no conflict or even any tension in reasoning.

Finally, although the Sixth Circuit held in *Littler* that the union defendant was *not* a state actor, petitioner points to the Sixth Circuit's observation that "[h]ad Littler challenged the constitutionality of a statute pursuant to which the state withheld dues, the 'specific conduct' challenged would be the state's withholdings, which would be state action." Pet. 14 (*quoting Littler*, 88 F.4th at 1182). But the *Littler* court gave the example of *Janus II*, in which state law required non-members to pay fair-share fees. *See* 88 F.4th at 1182.

In this case, there is no state statute that requires public employees to pay any money they have not agreed to pay. California law permits only deductions an employee has authorized in writing and provides that employees can cancel deductions pursuant to the terms of their voluntary authorizations. *See supra* at 4. As in *Littler*, the alleged harm here was caused by the union's "failure to … remove [an employee's] name from the deduction list"—which is not state action. *Littler*, 88 F.4th at 1182.

In sum, there is no "split of authority" that would justify review, or even any tension in the caselaw.[4]

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[4] Petitioner is wrong that district court decisions show a conflict on the state action issue. Pet. 15 n.4. Not only does petitioner mischaracterize some of those decisions, but the district court decisions that petitioner relies upon are from the Sixth and Ninth Circuits. Those circuits subsequently resolved the state action issue in *Littler* and *Wright*.

Moreover, this Court recently denied another petition for certiorari, filed by the same advocacy organization, that raised the same argument about state action. *See Jarrett v. Serv. Emps. Int'l Union Loc. 503*, No. 23-272, 144 S. Ct. 494 (2023). There have been no developments since that time that would make the question worthy of review.

3. Petitioner's proposed state action analysis is also inconsistent with this Court's precedents. Private misconduct does not become state action simply because, as a result of that private misconduct, a public employer erroneously deducts unauthorized dues. *See*, *e.g.*, *Blum v. Yaretsky*, 457 U.S. 991, 1005 (1982) ("That the State responds to [private] actions … does not render it *responsible* for those actions.") (Emphasis in original); *Lugar,* 457 U.S. at 940 ("That respondents invoked the statute without the grounds to do so could in no way be attributed to a state rule or a state decision.").

Petitioner's analysis would flood the federal courts with lawsuits about alleged payroll errors. About six million state and local public employees are union members.[5] Most of them pay their union dues through payroll deduction, so public employers are processing millions of dues deductions every month. Public employees also authorize voluntary payroll deductions for charitable contributions, insurance premium payments, and other purposes. The lower courts have wisely and correctly rejected a state action analysis

[5] News Release, Bureau of Labor Statistics, U.S. Dep't of Labor, Union Members—2023 (Jan. 23, 2024), Table 3, available at https://www.bls.gov/news.release/pdf/union2.pdf (last visited July 2, 2024).

that both is inconsistent with this Court's precedents and would turn the federal courts into substitutes for state labor boards and state courts in addressing disputes about employee payroll deductions, where state law already requires affirmative consent.

B. The Ninth Circuit's analysis of state action in this case was entirely correct. In any event, a case-specific error in a non-precedential decision would not be worthy of review.

California law permits public school employees to revoke their voluntary authorizations for dues deductions "pursuant to the terms of the written authorization." Cal. Educ. Code § 45060(c). Unions are "responsible for processing" employees' "requests to cancel or change authorizations." *Id.* § 45060(e).

The essence of petitioner's claim is that, because he crossed out certain language on the standard UTLA membership card with a Sharpie marker, he was not bound by the window period for cancelling deductions. *See supra* at 5–6. If petitioner is correct, then UTLA violated state law by failing to process his request to revoke deductions. As the Ninth Circuit stated: "[A]ssuming that [petitioner] validly revoked his dues deduction authorization in June 2020, UTLA's request that LAUSD continue making deductions violated state law." App. 24a–25a.[6]

[6] It is not clear whether, as a matter of state contract law, a party that crosses out language on a form agreement without bringing the alteration to the attention of the other party need not follow the form agreement. In any event, had petitioner brought the Sharpie marker issue to UTLA's attention when he

UTLA's alleged violation of state law, however, was unilateral, private misconduct, not misconduct for which the government was responsible. *See Hoekman,* 41 F.4th at 978 ("[T]he decision was made by the union officials alone, and does not constitute state action. That the State continued to deduct dues … does not make the State responsible for the decision of union officials…."). Petitioner did not allege that any government official even knew about the Sharpie marker issue.

Petitioner insists that, in this case, UTLA should have been treated like a government official for purposes of Section 1983 because UTLA's "authority to take involuntary dues deductions is a privilege granted by the State of California." Pet. 13. That is simply wrong. California law forbids involuntary dues deductions. Public employees must voluntarily authorize deductions in writing and can cancel their deductions in accordance with the terms of their own authorizations. *See supra* at 4. California law permits public employers to request that a union produce "a copy of the employee's written authorization" if "a dispute arises about the existence or terms of the written authorization." Cal. Educ. Code § 45060(f). A union's failure to process a valid request to revoke voluntary deductions would constitute a violation of state law redressable by PERB. *See supra* at 4–5. California law also recognizes all the usual state law civil claims, such as for conversion and unjust enrichment. 5 Witkin, Summary of California Law, Torts § 810 *et seq.,* § 1053 (11th Ed. 2024). Petitioner could have

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signed the membership card or when he resigned membership, this dispute would likely have been avoided.

sought a remedy under state law—although he has already received a full refund with interest.

Petitioner points out that state officials, acting in their official capacities, are considered Section 1983 state actors even when they abuse their authority in violation of state law. Pet. 13.[7] The same analysis, however, does not apply equally to private parties. *See, e.g., Lugar*, 457 U.S. at 940 ("That respondents invoked the statute without the grounds to do so could in no way be attributed to a state rule or a state decision.").

In any event, even if the Ninth Circuit made an error in applying state action caselaw to the allegations of this particular case (and it did not), a case-specific error in a non-precedential decision (affecting a petitioner who would have a state law remedy if he had not already received a refund) would not provide a sufficient basis for this Court's intervention.

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[7] See *Lindke v. Freed*, 601 U.S. at 191 (city manager); *Screws v. United States*, 325 U.S. 91, 92 (1945) (county sheriff); *United States v. Classic*, 313 U.S. 299, 307 (1941) (state election commissioners).

CONCLUSION

The petition for certiorari should be denied.

Respectfully submitted,

IRA L. GOTTLIEB
LISA C. DEMIDOVICH
LUKE TAYLOR
BUSH GOTTLIEB, a Law Corp.
801 N. Brand Blvd., # 950
Glendale, CA 91203

SCOTT A. KRONLAND
Counsel of Record
EMANUEL WADDELL
ALTSHULER BERZON LLP
177 Post Street, #300
San Francisco, CA 94108
(415) 421-7151
skronland@altber.com

Counsel for Respondent United Teachers Los Angeles

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