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 FOR THE ATTORNEY GENERAL

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QUESTIONS PRESENTED

Under California law, public school teachers have the right to join or decline to join a union. For teachers who choose to become union members, state law allows the employer to deduct union dues from their paychecks only pursuant to the teachers' written authorization. When a teacher withdraws this authorization, the union is responsible for informing the employer and requesting the termination of dues deductions. In this case, petitioner alleges that he withdrew his prior authorization in accordance with the terms of his agreement with the union, but that the union failed to notify the employer to terminate dues deductions. The questions presented are:

1. Whether the union acted under color of state law for purposes of 42 U.S.C. § 1983 when, in violation of state law, it failed to notify the employer to terminate dues deductions after a teacher withdrew a prior authorization.

2. Whether the union's failure to notify the employer to terminate dues deductions after a teacher withdrew his authorization violated the First Amendment.

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STATEMENT

1. California law guarantees public employees, including public school teachers, the right to join or decline to join a union. *See* Cal. Gov't Code § 3543(a); *see also id.* § 3515. Neither the public school employer nor the union may "[i]mpose or threaten to impose reprisals on employees," "discriminate or threaten to discriminate against employees," or otherwise "interfere with, restrain, or coerce employees because of their exercise" of these rights. *Id.* §§ 3543.5(a), 3543.6(b). In addition, no public employer may require an employee who chooses not to become a union member to pay an agency fee. *See* Pet. 2 & n.1.

Teachers who choose to become members of a union may authorize their employer to deduct union dues from their paychecks. *See* Cal. Educ. Code § 45060(a); *see also* Cal. Gov't Code § 3543.1(d). To begin deductions, the teacher must submit "a revocable written authorization" to the union, which will "certif[y] that it has and will maintain" copies of "individual employee authorizations." Cal. Educ. Code §§ 45060(a), (f). Once begun, deductions "shall remain in effect until expressly revoked in writing by the employee, pursuant to the terms of the written authorization." *Id.* § 45060(c); *see also id.* §§ 45060(a), 45168(a)(1).

When a teacher seeks to cancel deductions for union dues, his written request must be directed to the union, and the union is responsible for processing that request. *See* Cal. Educ. Code §§ 45060(e), 45168(a)(6). The union must "provide the public school employer with notification" of all changes concerning "the amount" the teacher must pay the union. *Id.* § 45060(c). The public school employer "rel[ies] on information provided by" the union regarding whether dues deductions "were properly canceled or changed,"

and the union must indemnify the public school for any claims made by an employee for deductions made in reliance on the union's information. *Id.* §§ 45060(e), 45168(a)(6).

2. Petitioner Glenn Laird was a public school teacher in Los Angeles County; he is now retired. Pet. App. 3a; Pet. C.A. Br. 9 n.1. For most of his career, Laird was a member of respondent United Teachers Los Angeles (UTLA), the union representing public school teachers in collective bargaining with the Los Angeles Unified School District. Pet. App. 3a, 5a. As part of his membership in the union, Laird "signed the standard membership and dues authorization agreements UTLA provided," which allowed the school district to deduct his membership dues directly from his paychecks. Pet. 2; *see also* Pet. App. 9a.

Laird signed his most recent membership agreement and dues-authorization form in February 2018. *See* Pet. App. 10a; C.A. E.R. 24.[1] That agreement made clear that Laird "want[ed] to . . . become a member of UTLA," and that he "agree[d] to abide by its Constitution and Bylaws." C.A. E.R. 24. The dues-authorization portion of the form also provided that Laird "agree[d] to pay regular monthly dues" and "authorize[d] [his] employer to deduct" those dues from his paychecks. *Id.*

By signing this form, Laird acknowledged that his "agreement to pay dues shall remain in effect and shall be irrevocable unless [he] revoke[d] it by sending written notice via U.S. mail to UTLA." C.A. E.R. 24.

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[1] This brief refers to the court of appeals' excerpts of record and supplemental excerpts of record as "C.A. E.R." and "C.A. S.E.R.," respectively.

Although the printed form provided that Laird's authorization to deduct dues could be revoked only during an annual "opt out window," Laird used a marker to strike-out the agreement's "opt out" language. Pet. App. 10a. But he did not touch the language explaining that "[t]his agreement 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." C.A. E.R. 24.

In June 2020, Laird sent a letter to UTLA resigning from the union and instructing it to terminate his dues deductions. Pet. App. 10a. The union responded that Laird was unable to terminate his dues deductions immediately because the request had been submitted outside the "opt out window" described in his 2018 dues-authorization form. *See id.* at 21a; C.A. E.R. 27 (union letter explaining that Laird's "open period" for opting out was "not less than thirty (30) days and not more than sixty (60) days before the annual anniversary date of . . . [the] signature date" on his dues-authorization form). Laird sent the union another letter in December 2020, which fell within the prescribed window for revocations. *See* C.A. E.R. 30. In response, the union confirmed that Laird would no longer be a member going forward, and that the final dues deduction would come from his January 2021 paycheck. *Id.* at 31; *see also* C.A. S.E.R. 6 (declaration confirming that "no payments to UTLA have been deducted from [Laird's] pay since" January 2021).

3. a. Two months after UTLA stopped collecting dues from Laird's paychecks, Laird filed this lawsuit. *See* Pet. App. 20a.[2] As relevant here, the complaint

[2] After Laird filed his complaint, the union sent Laird a "refund

asserted claims under 42 U.S.C. § 1983 alleging that the union and the Los Angeles Unified School District had violated Laird's First Amendment rights by making unauthorized dues deductions from his paychecks from June 2020 to January 2021. *See* Pet. App. 2a-3a. Laird sued the union, the school district, and the California Attorney General in his official capacity. *See* Pet. App. 3a-4a. He sought compensatory damages for the dues collected after he first attempted to resign in June 2020, nominal damages, attorney's fees and costs, a declaratory judgment, and a permanent injunction preventing the defendants from collecting dues under California Education Code § 45060 without "affirmative consent." Pet. App. 18a-20a.

The district court dismissed the complaint without leave to amend. *See* Pet. App. 27a, 47a. The court first held that Laird's claims for declaratory and injunctive relief failed for lack of standing. *See id.* at 33a-36a. As the court explained, Laird had already resigned his union membership—and the union had stopped collecting dues from his paychecks—before he filed his complaint. *See id.* at 34a. Moreover, Laird's complaint did not allege any "future injury he might suffer[] that would merit injunctive or declaratory relief"—in part because he had not alleged any specific, concrete plans to rejoin the union, and in part because he had not explained how his claimed harm (unauthorized collection of dues) would continue even if he did rejoin. *See id.* at 34a-36a.

The court also dismissed Laird's claims for compensatory and nominal damages from the Attorney

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of $800," which the union averred was "an amount sufficient to cover all [of Laird's] post-resignation deductions (which equaled at most $716.32), with interest and nominal damages." C.A. S.E.R. 7; *see id.* at 25-27.

General and the Los Angeles Unified School District, reasoning that such claims were barred by sovereign immunity under the Eleventh Amendment. *See* Pet. App. 38a-41a; *see also Belanger v. Madera Unified Sch. Dist.*, 963 F.2d 248, 253, 254 (9th Cir. 1992) (explaining that, "[u]nder California law, school districts are agents of the state that perform central governmental functions," and thus suits brought against a "district in its own name are subject to the same Eleventh Amendment constraints as suits against the state").

Finally, the court held that Laird's Section 1983 claims against the union failed for want of state action. *See* Pet. App. 41a-46a. The court reasoned that the challenged deductions amounted to "private misuse of a state statute [that] does not describe conduct that can be attributed to the State." *Id.* at 43a (internal quotation marks omitted). Nor could Laird plausibly allege that the State was acting "in concert" with the union in violating his constitutional rights, because Laird and the union had entered into a "private dues agreement[]," and "[t]he deduction of union dues from [Laird's] pay based on UTLA's representations that [Laird] authorized such deductions[] does not amount to state action." *Id.* at 45a, 46a (internal quotation marks omitted).[3]

b. Laird appealed, but he did not challenge the district court's dismissal of his declaratory and injunctive relief claims, and he did not contest the dismissal of his claims against the Los Angeles Unified School District. He argued only that his Section 1983 claims against the union and his nominal damages claim

[3] Because the district court dismissed each of Laird's claims on standing, sovereign immunity, and state-action grounds, it declined to "address whether [he] ha[d] stated a claim for violations of the First . . . Amendment[]." Pet. App. 47a n.7.

against the Attorney General ought to survive. *See* Pet. C.A. Br. 11-47.

The court of appeals affirmed. *See* Pet. App. 23a-24a. As to nominal damages, the court agreed with the district court that sovereign immunity barred Laird's claim for damages from the Attorney General. Pet. App. 25a. As to Section 1983, the court reasoned that even "assuming that Laird validly revoked his dues deduction authorization in June 2020," that would mean only that "UTLA's request that [the school district] continue making deductions violated state law." *Id.* at 24a-25a. Because the union's alleged misconduct "was antithetical to any right or privilege created by the State," it could not be state action for purposes of Section 1983. *Id.* at 25a (internal quotation marks omitted). In any event, the union could not be considered a state actor: "the mere fact that a state transmits dues payments to a union does not give rise to a section 1983 claim"; and "a state employer's ministerial processing of payroll deductions pursuant to employees' authorizations" does not "create sufficient nexus between a state and a union to subject the union to section 1983 liability." *Id.* (internal quotation marks and brackets omitted) (citing *Belgau v. Inslee*, 975 F.3d 940, 947-949 & n.2 (9th Cir. 2020), *cert. denied*, 141 S. Ct. 2795 (2021)).[4]

Laird filed a petition for rehearing or rehearing en banc. The court denied the petition without any judge calling for a vote. *See* Pet. App. 26a.

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[4] Like the district court, the court of appeals did not reach the issue of whether the union's allegedly unauthorized dues deductions violated the First Amendment.

ARGUMENT

The court of appeals rejected Laird's claims because of a lack of state action: his allegations of harm arose from his private dispute about an alleged violation of a dues-authorization agreement between him and the union. Laird nevertheless argues that this Court should grant review, asserting that there is a conflict of authority regarding what is necessary to establish state action for a Section 1983 claim, and that his First Amendment theories raise issues of such exceptional importance that the Court should resolve them in the first instance. He is wrong on both counts. The court of appeals properly held that Laird's Section 1983 claims failed for want of state action; there is no disagreement in the lower courts on that issue. And Laird's underlying First Amendment theories are meritless. They would not warrant plenary review even if this Court were willing to set aside its strong disinclination to resolve constitutional questions that were never addressed by the courts below.

1. Laird offers no persuasive reason for this Court to review whether the union was "acting under 'color of law'" when it declined to notify his employer to terminate dues deductions from his paychecks between June 2020 and January 2021. Pet. i. The court of appeals' ruling was correct; the conflict of authority alleged by Laird is illusory; and this Court has recently and repeatedly denied other petitions raising similar questions.[5]

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[5] *See, e.g.*, *Burns v. Serv. Emps. Int'l Union Loc. 284*, *cert. denied*, No. 23-634 (Feb. 20, 2024); *Jarrett v. Serv. Emps. Int'l Union Loc. 503*, *cert. denied*, No. 23-372 (Dec. 11, 2023); *Polk v. Yee*, *cert. denied*, No. 22-213 (Nov. 7, 2022); *Woods v. Alaska State Emps. Ass'n, AFSCME Loc. 52*, *cert. denied*, No. 21-615 (Feb. 22, 2022);

a. Section 1983 provides a cause of action for the deprivation of constitutional rights by those acting "under color of state law." *Am. Mfrs. Mut. Ins. Co. v. Sullivan*, 526 U.S. 40, 49-50 (1999). "[T]he under-color-of-state-law element of § 1983 excludes from its reach merely private conduct, no matter how . . . wrongful." *Id.* at 50 (internal quotation marks omitted). Only conduct that is "fairly attributable to the State" may form the basis of a Section 1983 claim. *Lugar v. Edmondson Oil Co.*, 457 U.S. 922, 937 (1982).

As the court of appeals explained, "two prongs must be met" for a plaintiff "[t]o establish fair attribution." Pet. App. 24a. First, "'the deprivation must be caused by the exercise of some right or privilege created by the State or by a rule of conduct imposed [by] the [S]tate or by a person for whom the State is responsible.'" *Id.* (quoting *Lugar*, 457 U.S. at 937). Second, "'the party charged with the deprivation must be a person who may fairly be said to be a state actor.'" *Id.* (quoting *Lugar*, 457 U.S. at 937). Laird cannot satisfy either prong.

Indeed, Laird does not even contest the court's holding that the union was not a "state actor" under *Lugar*'s second prong. *See* Pet. App. 25a. This Court has articulated several tests for determining whether a private party "may fairly be said to be a state actor." *Lugar*, 457 U.S. at 937; *see id.* at 939. Most recently, the Court explained that "a private entity can qualify as a state actor in a few limited circumstances—including, for example, (i) when the private entity performs a traditional, exclusive public function; (ii) when

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Anderson v. Serv. Emps. Int'l Union Loc. 503, *cert. denied*, No. 21-609 (Jan. 10, 2022); *Belgau v. Inslee*, *cert. denied*, No. 20-1120 (June 21, 2021).

the government compels the private entity to take a particular action; or (iii) when the government acts jointly with the private entity." *Manhattan Cmty. Access Corp. v. Halleck*, 587 U.S. 802, 809 (2019) (internal citations omitted).

None of those circumstances exists here. Laird has never claimed that the union's collection of dues is the kind of "exclusive public function" that might make it a state actor. *See* Pet. C.A. Br. 31-34. Nor did the State compel the union to enter into an agreement with Laird regarding his dues authorization. To the contrary, California law prohibits the State from "interfer[ing] with . . . or coerc[ing] employees" in connection with their rights to join (or not join) a union. Cal. Gov't Code § 3543.5(a); *see Sullivan*, 526 U.S. at 54 (the mere "permission of a private choice" does not give rise to state action). And there was no joint action between the State and UTLA regarding the allegedly unauthorized dues deductions: The State's role was limited to processing deductions pursuant to Laird's written authorization, the kind of ministerial task that is insufficient to "make the State responsible for" the union's conduct. *Sullivan*, 526 U.S. at 53; *see also id.* at 54; *Belgau v. Inslee*, 975 F.3d 940, 948 (9th Cir. 2020), *cert. denied*, 141 S. Ct. 2795 (2021).

Laird's Section 1983 claim also fails to satisfy *Lugar*'s first prong, which focuses on "the specific conduct of which the plaintiff complains." *Sullivan*, 526 U.S. at 51 (internal quotation marks omitted); *see also Lugar*, 457 U.S. at 940. Laird contends that the union caused him constitutional injury by failing to notify his employer to terminate dues deductions after he submitted his resignation letter in June 2020. *See* Pet. App. 2a-3a. But that failure did not "result[] from the exercise of a right or privilege having its source in

state authority." *Lugar*, 457 U.S. at 939. The source of the union's power to obtain dues was Laird's private agreement with the union: He voluntarily joined the union and agreed to have dues deducted from his paychecks when he signed the membership and dues-authorization form. *See* C.A. E.R. 24; Pet. App. 10a (alleging that "[p]ursuant to" that agreement, "UTLA instructed the District to continue to deduct dues from Mr. Laird's paychecks and remit those monies to UTLA"). No government entity or state law required Laird to join the union or to start paying dues; rather, California law guaranteed Laird the right to refuse to join or participate in the activities of a union. *See* Cal. Gov't Code § 3543(a); *see also* Cal. Educ. Code § 45060(a) (requiring "written authorization" from the employee for the deduction of union dues).

Laird nevertheless claims that the union engaged in state action when it failed to notify his employer to halt dues deductions after he attempted to withdraw his dues authorization in June 2020. *See* Pet. 7. Even assuming that Laird properly canceled his dues authorization, however, that would not convert the union's continued collection of dues into state action. There is no basis under state law for a union to continue the collection of dues if a teacher properly withdraws his authorization. The employer may deduct dues only pursuant to the teacher's written authorization. *See* Cal. Educ. Code § 45060(a). And California law gives teachers the right to revoke a prior authorization, subject to the terms of their agreement with the union. *See id.* § 45060(c). When a teacher "properly cancel[s]" his authorization, the union is responsible for informing the employer and requesting the termination of deductions. *Id.* § 45060(e); *see also id.* § 45060(c).

At best, then, Laird's allegations suggest that the union violated state law when it continued to obtain dues from his paychecks after June 2020. That kind of alleged misconduct is not fairly attributable to the State and does not constitute state action for purposes of Section 1983. As this Court recognized in *Lugar*, "private misuse of a state statute does not describe conduct that can be attributed to the State." 457 U.S. at 941. Put differently, the alleged union misconduct in this case cannot "be ascribed to any governmental decision" because the union was "acting contrary to the relevant policy articulated by the State." *Id.* at 940.

b. This Court's decision in *Janus v. American Federation of State, County, & Municipal Employees, Council 31*, 585 U.S. 878 (2018), does not support Laird's argument that the union engaged in state action. *See* Pet. 11-12. The Court did not expressly address state action in *Janus* because the case involved a challenge to a statutory scheme that required nonconsenting employees to pay agency fees. *See* 585 U.S. at 887-888. There was no question that the challenged requirement involved state action. *See id.* at 897 ("[T]he First Amendment does not permit the government to compel a person to pay for another party's speech."). By contrast, this case involves alleged misconduct by the union—a private party—that violates state law. *See* Cal. Educ. Code § 45060(c) (allowing dues deductions to "remain in effect" only "until expressly revoked in writing by the employee, pursuant to the terms of the written authorization").

The other cases Laird cites are similarly unhelpful. *See* Pet. 12-13. Like *Janus*, all of those cases involved challenges to the collection of mandatory union fees authorized by state or federal laws. *See Harris v.*

Quinn, 573 U.S. 616, 620 (2014) (resolving whether "the First Amendment permits a State to compel personal care providers" who are not union members to pay agency fees); *Knox v. Serv. Emps. Int'l Union, Loc. 1000*, 567 U.S. 298, 312-322 (2012) (examining procedures for collecting mandatory union fees from nonmember employees); *Chi. Tchrs. Union, Loc. No. 1 v. Hudson*, 475 U.S. 292, 301-309 (1986) (same); *Ellis v. Bhd. of Ry., Airline & S.S. Clerks, Freight Handlers, Express & Station Emps.*, 466 U.S. 435, 438-439 (1984) (addressing permissible uses of mandatory agency fees authorized by federal law); *Abood v. Detroit Bd. of Educ.*, 431 U.S. 209, 211, 232-237 (1977) (considering state-mandated agency fees). None of those cases conflicts with the decision below, which addressed the deduction of union fees resulting from a private dues-authorization agreement and alleged private misconduct. *See, e.g.*, Pet. App. 10a; C.A. E.R. 24.

Nor does this Court's recent decision in *Lindke v. Freed*, 601 U.S. 187 (2024), conflict with the decision below. *See* Pet. 12-13. That case considered whether a city manager's activity on Facebook constituted state action that might support a Section 1983 claim. *See Lindke*, 601 U.S. at 190-191. The Court therefore analyzed "whether a *state official* engaged in state action"—an entirely different question from the one presented here. *Id.* at 196. And although the Court reasoned that "the *misuse* of power, possessed by virtue of state law, constitutes state action," it also made clear that "the state-action doctrine requires that the State have granted an official the type of authority that he used to violate rights." *Id.* at 199, 200 (internal quotation marks and brackets omitted). The "authority" that the union allegedly "misused" here is its power to obtain union dues from Laird. *See* Pet. App. 2a-3a. As just described, however, state law does not

give the union the power to obtain dues. Only Laird's written authorization—a private agreement between Laird and the union—can do that. *See* Cal. Educ. Code § 45060(a).

c. Laird also fails to establish any genuine conflict among the lower courts regarding the application of the state-action doctrine to union-dues cases.

Other courts of appeals addressing analogous circumstances have agreed with the decision below. In *Hoekman v. Education Minnesota*, 41 F.4th 969 (8th Cir. 2022), for example, the Eighth Circuit held that a union's alleged misconduct in failing to promptly process two members' resignations and continuing to collect dues after the resignations was not state action. *Id.* at 978. Like the court below, the Eighth Circuit recognized that the "harm allegedly suffered by [the resigning members was] attributable to private decisions and policies, not to the exercise of any state-created right or privilege." *Id.* Similarly, in *Littler v. Ohio Ass'n of Public School Employees*, 88 F.4th 1176, 1181-1182 (6th Cir. 2023), the Sixth Circuit cited with approval both *Hoekman* and the Ninth Circuit's decision in *Wright v. Service Employees International Union Local 503*, 48 F.4th 1112 (9th Cir. 2022), *cert. denied*, 143 S. Ct. 749 (2023), before holding that a union did not engage in state action when it "improperly instructed the state to withhold union dues after [the employee] withdrew her union membership."

The circuit decisions invoked by Laird do not establish any conflict. He first points to the Seventh Circuit's decision following this Court's remand in *Janus*. *See* Pet. 14. The Seventh Circuit held that the union had engaged in state action because it "ma[de] use of state procedures with the overt, significant assistance of state officials." *See Janus v. Am. Fed'n of State,*

Cnty. & Mun. Emps., Council 31, 942 F.3d 352, 361 (7th Cir. 2019). As explained above, however, *Janus* involved the union's collection of agency fees that were compelled by state law. This case involves a private party's alleged violation of a dues-authorization agreement that—if proven—would amount to a violation of state law. *See supra* pp. 9-11; *see also Belgau*, 975 F.3d at 948 n.3 (distinguishing the Seventh Circuit's decision on that basis).

The Third and Sixth Circuit decisions referenced by Laird (Pet. 14-15) do not create any conflict of authority either. The Third Circuit's decision in *Lutter v. JNESO*, 86 F.4th 111 (3d Cir. 2023), addressed only standing and mootness. *Id.* at 123-135. The court explicitly declined to reach the issue of whether the union "was a state actor subject to suit under § 1983." *Id.* at 135 n.27. And Laird acknowledges that the Sixth Circuit "found no state action" in *Littler* when it considered an employee's Section 1983 claims against a union for improper deduction of dues. Pet. 14. He focuses on dicta observing that if the plaintiff had "challenged the constitutionality of the statute pursuant to which the state withheld dues, the 'specific conduct' challenged would be the state's withholdings, which would be state action taken pursuant to the challenged law." *Littler*, 88 F.4th at 1182; *see* Pet. 14. But that observation does not address the situation presented here, where Laird challenges the *union's* private misconduct performed in violation of state law—just like in *Littler*.[6]

[6] And even if the dicta in *Littler* were read as suggesting a rule that Section 1983 claims against government officials based on their own alleged misconduct necessarily involve state action,

Laird also contends that the decision below conflicts with several district court decisions. *See* Pet. 15 n.4. Two of those cases involved public employees who—unlike Laird—were not union members with dues-authorization agreements. *See Chandavong v. Fresno Deputy Sheriff's Ass'n*, 599 F. Supp. 3d 1017, 1020-1024 (E.D. Cal. 2022); *Warren v. Fraternal Ord. of Police, Ohio Lab. Council, Inc.*, 593 F. Supp. 3d 666, 668, 673-676 (N.D. Ohio 2022). The third, *Hernandez v. AFSCME California*, 424 F. Supp. 3d 912, 918-922 (E.D. Cal. 2019), is in tension with the decision below; but subsequent circuit decisions made clear that the district court was mistaken. *See Belgau*, 975 F.3d at 946-949; *Hernandez v. AFSCME Cal.*, 854 F. App'x 923, 925 (9th Cir. 2021).

2. Laird also asks the Court to grant certiorari to consider whether his First Amendment rights were violated when the union failed to notify his employer to terminate dues deductions after he withdrew his authorization. *See* Pet. i. That question does not warrant further review. The courts below did not reach it, and thus the decision below could not possibly implicate any conflict of authority on the question. In any event, there is no conflict on this issue among other lower-court decisions; Laird's First Amendment theories are meritless; and this Court has repeatedly denied petitions raising similar questions—at least 21 times in the last three years.[7]

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that rule would not save Laird's claims against the Attorney General here. Those claims would remain barred on standing and sovereign-immunity grounds—independent holdings that Laird does not contest. *See, e.g.*, Pet. App. 25a, 33a-36a, 40a-41a; *infra* pp. 16-17.

[7] *See, e.g.*, *Burns v. Serv. Emps. Int'l Union Loc. 284*, *cert. denied*,

a. This would be an exceptionally poor vehicle for addressing the First Amendment arguments raised in the petition because the courts below did not reach the merits of those claims. *See Cutter v. Wilkinson*, 544 U.S. 709, 718 n.7 (2005) ("[W]e are a court of review, not first view."). Both the court of appeals and the district court held that Laird's Section 1983 claims failed for lack of state action. *See* Pet. App. 24a-25a, 41a-46a, 47a n.7. And to the extent Laird previously sought declaratory relief, injunctive relief, or damages from the Attorney General in connection with his First Amendment theory, he either abandoned those claims in the courts below or declined to raise them in his petition to this Court. *See generally* Pet. C.A. Br. 11-47; Pet. i.

No. 23-634 (Feb. 20, 2024); *Alaska v. Alaska State Emps. Ass'n*, *cert. denied*, No. 23-179 (Jan. 16, 2024); *O'Callaghan v. Drake*, *cert. denied*, No. 22-219 (May 1, 2023); *Savas v. Cal. Statewide L. Enf't Agency*, *cert. denied*, No. 22-212 (May 1, 2023); *Baro v. Lake Cnty. Fed'n of Tchrs. Loc. 504*, *cert. denied*, No. 22-1096 (June 12, 2023); *DePierro v. Las Vegas Police Protective Ass'n Metro, Inc.*, *cert. denied*, No. 22-494 (Jan. 9, 2023); *Cooley v. Cal. Statewide L. Enf't Ass'n*, *cert. denied*, No. 22-216 (Nov. 7, 2022); *Polk v. Yee*, *cert. denied*, No. 22-213 (Nov. 7, 2022); *Adams v. Teamsters Union Loc. 429*, *cert. denied*, No. 21-1372 (Oct. 3, 2022); *Few v. United Tchrs. L.A.*, *cert. denied*, No. 21-1395 (June 6, 2022); *Yates v. Hillsboro Unified Sch. Dist.*, *cert. denied*, No. 21-992 (Mar. 7, 2022); *Woods v. Alaska State Emps. Ass'n, AFSCME Loc. 52*, *cert. denied*, No. 21-615 (Feb. 22, 2022); *Anderson v. Serv. Emps. Int'l Union Loc. 503*, *cert. denied*, No. 21-609 (Jan. 10, 2022); *Smith v. Bieker*, *cert. denied*, No. 21-639 (Dec. 6, 2021); *Wolf v. Univ. Pro. & Tech. Emps., Commc'n Workers of Am. Loc. 9119*, *cert. denied*, No. 21-612 (Dec. 6, 2021); *Grossman v. Haw. Gov't Emps. Ass'n*, *cert. denied*, No. 21-597 (Dec. 6, 2021); *Troesch v. Chi. Tchrs. Union*, *cert. denied*, No. 20-1786 (Nov. 1, 2021); *Fischer v. Murphy*, *cert. denied*, No. 20-1751 (Nov. 1, 2021); *Hendrickson v. AFSCME Council 18*, *cert. denied*, No. 20-1606 (Nov. 1, 2021); *Bennett v. AFSCME, Council 31*, *cert. denied*, No. 20-1603 (Nov. 1, 2021); *Belgau v. Inslee*, *cert. denied*, No. 20-1120 (June 21, 2021).

b. Even setting aside the vehicle problem, Laird's First Amendment claims are meritless. Under state law, public school teachers have the right to join or refuse to join a union. *See* Cal. Gov't Code § 3543(a). Teachers who choose to join may then authorize their employer to deduct union dues from their paychecks. *See* Cal. Educ. Code § 45060(a). They do so through private agreements with their unions. *See* Pet. App. 9a. There is no dispute here that Laird entered into that kind of private agreement with UTLA. *See id.* at 9a-10a; C.A. E.R. 24. And the First Amendment does not prohibit the enforcement of private contractual commitments. *See Cohen v. Cowles Media Co.*, 501 U.S. 663, 672 (1991) ("[T]he First Amendment does not confer . . . a constitutional right to disregard promises that would otherwise be enforced under state law.").

Laird nonetheless invokes *Janus* to argue that the union's dues deductions violated his First Amendment rights. *See* Pet. 8-11. But *Janus* does not support that argument. This Court held that a State may not compel a nonconsenting employee to pay agency fees. *Janus*, 585 U.S. at 929-930. It did not address the circumstances here, where an employee voluntarily joined a union and affirmatively agreed to pay union dues in accordance with a written dues-authorization form—and it did not abandon the general principle that the First Amendment offers no protection against the enforcement of contractual promises. *See Cohen*, 501 U.S. at 672. Indeed, the Court emphasized that although States "cannot force *nonmembers* to subsidize public-sector unions," they can otherwise "keep their labor-relations systems exactly as they are." *Id.* at 928 n.27 (emphasis added).

And even assuming that the union continued to collect dues from Laird in violation of the terms of his

signed authorization form, his First Amendment claims would still fail for want of state action. The First Amendment prohibits "the government" from compelling speech. *Janus*, 585 U.S. at 897; *see also Bd. of Dirs. of Rotary Int'l v. Rotary Club of Duarte*, 481 U.S. 537, 544 (1987). The state-action doctrine "enforc[es] that constitutional boundary between the governmental and the private" and is based on the "text and structure of the Constitution." *Manhattan Cmty. Access Corp.*, 587 U.S. at 808. That doctrine is closely related to the "color of law" analysis in the Section 1983 context. *See Lugar*, 457 U.S. at 928-929. And here, for the reasons discussed above, *see supra* pp. 8-13, the union's alleged misconduct was not state action.

That does not mean that "[e]mployees who may have once joined a union and affirmatively consented in the past" must "forever forego the benefit of the First Amendment protection from compelled speech." Pet. 11. Neither California law nor Laird's dues-authorization agreement prevented him from withdrawing his authorization to pay dues for all time. Instead, California law recognizes that teachers' authorizations must be "revocable" and may be "revoked . . . pursuant to the terms of the[ir] written authorization." Cal. Educ. Code § 45060(c). And Laird's particular dues-authorization form provided instructions for revocation. *See* C.A. E.R. 24.

Of course, Laird and UTLA disagree about whether Laird properly revoked his dues authorization in June 2020. But that disagreement is a traditional contract dispute between private parties. It turns on the effect of Laird's unilateral decision to modify the union's standard dues-authorization form with a marker, among other considerations bearing on the application of state contract law. The resolution of that dispute

does not raise First Amendment concerns. *See Cohen*, 501 U.S. at 672.

UTLA acknowledged that Laird could pursue various remedies under state law to address the union's alleged misconduct. *See* UTLA C.A. Br. 30 (explaining that California law "provides recourse for erroneous deductions via proceedings before the Public Employment Relations Board"). Other courts have likewise directed aggrieved plaintiffs to state contract law. *See, e.g.*, *Belgau*, 975 F.3d at 950 (rejecting a claim raised by employees who "signed" union membership forms "and made the commitment to pay dues for one year," because those "facts speak to a contractual obligation, not a First Amendment violation"). Especially given the availability of potential state law remedies for Laird's alleged injury, this case does not "present[] an important federal question" warranting certiorari. Pet. 18.

c. Finally, Laird fails to substantiate his assertion that the First Amendment question he seeks to raise implicates "a split of authority." Pet. 8 (emphasis omitted). Even if the courts below had addressed Laird's First Amendment claims and rejected them on the merits, *but see supra* p. 16, that decision would not have conflicted with the Third Circuit's decision in *Lutter*, as petitioner contends. *See* Pet. 9. In *Lutter*, just like this case, the court did not reach the merits of the former union member's First Amendment claim. *See* 86 F.4th at 119. It addressed only the plaintiff's standing and whether her claim had become moot. *Id.* at 135 n.27.[8]

[8] The district court cases cited by Laird do not establish any conflict of authority for similar reasons. *See* Pet. 9 n.2. None of those decisions finally resolved the merits of the plaintiffs' First

And regardless, the First Amendment issues at play in *Lutter* are far different from those Laird sought to raise here. The plaintiff in *Lutter* challenged a "state statute" that "established an annual ten-day period during which public-sector employees could revoke a prior authorization for payroll deductions of union dues." 86 F.4th at 119. In other words, a state law—not a private agreement—caused the plaintiff's alleged injury. But that is not the case here. Laird signed a membership agreement and dues-authorization form with UTLA that included terms for authorizing and revoking the collection of dues. *See* C.A. E.R. 24. Any limitations on Laird's ability to stop paying union dues are the result of his private agreement with UTLA—not any state statute or government action with implications under the First Amendment. *See Cohen*, 501 U.S. at 672.

Amendment claims. In one, the court did not address the First Amendment merits at all, holding instead that the plaintiff's claims failed for lack of state action. *See Klee v. Int'l Union of Operating Eng'rs, Local 501*, No. 2:22-cv-00148, Dkt. 45 at 14-17 (C.D. Cal. Aug. 14, 2023). The other two cases involved materially different facts: a union's collection of dues or vacation hours from employees who were not union members with dues-authorization agreements. *See Bright v. Oregon*, No. 3:23-cv-00320, Dkt. 1 at 4 (D. Ore. Mar. 6, 2023); *Chandavong*, 599 F. Supp. 3d at 1023.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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