No. 24-71

IN THE

Supreme Court of the United States

AVRAHAM GOLDSTEIN; MICHAEL GOLDSTEIN; FRIMETTE KASS-SHRAIBMAN; MITCHELL LANGBERT; JEFFREY LAX; MARIA PAGANO,

Petitioners,

V.

PROFESSIONAL STAFF CONGRESS/CUNY; CITY UNIVERSITY OF NEW YORK; JOHN WIRENIUS*, in his official capacity as chairperson of the New York Public Employee Relations Board;* ROSEMARY A. TOWNLEY, *in her official capacity as member of the New York Public Employee Relations Board;* ANTHONY ZUMBOLO*, in his official capacity as Member of the New York Public Employee Relations Board;* CITY OF NEW YORK; THOMAS P. DINAPOLI*, in his official capacity as New York State Comptroller*,

Respondents.

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

BRIEF OF RICHARD J. PELTZ-STEELE AS AMICUS CURIAE SUPPORTING PETITIONERS

August 22, 2024

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Question Presented

The State of New York is prohibiting several professors, all but one of whom are Jews, from dissociating themselves from a union's representation to protest its anti-Semitic and anti-Israel conduct and other expressive activities. The question presented is:

Whether it violates the First Amendment for a state to prohibit individuals from dissociating from a union's representation to protest that union's expressive activities?

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Interest of the Amicus Curiae[1]

Richard Peltz-Steele is Chancellor Professor at the University of Massachusetts School of Law at Dartmouth, where he teaches torts and media-related topics. His research interests include civil and human rights and freedom of expression, which have instilled in him a strong sense of the importance of First Amendment values.

Professor Peltz-Steele brought a lawsuit challenging a Massachusetts law that required him, as a condition of his employment at UMass Law School, to accept UMass Faculty Federation, Local 1895, American Federation of Teachers, AFL-CIO as his exclusive bargaining representative for all terms and conditions of his employment, even though he is not a union member. *Peltz-Steele v. UMass Fac. Fed'n*, 60 F.4th 1 (1st Cir. 2023), *cert. denied*, 143 S. Ct. 2614 (2023). In particular, Professor Peltz-Steele objected to the way the union had negotiated a decrease in compensation, rather than laying off employees, during the COVID-19 pandemic, which resulted in a cut of his compensation by about 12%.

Professor Peltz-Steele files this amicus brief because he believes that he and other government employees should not be compelled to associate with unions of which they are not members.

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[1] Rule 37 statement: No counsel for any party authored any part of this brief, and no person or entity other than Amici funded its preparation or submission. Counsel for both Petitioners and Respondents received notice more than 10 days before its filing that Amicus intended to file this brief.

Summary of Argument

This Court has on at least three recent occasions recognized that schemes compelling public-sector employees to associate with labor unions impose a "significant impingement" on those employees' First Amendment rights. *Knox v. SEIU, Local 1000*, 567 U.S. 298, 310–11 (2012); *Harris v. Quinn*, 573 U.S. 616, 647 (2014); *Janus v. AFSCME, Council 31*, 585 U.S. 878, 924 (2018). Most recently, in *Janus*, this Court recognized that a state's appointment of a labor union to speak for its employees as their exclusive representative constitutes "a significant impingement on associational freedoms that would not be tolerated in other contexts." 585 U.S. at 893. These "exclusive bargaining" schemes cannot be squared with the Supreme Court's First Amendment jurisprudence. The First Amendment protects "[t]he right to eschew association for expressive purposes," *id*. at 892, and "[f]reedom of association . . . plainly presupposes a freedom not to associate." *Roberts v. United States Jaycees*, 468 U. S. 609, 623 (1984).

In upholding this arrangement, the courts below believed themselves bound by this Court's decision in *Minnesota State Board for Community Colleges v. Knight*, 465 U.S. 271 (1984), which they held stands for the proposition that exclusive bargaining schemes are constitutional. But *Knight* did not consider a compelled-speech or compelled-association challenge to exclusive-bargaining schemes, as this case does. Rather, *Knight* addressed the issue of whether the "restriction on participation in the nonmandatory-subject exchange process violates the constitutional rights of professional employees." *Id*. at 273.

And under this Court's First Amendment precedent, exclusive representation laws violate nonunion employees' rights to freedom of speech and free association because the purported governmental interests set forth by those defending the constitutionality of such laws are insufficient to overcome First Amendment scrutiny.

This Court should grant the petition to clarify that *Knight* is not a license for unions to speak on behalf of dissenting employees, that *Knight* does not exempt state-mandated public sector union exclusive bargaining scheme from First Amendment scrutiny, and to hold that such exclusive representative schemes violate public employees' rights of speech and association.

Argument

I. State exclusive representative laws compel government employees to associate with a union in violation of their First Amendment rights to free speech and freedom of association.

Under New York law, when a union is certified by New York's Public Employment Relations Board ("PERB"), "it shall be the exclusive representative . . . of all the employees in the appropriate negotiating unit" for purposes of negotiating collectively in determining the "terms and conditions of employment" and "determin[ing] and administ[ering] grievances . . . ." N.Y. Civ. Serv. Law § 204. But those purposes are precisely the sort of policy decisions that this Court in *Janus v. AFSCME, Council* 31

recognized as matters of public concern. 585 U.S. 878, 910 (2018).

"By its selection as bargaining representative, [a union] . . . become[s] the agent of all the employees, charged with the responsibility of representing their interests fairly and impartially." *Wallace Corp. v. NLRB*, 323 U.S. 248, 255 (1944). This mandatory agency relationship is akin to "the relationship . . . between attorney and client," and to that between trustee and beneficiary. *ALPA v. O'Neill*, 499 U.S. 65, 74–75 (1991).

Unlike other principals represented by agents, however, "an individual employee lacks direct control over a union's actions." *Teamsters Local 391 v. Terry*, 494 U.S. 558, 567 (1990). That is because exclusive representation "extinguishes the individual employee's power to order his own relations with his employer and creates a power vested in the chosen representative to act in the interests of all employees." *NLRB v. Allis-Chalmers Mfg. Co.*, 388 U.S. 175, 180 (1967). In this way, "[t]he powers of the bargaining representative are 'comparable to those possessed by a legislative body both to create and restrict the rights of those whom it represents.'" *Sweeney v. Pence*, 767 F.3d 654, 666 (7th Cir. 2014) (quoting *Steele v. Louisville & N.R. Co.*, 323 U.S. 192, 202 (1944)).

As a result, exclusive representatives can, and often do, pursue agendas that do not benefit individuals subject to their mandatory representation. *See Knox v. Service Employees*, 567 U.S. 298, 310–11 (2012); *Abood v. Detroit Board of Education*, 431 U.S. 209, 222 (1977). Exclusive representatives also can enter into agreements that bind everyone subject to their representation. *See*

Ford Motor Co. v. Huffman, 345 U.S. 330, 338 (1953). Thus, for example, union representatives can waive employees' right to bring discrimination claims against their employer in court by agreeing that employees must submit such claims to arbitration. *See 14 Penn Plaza LLC v. Pyett*, 556 U.S. 247 (2009). A represented individual "may disagree with many of the union decisions but is bound by them." *Allis-Chalmers,* 388 U.S. at 180.

Unsurprisingly, given a union's power to speak and contract for individuals against their will, this Court has long recognized that exclusive representation impacts and restricts individual liberties. *See Pyett*, 556 U.S. at 271 (holding "[i]t was Congress' verdict that the benefits of organized labor outweigh the sacrifice of individual liberty that this system necessarily demands"); *Vaca v. Sipes*, 386 U.S. 171, 182 (1967) (noting "[t]he collective bargaining system . . . of necessity subordinates the interests of an individual employee to the collective interests of all employees in a bargaining unit"); *Am. Commc'ns Ass'n v. Douds*, 339 U.S. 382, 401 (1950) (holding "individual employees are required by law to sacrifice rights which, in some cases, are valuable to them" under exclusive representation, and that "[t]he loss of individual rights for the greater benefit of the group results in a tremendous increase in the power of the representative of the group—the union").

When a state certifies a union to represent a bargaining unit, it forces all employees in that unit to associate with the union. This coerced association authorizes the union to speak on behalf of the employees even if the employees are not members, even if the employees do not contribute fees, and even

if the employees disagree with the union's positions and speech.

This arrangement has two constitutional problems. First, it compels speech because the union speaks on behalf of the employees, as though its speech is the employees' own speech. Second, it compels association because the union represents everyone in the bargaining unit without giving dissenting employees the choice not to associate.

While it has not had occasion to directly address this issue, this Court has held that "designating a union as the exclusive representative of nonmembers substantially restricts the nonmembers' rights." *Janus*, 585 U.S. at 901; *see also Harris v. Quinn*, 573 U.S. 616, 649 (2014); *Knox*, 567 U.S. at 310–11 (2012). Indeed, "[f]orcing free and independent individuals to endorse ideas they find objectionable is always demeaning. . . . [A] law commanding involuntary affirmation of objected-to beliefs would require even more immediate and urgent grounds than a law demanding silence." *Janus*, 585 U.S. at 893 (quoting *W. Va. Bd. of Ed. v. Barnette*, 319 U.S. 624, 633 (1943) (internal quotation marks omitted)). Exclusive representation forces employees "to voice ideas with which they disagree, [which] undermines" First Amendment values. *Id.* New York law commands Petitioners' involuntary affirmation of beliefs they reject. In addition to the union's political positions and how it negotiates their employment terms and conditions, Petitioners "detest [the union's] positions on Israel," which they "believe vilifies Zionism, disparages the national identity of Jews, and seeks to destroy Israel as a sovereign state." Pet. 5. The fact that they retain the right to speak for themselves in

certain circumstances does not negate the fact that the union speaks as their representative by taking positions they find abhorrent and personally offensive.

Exclusive representation is also forced association: Petitioners are forced to associate with the union as their exclusive representative simply by the fact of their employment in this particular bargaining unit. "Freedom of association . . . plainly presupposes a freedom not to associate." *Roberts v. United States Jaycees*, 468 U.S. 609, 623 (1984). Yet Petitioners have no such freedom, no choice about their association with the union; it is imposed—indeed coerced—by the State's laws. This would be bad enough if Petitioners simply disagreed with the union's political or negotiating positions. But here, Petitioners believe their very identity is being attacked by the union.

Mandatory associations are "exceedingly rare because . . . [they] are permissible only when they serve a 'compelling state interes[t] . . . that cannot be achieved through means significantly less restrictive of associational freedoms.'" *Knox,* 567 U.S. at 309 (quoting *Roberts*, 468 U.S. at 623). This Court has required the government to satisfy this level of scrutiny to justify mandatory associations in a variety of contexts. This includes where the government required employees and contractors to affiliate with political parties, *see Elrod v. Burns*, 427 U.S. 347, 362–63 (1976); *O'Hare Truck Serv., Inc. v. City of Northlake*, 518 U.S. 712, 714–15 (1996); where it required groups to associate with unwanted individuals, *see Roberts*, 468 U.S. at 623; *Hurley v. Irish-Am. Gay, Lesbian & Bisexual Grp.*, 515 U.S. 557,

577–78 (1995); *Boy Scouts of Am. v. Dale*, 530 U.S. 640, 658–59 (2000); and where it required individuals to financially support exclusive representatives. *see Janus*, 585 U.S. at 924; *Harris*, 573 U.S. at 647; *Knox*, 567 U.S. at 309-10.

Exclusive representation is therefore subject to at least exacting scrutiny, if not strict scrutiny. *See Knox*, 567 U.S. at 310–11. It must "serve a compelling state interest that cannot be achieved through means significantly less restrictive of associational freedoms." *Id.* at 310. This the union cannot show.

II. No compelling interests justify the infringement of First Amendment rights created by laws providing for exclusive representation of public sector unions.

Unions and state governments have offered two justifications as compelling state interests to support exclusive representation: labor peace and the convenience to the government employer. Neither holds up under exacting, let alone strict, scrutiny.

A. "Labor peace" is not a compelling state interest justifying exclusive representation.

One interest often proffered is "labor peace," meaning the "avoidance of the conflict and disruption that it envisioned would occur if the employees in a unit were represented by more than one union" because "inter-union rivalries would foster dissension within the work force, and the employer could face

'conflicting demands from different unions.'" *Janus*, 585 U.S. at 933.

Some lower courts have said that exclusive representation by itself—separate from any other agency-fee or union-shop arrangement—promotes "labor peace." *See, e.g., Mentele v. Inslee*, 916 F.3d 783, 790 (9th Cir. 2019); *Thompson v. Marietta Educ. Ass'n*, No. 2:18-cv-628, 2019 U.S. Dist. LEXIS 206804, at *18 (S.D. Ohio Nov. 26, 2019); *Uradnik v. Inter Faculty Org.*, No. 18-1895, 2018 U.S. Dist. LEXIS 165951, at *9 (D. Minn. Sep. 27, 2018); *Reisman v. Associated Faculties of the Univ. of Me.*, 356 F. Supp. 3d 173, 178 n.1 (D. Me. 2018); *Akers v. Md. State Educ. Ass'n*, 376 F. Supp. 3d 563, 570 (D. Md. Apr. 18, 2019).

In *Janus* this Court assumed, without deciding, that labor peace might be a compelling state interest, but rejected it as a justification for agency fees—that is, for compelling employees to pay money to a union as a condition of their employment. That interest should likewise be rejected as a justification for exclusive representation. This Court recognized that "it is now clear" that the fear of "pandemonium" if the union could not charge agency fees was "unfounded." *Janus*, 585 U.S. at 895. To the extent that individual bargaining is claimed to raise the same concerns of pandemonium, this too, remains insufficient. *Janus* rejected the invocation of this rationale due to the absence of evidence of actual harm. *Id*.

And the state must do more than make a bald assertion of "labor peace" to win its case. *Perry Educ. Ass'n v. Perry Local Educators' Ass'n*, 460 U.S. 37, 71 (1983) (Brennan, J., dissenting) ("Although the State's interest in preserving labor peace in the schools in order to prevent disruption is unquestionably

substantial, merely articulating the interest is not enough to sustain the exclusive-access policy in this case. There must be some showing that the asserted interest is advanced by the policy"). The state must make "some showing" that exclusive representation is sufficiently necessary to labor peace to justify burdening Petitioners' First Amendment rights. This it cannot do.

The "labor peace" concept was borrowed by *Abood*, 431 U.S. at 220–21, from the Court's jurisprudence concerning Congress's Commerce Clause power to regulate economic affairs. *See, e.g., NLRB. v. Jones & Laughlin Steel Corp.*, 301 U.S. 1, 41–42 (1937). This Court described the core concern that *Abood* considered "compelling" to justify the state's interest in labor peace" (sometimes also called "labor stability"): avoiding inter-union rivalry.

> By "labor peace," the *Abood* Court meant avoidance of the conflict and disruption that it envisioned would occur if the employees in a unit were represented by more than one union. In such a situation, the Court predicted, inter-union rivalries would foster dissension within the work force, and the employer could face conflicting demands from different unions. Confusion would ensue if the employer entered into and attempted to enforce two or more agreements specifying different terms and conditions of employment. And a settlement with one union would be subject to attack from a rival labor organization.

Janus, 585 U.S. at 895. (internal punctuation omitted). *Abood's* "unsupported empirical assumption" is "unwarranted" under scrutiny. *See Harris*, 573 U.S. at 638.

First, research from a 2011 legislative change to multi-unionism in New Zealand indicates that this unsupported empirical assumption is inaccurate. Mark Harcourt, et al., *US Union Revival, Minority Unionism and Inter-Union Conflict*, 56 J. of Industrial Relations 653, 665 (2014) ("More than 70% of the New Zealand union leaders surveyed report not having had even one conflict with another union over the previous three years."). The authors conclude:

> [C]onflicts do happen in a multi-union setting, most commonly over membership and bargaining, but . . . both the level and consequences of conflict are low. This empirical evidence should help to dispel the belief that minority unionism (and multi-unionism) inevitably leads to more conflict and labour fragmentation.

Id. at 668.

Second, unions already must compete for affiliates, and this is a dynamic, ongoing competition based on leaders' personalities, political power, contract successes, and perceived aggression. *See* U.S. Dep't of Labor, "Labor Union Mergers and Affiliations" ("Labor unions exist in complex hierarchies that may consist of local, intermediate, and national/international unions. The relationships among the unions often change; for instance, one or more unions may merge or one union may affiliate with another union."). Exclusive representation does

not advance the cause of "labor peace" by preventing union competition; union competition is a reality of life for unions today because of the breakdown in industry siloes and national association that characterized unions in a bygone era.

Thus, the presumption that without exclusive representation inter-union rivalries would occur leading to conflict and disruption is not supported by evidence. Not only does inter-union rivalry already happen under the exclusive representation system that does not result in the chaos predicted by the *Abood* Court, but the evidence in systems without exclusive representation shows that such inter-union rivalries do not result in the kind of disruptive conflict and disruption that the *Abood* Court was concerned about. *See Janus*, 585 U.S. at 895 ("*Abood* cited no evidence that the pandemonium it imagined would result if agency fees were not allowed, and it is now clear that Abood's fears were unfounded").

And this Court's cases recognize that the First Amendment does not permit government to "substitute its judgment as to how best to speak for that of speakers and listeners" or to "sacrifice speech for efficiency." *Riley v. Nat'l Fed'n of the Blind*, 487 U.S. 781, 791, 795 (1988). But that is in essence what the labor peace rationale does. For these reasons, labor peace cannot justify the infringement of First Amendment rights imposed on dissenting employees by exclusive representation.

B. The government employer's convenience is not a compelling interest justifying exclusive representation.

In addition to labor peace, the dissent in *Janus* offers a second justification for exclusive representation from the government's perspective: "streamlin[ing] the process of negotiating terms of employment." *Janus*, 585 U.S. at 935 (Kagan, J., dissenting). The *Abood* Court noted the government's convenience not in negotiating only one contract, but also the convenience of administering only contract. 431 U.S. at 220 ("The designation of a single representative avoids the confusion that would result from attempting to enforce two or more agreements specifying different terms and conditions of employment.")

But the state's convenience cannot justify infringing First Amendment rights. The rights to speech and association cannot be limited by appeal to administrative convenience. *Police Dep't of Chicago v. Mosley*, 408 U.S. 92, 102 n.9 (1972) (in free speech cases, a "small administrative convenience" is not a compelling interest); *see also Tashjian v. Republican Party*, 479 U.S. 208, 218 (1986) (holding that a state could "no more restrain the Republican Party's freedom of association for reasons of its own administrative convenience than it could on the same ground limit the ballot access of a new major party").

While it may be quicker or more efficient for the University to negotiate only with the Union, "the Constitution recognizes higher values than speed and efficiency." *Stanley v. Illinois*, 405 U.S. 645, 656 (1972). Even if the state could claim that it saves monetary resources by negotiating and administering only one contract, the preservation of government resources is not an interest that can justify First Amendment violations. In other contexts, even where

the state's burden was only rational-basis review, this Court has rejected such justifications. *See, e.g., Romer v. Evans*, 517 U.S. 620, 635 (1996) (rejecting the "interest in conserving public resources" in a case applying only heightened rational basis review); *see also Plyler v. Doe*, 457 U.S. 202, 227 (1982) ("a concern for the preservation of resources standing alone can hardly justify the classification used in allocating those resources"). Such claimed interests are not enough to leave Petitioners "shanghaied for an unwanted voyage." *Janus*, 585 U.S. at 897.

Second, the inconvenience argument is an "unwarranted empirical assumption" with no particular showing to back it up. Virtually every government employer already negotiates and administers numerous different contracts with different unions that cover different bargaining units. Often unions find greater leverage in entering those negotiations together as a coalition to reach a joint contract covering multiple bargaining units. *See, e.g.*, "Chicago Park District Has Reached Deal With 24 Of 25 Unions; Remaining Union Has Served Strike Notice," CBS-2 (Oct. 2, 2019)[2] (reporting that government agency negotiated a joint contract with a coalition of 22 unions). Or the government may negotiate with a union or unions on certain common topics, such as the terms and conditions in an employee handbook, but then vary the particulars of individual unrepresented employees' compensation based on merit or individual concerns, as already happens in the private sector. Catherine Fisk and

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[2] https://www.cbsnews.com/chicago/news/chicago-park-district-has-reached-deal-with-24-of-25-unions-remaining-union-has-served-strike-notice/

Xenia Tashlitsky, *Imagine a World Where Employers are Required to Bargain with Minority Unions*, 27 ABA JOURNAL LAB. & EMP. LAW 1, 15 (2011). The government employer may also decide to extend a flat percentage cost-of-living increase or raise to all employees even if it has the flexibility to vary amounts. So in many instances, the government may have less inconvenience than supposed.

In other situations, the government may find the task of negotiating salaries with individual employees not a burden but an opportunity. A government employer may find that flexibility in setting salaries allows it to recruit better candidates in a highly competitive market for talent. For current employees, variability in increases will give public managers a new tool to align rewards with performance. In both cases, the incremental additional burden of negotiating salary on top of the potential or past performance evaluation already undertaken may be slight, and the payoff for talent management significant. In all events, these are the sorts of trade-offs that should be considered by public officials, not predetermined by courts.

In sum, the state's convenience is not a compelling interest justifying infringements on First Amendment rights. It is not an acceptable excuse in other First Amendment contexts, and there is no strong empirical proof that government employers would be paralyzed by inconvenience without exclusive representation.

III. The lower courts have misapplied *Knight* in upholding state-compelled union exclusive representative schemes as consistent with the First Amendment.

The lower courts that have addressed this issue believed themselves bound by this Court's decision in *Minnesota State Board for Community Colleges v. Knight*, 465 U.S. 271 (1984), which they held stands for the proposition that exclusive bargaining schemes are constitutional. *See e.g., Reisman v. Associated Foes. of Univ. of Me.*, 939 F.3d 409, 414 (1st Cir. 2019), *cert. denied*, 141 S. Ct. 445 (2020); *Adams v. Teamsters Union Loc. 429*, No. 20-1824, 2022 U.S. App. LEXIS 1615, *4 (3d Cir. Jan. 20, 2022), *cert denied*, 143 S. Ct. 88 (2022); Akers v. Md. State Educ. Ass'n, 990 F.3d 375, 382 (4th Cir. 2021); *Thompson v. Marietta Educ. Ass'n*, 972 F.3d 809, 812 (6th Cir. 2020), *cert. denied*, 141 S. Ct. 2721 (2021); *Bennett v. AFSCME Council 31*, 991 F.3d 724, 727 (7th Cir. 2021), *cert. denied*, 142 S. Ct. 424 (2021); *Uradnik v. Inter Faculty Org.*, 2 F.4th 722, 725 (8th Cir. 2021); *Mentele*, 916 F.3d at 790, *cert. denied*, 140 S. Ct. 114 (2019); *Hendrickson v. AFSCME Council 18*, 992 F.3d 950, 969 (10th Cir. 2021), *cert. denied*, 142 S. Ct. 423 (2021). But *Knight* did not consider a compelled-speech or compelled-association challenge to exclusive-bargaining schemes.

Knight holds that employees do not have a right, as members of the public, to a formal audience with the government to air their views. *Knight* did not decide whether such employees can be forced to associate with the union. As the *Knight* court framed the issue, "The question presented . . . is whether this restriction on participation in the nonmandatory-subject exchange process violates the constitutional rights of professional employees." 465 U.S. at 273.

The plaintiffs in *Knight* were community college faculty who dissented from the certified union. *Id*. at

278. The Minnesota statute at issue required that their employer "meet and confer" with the union alone regarding "non-mandatory subjects" of bargaining. The statute explicitly prohibited negotiating separately with dissenting employees. *Id.* at 276. The plaintiffs filed their suit claiming a constitutional right to take part in these negotiations.

The Court explained the issue it was addressing: "[A]ppellees' principal claim is that they have a right to force officers of the State acting in an official policymaking capacity to listen to them in a particular formal setting." *Id.* at 282. Confronted with this claim, this Court held that the employees had "no constitutional right to force the government to listen to their view, . . . as members of the public, as government employees, or as instructors in an institution of higher education." *Id.* at 283.

Knight did not address whether exclusive representation constitutes a mandatory expressive association. That is because this Court had already ruled on that issue years earlier in *Abood*, 431 U.S. at 220–21. *Abood* "reject[ing] the claim that it was unconstitutional for a public employer to designate a union as the exclusive collective-bargaining representative of its employees." *Chicago Teachers Union v. Hudson*, 475 U.S. 292, 301 (1986); *see Knight v. Minn. Cmty. Coll. Faculty Ass'n*, 571 F. Supp. 1, 15 (D. Minn. 1982) (recognizing that "*Abood* squarely upheld the constitutionality of exclusive representation bargaining in the public sector"). *Abood* did so because it found "[t]he principle of exclusive union representation" to be justified by the labor peace interest. 431 U.S. at 220–21. *Knight* did not revisit the compelled association issue already

decided in *Abood*. But *Abood* is no longer good law. This Court squarely overturned it in *Janus*. Thus, *Abood* cannot justify the exclusive bargaining statutory system.

The central issue in *Knight* was whether the plaintiffs could compel the government to negotiate with them instead of, or in addition to, the union. That question is fundamentally different from Petitioners' claim that the government cannot compel them to associate with the union by authorizing the union to bargain on their behalf. The fact that the government is entitled to listen only to the exclusive representative does not mean the government is free to dictate *who speaks and contracts* for individuals in their relations with government. The latter infringes on First Amendment rights, even if the former does not.

Knight is, therefore, not responsive to the question Petitioners now raise: whether someone else can speak in their name, with their imprimatur granted to it by the government. They do not contest the right of the government to choose whom it meets with, to "choose its advisors," or to amplify the union's voice. They do not demand that the government schedule meetings with them, engage in negotiation, or satisfy any of the other demands made in *Knight*. They only ask that the union not do so in their name.

This Court's "compelled-speech cases are not limited to the situation in which an individual must personally speak the government's message." *Rumsfeld v. Forum for Academic and Institutional Rights, Inc.*, 547 U.S. 47, 63 (2006). The state exclusive representation requirement takes away dissenting employees' "choice . . . not to propound a

particular point of view," a matter "presumed to lie beyond the government's power to control," in the same way that compelling a parade organizer to accept a group carrying a banner with an unwanted message would do so. *Hurley*, 515 U.S. at 575. The fact that Petitioners must speak out to distance themselves from the union's speech—speech that attacked their identity and that they believe is antisemitic and anti-Israel, Pet. 5—escalates, not diminishes, their constitutional injury. *Pacific Gas & Elec. Co. v. Public Util. Comm'n of Cal.*, 475 U.S. 1, 20–21 (1986) (plurality opinion); *Miami Herald Publishing Co. v. Tornillo*, 418 U.S. 241, 258 (1974). The government is not free to compel citizens to associate with advocacy groups so long as those citizens are otherwise free to speak. As Justice Scalia put it when addressing a similar contention in *Harris*, "I suppose the fact that you're entitled to speak against abortion would not justify the government in requiring you to give money to Planned Parenthood." Transcript of Oral Argument at 17, *Harris v. Quinn*, 573 U.S. 616 (2014) (No. 11-681)[3].

Conclusion

Government-imposed mandatory associations violate the First Amendment unless they serve a compelling government interest that cannot be achieved through means significantly less restrictive of associational freedoms. State exclusive representative laws violate employees' First Amendment rights to free speech and association. No

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[3] Available at:
https://www.supremecourt.gov/oral_arguments/argument_transcripts/2013/11-681_4f14.pdf.

compelling interest justifies this intrusion into Petitioners' rights. This Court should grant certiorari to clarify that *Knight* does not stand for the proposition that exclusive bargaining schemes are constitutional. Rather, based on this Court's First Amendment precedent, state exclusive representation laws violate the First Amendment rights to speech and association.

August 22, 2024

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