

No. 24-71

In the Supreme Court of the United States

AVRAHAM GOLDSTEIN, et al.,

Petitioners,

v.

PROFESSIONAL STAFF CONGRESS/CUNY, et al.,

Respondents.

**ON PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT**

**BRIEF FOR JEWISH COALITION FOR
RELIGIOUS LIBERTY AS *AMICUS CURIAE*
IN SUPPORT OF PETITIONERS**

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INTEREST OF *AMICUS CURIAE**

Jewish Coalition for Religious Liberty is an incorporated group of Jewish lawyers, rabbis, and communal professionals. JCRL is devoted to ensuring that First Amendment jurisprudence enables the flourishing of diverse religious viewpoints and practices in the United States. As adherents of a minority religion, amicus also has a unique interest in ensuring that First Amendment jurisprudence protects against compelled association with groups that denigrate religious beliefs held by JCRL's members. To that end, JCRL urges the Court to grant certiorari and protect First Amendment freedoms for all Americans, including religious minorities.

SUMMARY OF ARGUMENT

New York's Taylor Law forces certain public employees to choose between their jobs and their faith. It requires public employees to have an exclusive representative to negotiate on their behalf "with respect to wages, hours, and other terms and conditions of employment." N.Y. Civ. Serv. Law §204. The Professional Staff Congress is a union that exclusively represents professors that work for the City University of New York. Though professors at CUNY need not be mem-

* Under Rule 37.2, *amicus curiae* provided timely notice of its intention to file this brief. Under Rule 37.6, no counsel for a party authored this brief in whole or in part, and no person other than *amicus curiae*, its members, or its counsel made a monetary contribution to its preparation or submission.

bers of PSC, PSC is the only union permitted to represent them and hence to speak for them on certain topics.

Unfortunately, that union takes views on Israel that petitioners find “anti-Semitic and anti-Israel.” Pet.5. The law’s exclusive representation scheme compels these employees to associate with messages they vehemently disagree with. Worse, here, the law requires religious minorities (particularly, Jews) to associate with a union that denigrates central tenets of their faith. In fact, making such statements may be prohibited by Jewish law.

The Second Circuit, however, saw no problem: “The prudential pressure that Plaintiffs may reasonably feel to *join* the union—despite their deep objections to its political positions—is no different from the pressure to join a majority party that persons in the minority always feel’ and thus ‘does not create an unconstitutional inhibition on associational freedom.” *Goldstein v. Pro. Staff Cong./CUNY*, 96 F.4th 345, 350 (2d Cir. 2024). The Second Circuit’s conception of this case is fundamentally flawed. This case isn’t just about a mere political objection to the union; five of the six petitioners are Jews that can have religious objections to the union’s statements and conduct toward Israel. *See Emp. Div., Dep’t of Hum. Res. of Ore. v. Smith*, 494 U.S. 872, 882 (1990) (“[I]t is easy to envision a case in which a challenge on freedom of association grounds would likewise be reinforced by Free Exercise Clause concerns.”). The clauses of the First Amendment “work in tandem” and “doubly protec[t]” religion. *Kennedy v. Bremerton Sch. Dist.*, 597 U.S.

507, 523 (2022). This “hybrid situation” makes this case an ideal vehicle for this Court to reevaluate exclusive-representation schemes that raise grave First Amendment concerns. *Smith*, 494 U.S. at 82.¹

And the rule adopted below is not limited to CUNY, or even the States in the Second Circuit. Most circuits have addressed materially similar claims, and all of them say this Court’s decision in *Minnesota State Board for Community Colleges v. Knight*, 465 U.S. 271 (1984), ties their hands.² If this Court does not grant the petition and reverse the erroneous interpretation of this Court’s precedent, the negative effects will reverberate beyond the present case. Of the 7.8 million Americans represented by a public sector

¹ *Smith* has obviously drawn significant criticism, including its “hybrid” language. See, e.g., *Fulton v. City of Philadelphia*, 593 U.S. 522, 545-618 (2021) (Alito, J., concurring in the judgment). As JCRL has explained many times, *Smith* is wrongly decided. See, e.g., JCRL-Amicus-Br. in *Fulton v. City of Philadelphia*, No. 19-123 (U.S. May 27, 2020); JCRL-Amicus-Br. in *Tingley v. Ferguson*, No. 22-942 (U.S. Apr. 27, 2023). But at the very least, the presence of *Smith*’s “special category” makes this case a better vehicle for considering the questions presented. *Fulton*, 593 U.S. at 599-600 (Alito, J., concurring in the judgment).

² See, e.g., *Peltz-Steele v. UMass Fac. Fed’n*, 60 F.4th 1 (1st Cir. 2023); *Goldstein v. Pro. Staff Cong./CUNY*, 96 F.4th 345 (2d Cir. 2024); *Adams v. Teamsters Union Loc. 429*, 2022 WL 186045 (3d Cir. Jan. 20); *Akers v. Md. State Educ. Ass’n*, 990 F.3d 375 (4th Cir. 2021); *Thompson v. Marietta Educ. Ass’n*, 972 F.3d 809 (6th Cir. 2020); *Bennett v. AFSCME*, 991 F.3d 724 (7th Cir. 2021); *Ocol v. Chi. Tchrs. Union*, 982 F.3d 529 (7th Cir. 2020); *Uradnik v. Inter Fac. Org.*, 2 F.4th 722 (8th Cir. 2021); *Mentele v. Inslee*, 916 F.3d 783 (9th Cir. 2019); *Hendrickson v. AFSCME*, 992 F.3d 950 (10th Cir. 2021).

union, 10% are not union members. Bureau of Lab. Stat., *Union Members—2023*, U.S. Dep’t of Lab. (Jan. 23, 2024), bit.ly/46YX6Tq. But despite not being members, petitioners remain bound to the union because the union must exclusively represent employees like them.

In short, New York’s exclusive-representation scheme puts Jewish professors in an untenable position where they are associated with a union that denigrates core tenets of their faith. The First Amendment doesn’t allow that. The Court should grant the petition and do what no court can do right now: restore the First Amendment to its proper scope and vindicate individuals’ free-speech and free-exercise rights.

REASONS FOR GRANTING THE PETITION

I. Exclusive representation by the Professional Staff Congress compels Jews represented by it to mouth vilification of Israel in conflict with their faith.

The Professional Staff Congress (PSC) is a union that exclusively represents professors that work for the City University of New York (CUNY). This union declares abhorrent views about the State of Israel and the Jewish people. Though professors that disagree with the union (including religious Jews) can decline to be a member of the union, they cannot escape the union’s representation. In other words, these employees cannot disassociate from the union and its antisemitic and anti-Israel views—even when these views contradict core tenets of their faith. New York’s exclusive-representation scheme thus compels its members to mouth support for views they disagree with, and

possibly even consider themselves religiously prohibited from endorsing.

A. Forcing Jewish professors to mouth support for anti-Israel messages conflicts with central aspects of their faith and may violate religious prohibitions.

There are many compelling reasons Jews want to disassociate from an organization that denigrates core aspects of their religion, lest they impliedly mouth support for ideas at odds with their faith. The tenets of Judaism include wide-ranging requirements that touch on many aspects of public and private life. For example, Judaism dictates what food Jews may eat (*e.g.*, kosher), what clothes they may wear (*e.g.*, shatnez), what words they may say (*e.g.*, lashon hara), and even where they live (*e.g.*, walking distance of a synagogue). Judaism also says a lot about Israel—the Holy Land of the Jewish people. Significant aspects of religious Jews’ life involve Israel, including how they pray, how they celebrate holidays and weddings, and how they give charity. Forced association with PSC’s smearing of the State of Israel and the Jewish people denigrates many Jews’ faith in violation of the First Amendment.

1. The State of Israel is central to Jews and their faith. Israel is the Jews’ Holy Land, given by G-d (Ha-shem) to the Jewish people. *See, e.g.*, Posner, *23 Facts About the Land of Israel Every Jew Should Know*, Chabad.org, perma.cc/QK4D-WNQ7; *5 Facts About the Jewish People’s Ancestral Connection to the Land of Israel*, Am. Jewish Comm. (Feb. 26, 2024),

perma.cc/493Q-5HAC.³ Its “very space is sacred, designated so by G-d.” 23 Facts, *supra*. Hashem is always looking after it. See 23 Facts, *supra*; Deuteronomy 11:12 (“a land the L-rd, your G-d, looks after; the eyes of L-rd your G-d are always upon it, from the beginning of the year to the end of the year”).

Israel also plays a central role in Jewish law. The Torah has 613 commandments (mitzvot)—248 positive commandments (what an adherent must do) and 365 negative commandments (what an adherent must not do)—that govern Jewish conduct. Many can be fulfilled anywhere, but some can be fulfilled only in Israel. See Hecht, *The 613 Commandments (Mitzvot)*, Chabad.org, perma.cc/ELB2-UV3S. At least according to some sources, two of them, for example, require living in Israel: “the national obligation to settle the land and the obligation for the individual to reside in the land.” *The Mitzvah of Living in Israel*, Nefesh B’Nefesh, perma.cc/X3H9-8JVB. And according to many rabbis, “the true fulfillment of all the commands is only in the land of Israel, where the mitzvot take on a special holiness and higher level of fulfillment.” Sperling, *How Many Mitzvot Can I Keep?*, Yeshiva.co, perma.cc/VZR4-9REW. As one of the most well-known

³ See also, e.g., Margolin, *It Is Time to Declare the Truth About the Jews and Israel*, Chabad.org, perma.cc/HUD3-D4RS (“The Torah grants Israel to the Jews and obligates them to protect her people.”); The Rebbe, *The Land of Israel*, Chabad.org, perma.cc/5D6B-AMJK; *Rashi on Genesis 1:1*, Sefaria, perma.cc/JK4N-GHEA (“All the earth belongs to the Holy One, blessed be He; He created it and gave it to whom He pleased. When He willed He gave it to [the Jewish people], and when He willed He took it from them and gave it to [the Jewish people].”).

Torah scholars, the Rambam, explained: “One should not emigrate from the Land of Israel, except for the purposes of studying Torah or in order to get married[;] so, too, one may leave for the purposes of business. However, one may not leave on a permanent basis Our Sages said that any person who lives in the Land of Israel will be forgiven for his sins ... even if he walks four cubits there, he will merit life in the World to Come. So, too if a person is buried there, he is atoned for. A person should always live in the Land of Israel.” Chaim Miller, *The Choseness of the Land of Israel*, Chabad.org, perma.cc/5YYT-5HCC (cleaned up).

Israel is significant to Judaic prayer as well. The Talmud, a compilation of discussions on Judaic law, instructs Jews to pray toward Israel, specifically Jerusalem and the Temple Mount. *See* Shurpin, *Why Do We Face East When Praying? Or Do We?*, Chabad.org, perma.cc/ZXH6-6CQZ; *see also* Adelman, *What Is the Temple Mount?*, Chabad.org, perma.cc/FK2P-MA3C (explaining why the Temple is “the holiest place on earth”). So “even though [Jews] may not physically be in the Holy Land,” their “prayers ascend to heaven through it.” 23 Facts, *supra*; *accord* Face East, *supra*. This idea “is rooted” in the Torah. *See ibid.* (“[T]he notion that our prayers ascend to heaven through the Temple Mount is rooted in the Book of Genesis, where Jacob states regarding the Temple Mount, ‘How awesome is this place! This is none other than the house of G-d, and this is the gate of heaven.’” (quoting Genesis 28:16-17)). Further, in the Book of Daniel, which is included in the canon of sacred Jewish writings, Daniel prayed toward Jerusalem while in captivity,

and today, Jews follow this tradition by directing their prayers toward Israel. Face East, *supra*; 23 Facts, *supra*; see Bergstein, *Daniel the Prophet of the Bible*, Chabad.org, perma.cc/6CRP-PUKX.

Jews also celebrate Israel during holidays. For example, the Passover Seder is an important and well-known Jewish tradition, which tells the story of the Jews' exodus from Egypt and entrance into Israel. See *What is Passover (Pesach)?*, Chabad.org, perma.cc/A2HG-RSXN. One song Jews sing during the Seder is "Dayenu," and it recounts all the wonders that Hashem (G-d) did for the Jewish people at that time. Alevsky, *Dayenu*, Chabad.org, perma.cc/BCT9-3BZM. The song starts with the exodus, and it ends with Hashem taking the Jewish people into Israel and building the Temple. *Ibid.* And at the end of Seder, Jews commonly cheer, "Next year in Jerusalem!" 5 Facts, *supra*.

Consider also the fast of Tisha B'Av. Though the Jewish Calendar is marked by several fasts, Tisha B'Av is one of them because it is the saddest day on the Jewish Calendar. *What is Tisha B'Av?*, Hillel Int'l, perma.cc/AXX5-8RB3. And it is the saddest day because of what happened in Israel: the destruction of the first and second Holy Temples in Jerusalem. See *What is Tisha B'Av*, Chabad.org, perma.cc/4VYA-RAJE.

Israel is significant for Jewish weddings too. The famous broken-glass ritual commemorates the destruction of the Temple and the Jewish exile from Israel in 70 AD. See Stolper, *Why Do We Still Mourn*,

Aish, perma.cc/DY9K-K6Y4; 5 Facts, *supra*. And just before the glass ritual, Psalm 137 is often sung, which says, “If I forget you, O Jerusalem, may my right hand forget its skill; may my tongue cling to my palate if I do not remember you, if I do not bring up Jerusalem at the beginning of my joy.” Tehillim (Psalms) 137:5-6, perma.cc/VC38-H9QR. Even at one of the happiest moments in their life, Jews are thinking about Israel.

Giving charity (tzedakah) to Israel is also a high priority. To be sure, there are many worthwhile causes in the world and every person has limited funds. But there is a Jewish religious injunction to ensure Israel is a priority in charitable giving. See Feldman, *Giving in Halachah: What Are Priorities in Tzedakah*, perma.cc/U6QS-5VJP; Posner, *What is Tzedakah?*, Chabad.org, perma.cc/3WVN-CZVG.

Moreover, forcing Jews to disparage Israel, or associate with groups that do, can be considered sinful for some Jews. According to Rashi, the most famous and widely read Jewish Biblical commentator, the spies from the Book of Numbers sinned—and were later punished—because they slandered the land of Israel. Rashi, *Commentary on the Tanakh*, Sefaria, perma.cc/W9N2-H5P8; accord Citron, *Lashon Hara*, Chabad.org, perma.cc/H3C2-PADV. As a result, some Jews believe it is sinful to slander the land of Israel. See *Lashon Hara*, Halachipedia, perma.cc/X4K8-L6WG (“It is forbidden to say Lashon Hara about the land of Israel, its fruits, its people or any other aspect of it.”).

2. Though America has provided an unprecedentedly safe and welcoming environment for Jewish people, antisemitism unfortunately is and has long been common. See *A Brief History of Antisemitism*, Anti-Defamation League (2020), perma.cc/3342-TFLP. Indeed, it's often said to be "the world's oldest hatred." *Netanyahu: 'Antisemitism is the world's oldest hatred,'* Wash. Post (July 24, 2024), wapo.st/46ZY4i7. And it has only increased recently. *The State of Antisemitism in America 2023*, Am. Jewish Comm., perma.cc/FRC5-KFKY.

Today, there are many ways groups and individuals engage in anti-Israel and antisemitic conduct. Take, for example, the Boycott, Divestment, and Sanctions (BDS) movement. BDS is an international campaign trying to delegitimize, isolate, and pressure Israel through economic, cultural, and diplomatic boycotts. *The Boycott, Divestment and Sanctions Campaign (BDS)*, Anti-Defamation League (May 24, 2022), perma.cc/9ZP9-LGBT. The movement uses "divisive and inaccurate terms" to refer to Israel to "demonize the Jewish state and those who support its existence." *Ibid.* The movement's "founding goals"—to "effectively reject or ignore the Jewish people's right

of self-determination” and to “eradicat[e] ... the world’s only Jewish state”—are antisemitic. *Ibid.*⁴

Take also the trope “From the River to the Sea.” See *Slogan: “From the River to the Sea Palestine Will be Free,”* Anti-Defamation League (Oct. 26, 2023), perma.cc/GA6F-C2TE. This “antisemitic slogan” calls for “a Palestinian state extending from the Jordan River to the Mediterranean Sea,” which is “territory that includes the State of Israel.” *Ibid.* So the chant means “the dismantling of the Jewish state” and “denying the Jewish right to self-determination, including through the removal of Jews from their ancestral homeland.” *Ibid.*

Or consider the slogan “Globalize the Intifada.” This phrase refers “to two periods of Palestinian violence against Israel” where “Palestinian terrorists commit[ted] indiscriminate acts of violence against Israelis, including suicide bombings, shootings and stabbings,” and other atrocities. *Slogan: Globalize the Intifada,* Anti-Defamation League (Jan. 16, 2024), perma.cc/EXP2-SCG5. The chant is “generally under-

⁴ Given the movement’s goals, many—including the German Parliament—have criticized this movement as antisemitic and pointed to stark parallels between BDS and Nazi-era boycotts of Jewish businesses. See, e.g., Ahren, *Germany Denounces BDS as ‘Anti-Semitic,’ Reminiscent of Nazi-era Boycotts*, Times of Israel (May 17, 2019), perma.cc/3XCT-FPDT; *Germany Labels Israel Boycott Movement BDS Anti-Semitic*, BBC (May 17, 2019), perma.cc/JT8P-J457.

stood as a call for indiscriminate violence against Israel, and potentially against Jews and Jewish institutions worldwide.” *Ibid.*

One could go on and on and on again about the many other ways Israel is central to Judaism. And one could go on and on about the ways groups and individuals engage in antisemitism today. But even just a sample makes clear that New York’s exclusive-representation law forces Jewish professors to associate with a union that denigrates (at best) the State of Israel. In so doing, Jewish professors must implicitly endorse defamatory language directed at the same land that they pray toward, support the celebration of the very thing they mourn on the saddest day of the Jewish Calendar (*e.g.*, the destruction of the Temple Mount and Jewish sovereignty in Israel), and for some, sinfully violate religious injunction (*e.g.*, slandering Israel). And they must do all this (and more) to keep their job. The First Amendment forbids this forced association.

B. PSC expresses antisemitic and anti-Israel messages that are imputed to those it exclusively represents.

New York’s Taylor Law requires public employees within the same state-appointed bargaining unit to designate an exclusive representative to negotiate on their behalf “with respect to wages, hours, and other terms and conditions of employment.” N.Y. Civ. Serv. Law §204. Though professors at CUNY need not be members of PSC, PSC is the only union permitted to represent them. In other words, all employees must delegate their speech to this union to some degree.

But PSC spews antisemitic and anti-Israel views that the six petitioners (five of them are Jews) wish to disassociate from. For example, in 2021, PSC issued two resolutions on international matters: one addressing communist China; the other condemning the State of Israel. One might think that the union would have condemned China's long litany of oppression, human-rights abuses, religious persecution, and crushing dissent. But he would be mistaken. The first resolution condemned the "incessant China-bashing by the mainstream media" and proclaimed PSC's commitment to "solidarity with Chinese fellow-workers, educators and scholars." *No Cold War with China*, PSC/CUNY (May 2021), perma.cc/A56R-5TQ9. The union's condemnation was instead reserved solely for Israel, the world's single Jewish state. A month later, PSC condemned Israel, calling it an "apartheid" state and a "settler colonial state" and condemned, what it called, "the massacre of Palestinians by the Israeli state." *Resolution in Support of the Palestinian People*, PSC (June 10, 2021), perma.cc/89ZV-8FSD. It also announced it would consider adopting a BDS policy against Israel. *Ibid.*; see Campanile, *CUNY Professors' Union Rebukes Israel in Pro-Palestinian Resolution*, N.Y. Post (June 13, 2021), perma.cc/D9GE-GKUT; App.74a ("PSC adopted the Resolution regarding what it termed 'the continued subjection of Palestinians to the state-supported displacement, occupation, and use of lethal force by Israel,' and requir[ed] chapter-level discussion of possible support by PSC for the BDS movement.").

PSC's antisemitism was blatant. It defended a Communist regime just four months after the U.S.

government determined China committed genocide against a minority religious group, but condemned the world's only Jewish state just days after Hamas launched over 4,300 rockets at Israeli cities. See Pompeo, *Determination of the Secretary of State on Atrocities in Xinjiang*, U.S. Dep't of State (Jan. 19, 2021), perma.cc/JP3Q-NRPW; Campanile, *supra*; *Israel-Gaza Ceasefire Holds Despite Jerusalem Clash*, BBC (May 21, 2021), perma.cc/SYU7-L6FR.

There is more. In February 2024, CUNY canceled an event titled “Globalize the Intifada! Mapping Struggles for Palestine from the Streets to Our Classrooms.” Campanile et al., *CUNY Axes Panel on ‘Globalizing the Intifada!’ That Was Ripped as ‘Guide for Junior Terrorists,’* N.Y. Post (Feb. 5, 2024), perma.cc/D2W5-CJBL. A former CUNY trustee called the “Globalize the Intifada!” event “a how to guide for junior terrorists.” *Ibid.* PSC, however, objected to the event’s cancellation. Its Academic Freedom Committee, charged with defending “academic freedom as a professional and contractual right of all CUNY professional staff,” wrote to CUNY leaders to protest “in the strongest possible terms the cancellation of [the] panel.” Alessandrini, *PSC Academic Freedom Committee Letter to Lehman College* (Feb. 23, 2024), perma.cc/5ZEW-CV5J. PSC speaks for all faculty and staff on contractual matters, and because the PSC letter explicitly invoked CUNY’s contractual commitment to academic freedom, one could reasonably infer that the complaint was issued on behalf of all CUNY faculty and staff—not just PSC members.

Elsewhere, PSC supported antisemitic and anti-Israel protestors on college campuses soon after October 7. Indeed, in a press release, PSC bragged that it “represent[s] 30,000 City University of New York employees” and stressed that it “joins fellow unionists and academics in condemning the recent actions of Columbia University administration to suppress student protest.” *Statement on the Arrest of Students Demonstrating at Columbia*, PSC-CUNY (Apr. 22, 2024), perma.cc/E6FZ-9RWP. Never mind that the protest encampment referred to in PSC’s statement “repeatedly expressed explicit support for violence,” shouted “From the River to the Sea” and “Globalize the Intifada,” and eventually led to protestors seizing a university building. See, e.g., *Anti-Israel Protesters Glorify Terror Groups, Violence*, Anti-Defamation League (last updated Apr. 26, 2024), perma.cc/936H-WBS3; Campanile, *Columbia Has ‘Waved the White Flag’ By Failing to Expel Even One Student Who Occupied Campus Building: House Report*, N.Y. Post (Aug. 19, 2024), perma.cc/HD97-QDBK.

PSC’s anti-Israel agenda mirrors CUNY’s own antisemitism problems. Indeed, CUNY has been described as “America’s most anti-Semitic university.” Lax, *How CUNY Became America’s Most Anti-Semitic*

University, N.Y. Post (Apr. 6, 2023), perma.cc/8DUX-MCKR.⁵

PSC’s antisemitic views are attributed to Jewish professors that vehemently disagree with them because they are forced to be represented by the union. As a result, New York Law says Jewish professors must authorize an antisemitic union to negotiate on their behalf with the nation’s most antisemitic university and forbids them from dissociating from this union.

PSC even seems to encourage the perception that the union’s views on Israel speak for not only those professors who are members but also those who it represents. For example, on its homepage, PSC stresses that it “is the union that represents 30,000 faculty and staff at the City University of New York and the

⁵ For example, in 2021, the U.S. Equal Employment Opportunity Commission found CUNY had discriminated against a Jewish professor. The EEOC found that a university caucus intentionally scheduled its meetings (on the Sabbath) when the professor could not attend because of his religious observances. Pierre, *Jewish CUNY Professor Found Discriminated Against After Faculty Group Intentionally Held Meetings on Shabbat*, *The Algemeiner* (Nov. 19, 2021), perma.cc/4FZQ-XAVS. About a year after the EEOC report, CUNY’s law school faculty council endorsed the BDS movement against Israel. Campanile, *CUNY School of Law Faces State Probe over Anti-Jewish Bias After BDS Support*, N.Y. Post (Feb. 23, 2023), perma.cc/YD7Q-H7DE. And more recently, CUNY settled a federal investigation into whether it violated Title VI by failing to respond to antisemitic and Islamophobic behavior on campus. Campanile, *CUNY Settles Federal Complaints Alleging Antisemitism, Islamophobia: ‘Step in the right direction,’* N.Y. Post (June 17, 2024), perma.cc/4VXM-CD7N.

CUNY Research Foundation.” *PSC-CUNY*, perma.cc/UH4V-YS36. PSC’s court filings proclaim itself as “the collective bargaining representative for a bargaining unit of about 30,000 CUNY instructional staff.” PSC-Answering-Br. in *Goldstein v. PSC*, 2023 WL 4930843, at *5 (2d Cir. July 27, 2023). Even its bio on social media platforms—where PSC endorses political candidates and weighs in on sensitive issues—describes PSC as “[t]he union that represents more than 30,000 faculty and staff at the City University of New York (CUNY).” PSC-CUNY (@PSC_CUNY), X, x.com/PSC_CUNY.

PSC’s leading officials also purport to speak on behalf of all represented faculty and staff. PSC’s president recently issued an open letter on academic freedom, and in his biography, he called himself the “President of The Professional Staff Congress (NYSUT, AFT Local 2334), which represents 30,000 faculty and professional staff at the City University of New York.” Davis, *Academic Freedom is the Union’s Fight, and All of Ours*, PSC-CUNY (Dec. 20, 2023), perma.cc/3TT5-KVXX. PSC’s vice president also refers to herself as leading “the union representing CUNY faculty and staff.” Vasquez, *Looking Back to Understand this Moment at CUNY*, New York Amsterdam News (May 16, 2024), perma.cc/JJM9-82Z2.

The media also seems to think that PSC speaks for all faculty and staff within the bargaining unit. Politico opened an article about PSC by calling it the union that “represents 30,000 faculty and staff at the City University of New York.” Touré, *CUNY Workers Rally for a New Contract*, Politico (Feb. 27, 2023),

perma.cc/Q8AJ-WLJW. Similarly, the Left Voice wrote: “The PSC CUNY union, which represents more than 30,000 faculty and staff at the City University of New York[,] has joined dozens of other major unions to demand a ceasefire in Gaza.” Cozzarelli et al., *CUNY Union Joins Call for Ceasefire in Gaza*, The Left Voice (Dec. 15, 2023), perma.cc/MJS5-X9FC. The New York Post also appears to share this belief. See Campanile, *CUNY Professors’ Union Rebukes Israel in Pro-Palestinian Resolution*, N.Y. Post (Jun. 13, 2021), perma.cc/6HSX-EKLC (publishing an article saying “the union representing CUNY professors has passed a one-sided resolution rebuking Israel for recent attacks on Palestinians”). And a Jacobin article conflated union representation with union membership, calling PSC “the union representing thirty thousand faculty and other staff at the university” and later referring to “PSC’s thirty thousand members.” Clarke, *CUNY Workers Against Austerity*, The Jacobin (May 22, 2024), perma.cc/YN3C-YCGL.⁶

All this is to say: PSC and CUNY have an anti-semitism problem. They also have a First Amendment problem. PSC, CUNY’s only union for its professors and other staff, openly supports causes that “see[k] to

⁶ JCRL is not aware of a readily available public source containing PSC’s exact membership count, but membership numbers must be lower than the 30,000 represented faculty and staff. That’s because membership “decline[d] precipitously” after this Court issued its *Janus* decision, and in 2023, only 51% of CUNY’s part-time staff and 88% of its full-time staff were PSC union members. Aponte & Bhat, *City Workers Ditch Unions, Skip Dues, Following Supreme Court Ruling*, The City (Oct. 25, 2023), perma.cc/YE3A-5PVX.

destroy Israel as a sovereign state.” Pet.5. New York’s exclusive-representation scheme forces employees to implicitly mouth support for these views that they find detestable and violative of their faith, and prevents them from speaking against these views by disassociating from the union. Contra the Second Circuit, that violates the First Amendment.

II. The First Amendment prohibits the forced association between religious minorities and a union that espouses views in conflict with their faith.

The First Amendment prohibits what the Second Circuit allowed: forcing public employees to be exclusively represented by a union that endorses views in direct conflict with the employees’ faith. “Freedom of association ... plainly presupposes a freedom not to associate.” *Roberts v. U.S. Jaycees*, 468 U.S. 609, 623 (1984); *accord Ams. for Prosperity Found. v. Bonta*, 594 U.S. 595, 606 (2021). Associational freedoms are important because the “right of free association ... lies at the foundation of a free society.” *Shelton v. Tucker*, 364 U.S. 479, 486 (1960). “Forcing free and independent individuals to endorse ideas they find objectionable is always demeaning” and “require[s] ‘even more immediate and urgent grounds’ than a law demanding silence.” *Janus v. AFSCME*, 585 U.S. 878, 893 (2018). That’s why even strong government interests, like promoting “national unity,” “patriotism,” and “national security” during World War II, cannot justify compelling association and speech. *W.V. State Bd. of Educ. v. Barnette*, 319 U.S. 624, 634, 640-41 (1943).

“Designating a union as the employees’ exclusive representative substantially restricts the rights of individual employees.” *Janus*, 585 U.S. at 887. Exclusive representation, this Court has said, is a “significant impingement upon associational freedoms.” *Id.* at 893 (cleaned up). That is especially true here. The issues petitioners cannot disassociate from are matters of public concern. They involve “controversial subjects” like “minority religions” and politics that “are undoubtedly matters of profound value and concern to the public.” *Id.* at 913-14; accord *Snyder v. Phelps*, 562 U.S. 443, 453 (2011) (“Speech deals with matters of public concern when it can be fairly considered as relating to any matter of political, social, or other concern to the community, or when it is a subject of legitimate news interest.” (cleaned up)).

That the issues here extend beyond this case shows that these are indeed matters of public concern. Indeed, 38 States have adopted laws, executive orders, or resolutions that reject BDS. *Anti-Semitism: State Anti-BDS Legislation*, Jewish Virtual Library, [perma.cc/D4K4-SRXZ](https://www.jewishvirtuallibrary.org/anti-semitism-state-anti-bds-legislation). On the other hand, unions have endorsed BDS, including university unions. See, e.g., Kettles, *Harvard Grad Union Endorses BDS and Calls for Ceasefire, Drawing Member Criticism*, The Harvard Crimson (Nov. 13, 2023), [perma.cc/LL3N-G7PL](https://www.harvardcrimson.com/2023/11/13/harvard-grad-union-endorses-bds-and-calls-for-ceasefire-drawing-member-criticism/); Vasquez, *California Campus Workers Become First Major Local Union to Endorse BDS Against Israel*, In These Times (Dec. 29, 2014), [perma.cc/6XRS-HUSZ](https://www.inthesetimes.com/article/california-campus-workers-become-first-major-local-union-to-endorse-bds-against-israel/); Vasquez, *UE Becomes First National Union in U.S. To Endorse BDS Against Israel*, In These Times (Sept. 1, 2015), [perma.cc/YKE6-W7MY](https://www.inthesetimes.com/article/ue-becomes-first-national-union-in-u-s-to-endorse-bds-against-israel/). Unions have also issued statements with antisemitic tropes, such

as “From the River to the Sea.” See Wulfsohn, *New Yorker Union Accused of Promoting Israel’s Genocide for Backing Palestinians ‘From the River to the Sea,’* Fox News (May 19, 2021), perma.cc/LY4L-B872.

Thus, the speech petitioners wish to convey by dissociating from PSC “occupies the highest rung of the hierarchy of First Amendment values, and is entitled to special protection.” *Snyder*, 562 U.S. at 452; *accord Janus*, 585 U.S. at 914. It “lies at the heart of the First Amendment.” *Lane v. Franks*, 573 U.S. 228, 235 (2014). Even more so here because this case presents a “hybrid situation” where “Free Exercise Clause concerns” reinforce the “freedom of association grounds.” *Smith* 494 U.S. at 881-82; *accord Kennedy*, 597 U.S. at 523 (“doubly protects” religion). Despite the importance of the issues on which PSC is speaking, exclusive representation renders employees nearly powerless to disassociate themselves from the union’s speech. The First Amendment does not allow States to force Jews to choose between their job and their faith. *Cf. Sambrano v. United Airlines, Inc.*, 2022 WL 486610, at *8 (5th Cir. Feb. 17) (“plaintiffs had suffered irreparable harm from being coerced into a choice between their job(s) and their job(s) or between their beliefs and their benefits” (cleaned up)).

And only this Court can do something about it. As Judge Thapar explained, States that have “take-it-or-leave-it system” like New York’s are “in direct conflict with the principles enunciated in *Janus*.” *Thompson*, 972 F.3d at 811-12. After most circuits have all said the same thing—that this Court’s precedent prevents them from squaring *Janus* and *Knight*—it is time for

this Court to address these “First Amendment questions of considerable importance.” *Id.* at 815. Otherwise, public employees that practice their faith will continue to be forced to choose between their faith and their job in violation of their First Amendment rights.

CONCLUSION

This Court should grant certiorari.

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