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 A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF *AMICUS CURIAE* OF GOLDWATER INSTITUTE IN SUPPORT OF PETITIONERS

TIMOTHY SANDEFUR*
PARKER JACKSON
SCHARF-NORTON CENTER FOR CONSTITUTIONAL LITIGATION AT THE GOLDWATER INSTITUTE
500 East Coronado Road
Phoenix, AZ 85004
(602) 462-5000
litigation@goldwaterinstitute.org

* *Counsel of Record*

Counsel for Amicus Curiae Goldwater Institute

116914

COUNSEL PRESS
(800) 274-3321 • (800) 359-6859

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?

TABLE OF CONTENTS

TABLE OF CITED AUTHORITIES

Page

CASES

Cited Authorities

Page

Cited Authorities

Page

Cited Authorities

Page

Page

Page

STATUTES

OTHER AUTHORITIES

Page

IDENTITY AND INTERESTS OF *AMICUS CURIAE*[1]

The Goldwater Institute was established in 1988 as a nonpartisan public policy and research foundation devoted to advancing the principles of limited government, individual freedom, and constitutional protections through litigation, research, policy briefings, and advocacy. Through its Scharf-Norton Center for Constitutional Litigation, the Institute litigates cases and files amicus briefs when its or its clients' objectives are directly implicated.

The Institute devotes substantial resources to defending the constitutional principles of free speech and freedom of association. The Institute has appeared frequently as counsel for parties or as amicus curiae in cases implicating speech and associational rights. *See, e.g.*, *Ams. for Prosperity Found. v. Bonta*, 141 S. Ct. 2373 (2021); *Janus v. AFSCME*, 585 U.S. 878 (2018); *Anderson Fed'n of Teachers v. Rokita*, No. 23-1823 (7th Cir filed May 1, 2023) (pending); *Crowe v. Oregon State Bar*, 989 F.3d 714 (9th Cir. 2021) (reversing dismissal of First Amendment challenge to mandatory bar association membership); *Boudreaux v. Louisiana State Bar Ass'n.*, 86 F.4th 620 (5th Cir. 2023); *Schell v. Oklahoma Sup. Ct. Justices*, 11 F.4th 1178 (10th Cir. 2021).

---

1. The parties received timely notice of the Goldwater Institute's intent to file this amicus brief per Supreme Court Rule 37.2. Pursuant to Rule 37.6, counsel for Amicus Curiae affirms that no counsel for any party authored this brief in whole or in part and that no person or entity, other than Amicus, its members, or counsel, made a monetary contribution to the preparation or submission of this brief.

The Institute dedicates particular attention to holding public-sector unions accountable when they abuse the public trust. *See*, *e.g.*, *Rokita*, *supra*; *Borgelt v. City of Austin*, No. 22-1149, 2024 WL 3210046 (Tex. 2024); *Gilmore v. Gallego*, No. CV-23-0130-PR, 2024 WL 3590669 (Ariz. 2024). Additionally, the Institute's scholars and litigators are intimately familiar with the excesses of radicalism in higher education and the free speech crisis on America's college campuses. *See*, *e.g.*, *Anderson v. Arizona Bd. of Regents*, CV2024-005713 (Ariz. Super. Ct. filed Mar. 19, 2024) (pending); *Goldwater Helps Fired Conservative Prof Get Answers*, Goldwater Institute (Aug. 8, 2024)[2]; Matt Beienburg, *Reclaim Academic Freedom*, Goldwater Institute (Sept. 26, 2023)[3]; *The New Loyalty Oaths: How Arizona's Public Universities Compel Job Applicants to Endorse Progressive Politics*, Goldwater Institute (Jan. 17, 2023).[4]

The Institute believes its litigation experience and public policy expertise will aid this Court in considering the appeal.

---

2. https://www.goldwaterinstitute.org/goldwater-helps-fired-conservative-prof-get-answers/.

3. https://www.goldwaterinstitute.org/reclaim-academic-freedom/.

4. https://www.goldwaterinstitute.org/policy-report/the-new-loyalty-oaths/.

SUMMARY OF REASONS FOR GRANTING THE PETITION

The egregious facts of this case dramatize like rarely before the longstanding deficiencies in current associational rights precedent—deficiencies that can only be, and that must be, addressed by this Court. If the right against compelled association means anything, then surely the government cannot force someone, as a condition of public employment or otherwise, to be *represented by* an organization that actively *advocates against* that person's interests. Having *no* representation is preferable to *adverse* representation.

No person should be coerced into association with—let alone representation by—ideologically driven organizations with which they fundamentally disagree. That is cruel and oppressive. *Janus v. AFSCME*, 585 U.S. 878, 893 (2018). And choosing to terminate such representation is itself an expressive activity protected by the First Amendment. Yet lower courts continue to enforce rules that prohibit public sector employees from severing ties with their unions, even when those unions engage in egregious and outrageous behavior such as in this case. The public thirsts for clarity regarding their fundamental First Amendment rights—rights that at this point only this Court can secure.

The Court should grant certiorari if it is to preserve Americans' rights to freely associate—and, importantly here, *dis*associate.

REASONS FOR GRANTING THE PETITION

The right to freely associate, as protected by the First Amendment, rests on the foundation of affirmative consent. *See Janus*, 585 U.S. at 930. From the "I do's" of marriage to the underpinnings of our very nation, *see* Declaration of Independence, 1 Stat. 1 (1776), mutual consent is the touchstone of every form of free human association, small or large. That is because the right to *refuse* to associate is the most basic safeguard of individual conscience—as well as of a properly functioning democratic process.

The right to *dis*associate—the right to cut ties, publicly or privately, with individuals or organizations with whom a person previously associated—is thus a crucial form of self-expression and individual choice. Whether it be Justice Benjamin Curtis resigning from this Court to protest the *Dred Scott* ruling, *see* R. Owen Williams, *Benjamin Curtis: Top of the List*, 82 Chi.-Kent L. Rev. 277, 286–87 (2007), or Senator Wayne Morse quitting the Republican Party to become a Democrat, Antoine Yoshinaka, *Crossing the Aisle: Party Switching by U.S. Legislators in the Postwar Era* 15 (2016), or Ronald Reagan leaving the Democratic Party because "[t]hey left me," 2 *Public Papers of the Presidents: Ronald Reagan 1988-89* 1084 (1991), the right to refuse to be counted as part of a group one disagrees with is absolutely critical to freedom of expression and conscience.

This Court has, indeed, recognized the centrality of the right to resign from a labor union. *See*, *e.g.*, *Scofield v. NLRB*, 394 U.S. 423, 430 (1969); *cf. Pattern Makers' League of N. Am. v. NLRB*, 473 U.S. 95, 105 (1985). And yet public-sector unions violate this right routinely,

through the imposition of exclusive representation rules and restrictions on the right to quit—and they keep getting away with it, thanks to precedent that allows states to force employees to accept exclusive representation by a union they may find unacceptable, or to be barred from the workplace. *See*, *e.g.*, *State v. Alaska State Emps. Ass'n*, 529 P.3d 547 (Alaska 2023), *cert. denied*, 144 S. Ct. 682 (2024); *Savas v. California State L. Enf't Agency*, No. 20-56045, 2022 WL 1262014 (9th Cir. Apr. 28, 2022), *cert. denied*, 143 S. Ct. 2430 (2023); *Jarrett v. SEIU Loc. 503*, 144 S. Ct. 494 (2023) (denying cert. in several such cases); *Mentele v. Inslee*, 916 F.3d 783 (9th Cir. 2019), *cert. denied*, 140 S. Ct. 114 (2019).

Although dicta in *Janus* paradoxically recognizes that exclusive representation is "a significant impingement on associational freedoms," 585 U.S. at 916, the Court simultaneously suggested that exclusive representation might be permissible, even though it "would not be tolerated in other contexts." *Id.* The result is legal precedent such as that established below, which says that *Janus* "does not undermine the constitutionality of exclusive representation by public-sector unions that do not assess mandatory agency fees." App. 9a. The Court should clarify that "significant impingement[s] on associational freedoms" should "not be tolerated" *at all*, unless strict scrutiny is satisfied. 585 U.S. at 916.

The freedom to *dis*associate merits at least as much protection as the right to freely associate. And because of the political nature of modern public-sector unions, the rights of dissenting employees to resign *and terminate all representation* are essential to protect not only associational rights generally, but the core First Amendment right to express one's political views.

I. The Court should grant the petition so it can clarify its associational rights caselaw.

A. The Court should clarify its dicta in *Janus* regarding exclusive representation.

Janus held that public employees' associational rights were violated by a forced subsidization scheme where workers paid fees to a union as a condition of employment, "even if they [chose] not to join and strongly object[ed] to the positions the union t[ook] in collective bargaining and related activities." 585 U.S. at 884–85.[5] The *Janus* court recognized that "[f]undamental free speech rights [we]re at stake" because unions engaged in "private speech on matters of substantial public concern." *Id.* at 886.

---

5. Lower courts' resistance to *Janus* has been fierce. *See, e.g.*, *Belgau v. Inslee*, 975 F.3d 940 (9th Cir. 2020), *cert. denied*, 141 S. Ct. 2795 (2021); *Zielinski v. SEIU Loc. 503*, No. 20-36076, 2022 WL 4298160 (9th Cir. Sept. 19, 2022); *Jarrett v. Marion Cnty.*, No. 6:20-cv-01049-MK, 2021 WL 65493 (D. Or. Jan. 6, 2021), *aff'd* 2023 WL 4399242 (9th Cir July 7, 2023), *cert. denied*, 144 S. Ct. 494 (2023); *Schiewe v. SEIU Loc. 503*, No. 3:20-CV-00519-JR, 2020 WL 5790389 (D. Or. Sept. 28, 2020), *aff'd* No. 20-35882, 2023 WL 4417279 (9th Cir. July 10, 2023), *cert. denied, Jarret v. SEIU Loc. 503*, 144 S. Ct. 494 (2023); *Wright v. SEIU Loc. 503*, 48 F.4th 1112 (9th Cir. 2022), *cert. denied*, 143 S. Ct. 749 (2023); *Semerjyan v. SEIU Loc. 2015*, 489 F. Supp.3d 1048 (C.D. Cal. 2020), app. dismissed, No. 21-55104, 2021 WL 6881066 (9th Cir. Nov. 12, 2021); *Yates v. Wash. Fed'n of State Emps.*, 466 F. Supp.3d 1197 (W.D. Wash. 2020), *aff'd*, No. 20-35879, 2023 WL 4417276 (9 Cir. July 10, 2023), *cert. denied, Jarret v. SEIU Loc. 503*, 144 S. Ct. 494 (2023); *Quezambra v. United Domestic Workers of Am. AFSCME Loc. 3930*, 445 F. Supp.3d 695 (C.D. Cal. 2020), *aff'd*, No. 20-55643, 2023 WL 4398498 (9th Cir. July 7, 2023), *cert. denied, Jarret v. SEIU Loc. 503*, 144 S. Ct. 494 (2023).

Although it wasn't at issue in the case, the *Janus* Court also noted that exclusive representation creates "a significant impingement on associational freedoms that would not be tolerated in other contexts." *Id.* at 916. The reason why is that "this designation means that individual employees may not be represented by any agent other than the designated union; nor may individual employees negotiate directly with their employer." *Id.* at 887. Rather, "[p]rotection of the employees' interests is placed in the hands of the union, and therefore the union is required by law to provide fair representation for all employees in the unit, members and nonmembers alike." *Id.* In other words, states may not forbid people from speaking, nor may they force people to join and subsidize unions—and yet in this and other cases, states are forbidding people from speaking (i.e., from negotiating with employers) if they refuse to join and subsidize a union.

That makes no logical sense, and the practical consequences are constitutionally offensive, even outrageous. It certainly is in this case, in which a group of predominantly Jewish, pro-Israel, Zionist professors are being forced to choose between representation by a union that is openly hostile to the nation of Israel, and that officially supports the BDS movement, Pet. at 17, App. 93a–95a—or, in effect, to surrender their employment, because they "may not themselves directly bargain with or select their own representative to bargain with CUNY over their employment terms." App. 9a.

It is hard to imagine any context in which such "heads I win; tails you lose" logic would be permitted. The government cannot, for example, tell a property owner that she must either surrender her property or be prohibited

from building on it, *see*, *e.g.*, *Nollan v. California Coastal Comm'n*, 483 U.S. 825, 837 (1987), or tell a person that he must waive his free speech rights in order to qualify for a tax exemption, *Speiser v. Randall*, 357 U.S. 513, 518–19 (1958), or bar a person from a profession and then argue that this isn't a punishment because she could simply choose another profession, *cf. Ex parte Garland*, 71 U.S. (4 Wall.) 333, 370 (1866) (argument of Reverdy Johnson: "[the petitioner] is gravely told, 'You are not obliged to take [the oath].' Certainly, he is not obliged to take it. No man is obliged to follow his occupation; but unless he takes it he must starve, except he have other means of living."). How much more outrageous is such logic in the realm of the First Amendment, which has for so long been accorded special legal solicitude.

B. The Court should clarify the status of *Knight*, which rested on the now-overruled *Abood*.

The petition commendably discusses the Second Circuit's expansive reading of *Minnesota State Board for Community Colleges v. Knight*, 465 U.S. 271 (1984), and suggests that the facts here are distinguishable. But regardless of whether there is sufficient basis to distinguish the two cases, *Knight* itself rests on shaky ground. Three of the four opinions in that case cite *Abood v. Detroit Board of Education*, 431 U.S. 209 (1977), to rationalize laws that impose exclusive representation by force. *Compare* 465 U.S. at 291, *with id.* at 299 (Brennan, J., dissenting), *and id.* at 316 (Stevens, J., dissenting). Yet with the overruling of *Abood* in *Janus*—indeed, *Janus* recognized *Abood* as a First Amendment "anomaly" and "oddity," 585 U.S. at 925–26—this Court has already eroded one of the foundation stones on which *Knight* rests.

In truth, *Knight* is as much an oddity as *Abood*. In no other context would this Court countenance forcing people to join a group with which they disagree—or among whom they are despised and treated with scorn and contempt—on pain of being effectively deprived of their employment by state law.

In practice, *Knight* permits states to force people to join unions against their will, because it empowers states to forbid people from negotiating with the state unless they join that private association. The *Knight* Court characterized its holding in euphemistic terms—as rejecting the proposition that people have "a right to force officers of the state acting in an official policymaking capacity to listen to them in a particular formal setting," 465 U.S. at 282, but in reality, the decision authorized the state to close off all but a single avenue whereby a prospective employee could approach the state for a job—that one avenue being: joining the union. This simply *is* compelled association under a different name, as Justices Stevens, Brennan, and Powell explained:

> It is inherent in the republican form of government that high officials may choose [not] . . . to listen to some of their constituents . . . . But the First Amendment does guarantee an open marketplace for ideas . . . . The Minnesota statute places a significant restraint on that free competition, by regulating the communication that may take place between the government and those governed. . . . [It] gives only one speaker a realistic opportunity to present its views to state officials. All other communication is effectively prohibited, not by reference to the

> time, place or manner of communication, or even by reference to the officials' willingness to listen, but rather by reference to the identity of the speaker.

Id. at 300–01 (Stevens, J. dissenting). This was obviously correct. Yet the majority in *Knight* rejected it by invoking the rational basis test and by a single case citation: "it is rational for the state to [see to it that it] ha[s] before it only one collective view of its employees when 'negotiating.' *See Abood* . . . ." *Id.* at 291.

What's more, the *Knight* Court had no call to address the First Amendment value of *disassociation*. The Court said that the compulsory representation law there did not violate the First Amendment because it merely increased the "pressure" on professors to join, but left them free to speak and associate, *id.* at 289–90, but it was not asked to address the way in which exclusive representation penalizes a person for disassociation from a union that engages in speech that they find repugnant for political, religious, or racial reasons. In *Speiser*, the Court acknowledged that "[t]o deny [a tax] exemption to claimants who engage in certain forms of speech is in effect to penalize them for such speech," because it would have the same "deterrent effect . . . as if the State were to fine them for this speech." 357 U.S. at 518. Yet neither *Knight* nor subsequent cases addressed how this principle applies in situations where an exclusive representation law forces employees to accept representation by a union—and penalizes them for disassociation with that union by effectively barring them from employment.[6]

---

6. Although aware of the tension in these principles, the *Knight* majority did not address them—again citing *Abood*: "*Abood*

Now that *Abood* has been rightly overruled—and with it the rational basis test that it (anomalously) employed in the free speech context, *cf. Janus*, 585 U.S. at 894–95 (attributing rational basis review to *Abood* and rejecting it)—the Court should clarify the status of *Knight* in the wake of *Janus*.

II. The Court should grant the petition so it can adequately protect the First Amendment right to *dis*association.

The right of association belongs not only to organizations, but to all individuals who may wish to associate, or abstain from associating, or *disassociate*. Like "the right to refrain from speaking," *Wooley v. Maynard*, 430 U.S. 705, 714 (1977), "[t]he right to eschew association for expressive purposes," is protected by the First Amendment. *Janus*, 585 U.S. at 892. This Court's precedents make clear that without the right to disassociate, the right to associate means little. *Roberts v. U.S. Jaycees*, 468 U.S. 609, 623 (1984) ("Freedom of association . . . plainly presupposes a freedom not to associate."). In fact, the Court long ago recognized the centrality of the right to resign from a union. *Scofield*, 394 U.S. at 430 (union members' freedom to leave the union and escape union rule meant rule was not coercive).

Association with *any* organization should not, and constitutionally cannot, be a one-way ticket. In fact, the

---

held that employees may not be compelled to support a union's ideological activities unrelated to collective bargaining. . . . Of course, this case involves no claim that anyone is being compelled to support MCCFA's activities." 465 U.S. at 291 n.13.

right to resign is *more* important than the right not to join in the first place. Being forced to associate with an organization is offensive enough, but at least it may be a one-time injury. Being denied the right to *dis*associate if that organization commits an act one regards as wrong is worse—because it stretches the associational and expressive injury into the indefinite future.[7]

This Court's mixed messaging on exclusive representation is largely responsible for this incongruity: Because of *Janus*, Petitioners could resign from

7. Disturbingly, and with little judicial recourse for victims, many unions often use deceptive or coercive tactics to compel or retain membership and dues. *See*, *e.g.*, *Ochoa v. Pub. Consulting Grp., Inc.*, 48 F.4th 1102 (9th Cir. 2022); *Wright v. SEIU Loc. 503*, 48 F.4th 1112 (9th Cir. 2022); *Loc. 58, Int'l Bhd. of Elec. Workers (IBEW v. NLRB*, 888 F.3d 1313, 1317 (D.C. Cir. 2018); *Cummings v. Connell*, 316 F.3d 886, 890–91 (9th Cir. 2003); *Tavernor v. Ill. Fed'n of Teachers*, 226 F.3d 842, 848 (7th Cir. 2000); *Shea v. Int'l Ass'n of Machinists & Aerospace Workers*, 154 F.3d 508, 515 (5th Cir. 1998); *Savas*, 2022 WL 1262014 at *1–2; *Debont v. City of Poway*, No. 98CV0502-K(LAB), 1998 WL 415844, at *2 (S.D. Cal. Apr. 14, 1998); *McCahon v. Pennsylvania Tpk. Comm'n*, 491 F. Supp.2d 522, 527 (M.D. Pa. 2007); *Chauffeurs, Teamsters, Warehousemen & Helpers Union, Loc. No. 377*, No. 8-CB-9415-1, 2004 WL 298352 (N.L.R.B. Feb. 11, 2004); *Office & Prof'l Emps. Int'l Union, Loc. 29*, 331 N.L.R.B. 48 (2000); *Monson Trucking Inc.*, 324 N.L.R.B. 933, 935 (1997); *Local 74, SEIU*, 323 N.L.R.B. 289, 290 (1997); *Local 647, UAW*, 197 N.L.R.B. 608, 609 (1972); *Marlin Rockwell Corp. (Auto. Workers, Loc. 197)*, 114 N.L.R.B. 553, 589 (1955); Jeff Canfield, *Comment, What a Sham(e): The Broken Beck Rights System in the Real World Workplace*, 47 Wayne L. Rev. 1049, 1050 (2001); R. Bradley Adams, *Union Dues and Politics: Workers Speak Out Against Unions Speaking For Them*, 10 U. Fla. J.L. & Pub. Pol'y 207, 222 (1998).

membership in the union and stop paying union dues[8]; and yet, Petitioners are still subject to *representation by* the union in negotiations regarding the terms of their employment.

Representation, however, is a *stronger* form of association than mere membership—because representation comes with fiduciary duties and the ability for a representative to literally stand in the place of the represented party. It is, again, anomalous to suggest that a person's right to officially quit the union is protected, perhaps by the highest register of constitutional strict scrutiny, while at the same time allowing the state to penalize a person for refusing to accept the state as an *official spokesman* in the employment negotiation process, responsible for the most important binding legal obligations and economic consequence to affect that employee. By way of analogy, it is as if this Court were to hold that a person may proceed at trial without counsel, *Faretta v. California*, 422 U.S. 806, 807 (1975)—but also that a defendant who waives counsel must nevertheless adhere to a plea bargain negotiated by the lawyer she rejected—or that a person may refuse medical treatment, *Cruzan by Cruzan v. Dir., Missouri Dep't of Health*, 497 U.S. 261, 270 (1990), but that a person refusing such treatment could be prohibited from obtaining medical services from anyone else.

None of this is logical. If compelled membership violates the First Amendment, so does compelled

8. Three of the Petitioners had to sue to halt the deduction of union dues from their paychecks. Those claims settled relatively early in the litigation below. *See* App. at 5a n.2.

representation. Yet lower courts are bound to follow *Knight* until this Court says otherwise. *See Agostini v. Felton*, 521 U.S. 203, 207 (1997). This Court should take the opportunity to protect the critical right to freedom of speech *and* of association by granting certiorari.

III. Public-sector unions now focus more on partisan political advocacy than on dutifully representing public employees in labor negotiations.

The right to disassociate is even more important when political speech is involved than in other situations, because this Court has said that "core political speech" is at the "zenith" of First Amendment values. *Meyer v. Grant*, 486 U.S. 414, 420, 425 (1988). And as this Court is well aware, public-sector unions are partisan political entities, not labor negotiators in the traditional sense. Given their overwhelming (and increasing) political identity, association with a union has taken on a political valence that was not present in the days of Samuel Gompers or George Meany.

Consider: to date in the 2023–2024 election cycle, the National Education Association (the nation's largest teacher union), has donated nearly $22 million to political parties, candidates, and causes—99.7% to liberals and progressives.[9] Those numbers roughly track prior election cycles. *See, e.g.*, *Use of Dues for Politics*, UnionFacts.com[10] ("From 2010 to 2018, union officials sent more than $1.6 billion in member dues to hundreds of liberal advocacy groups . . . account[ing] for 99 percent of the union

9. https://www.opensecrets.org/industries/indus?ind=P04.

10. https://www.unionfacts.com/article/political-money/.

money going toward political advocacy during that time period."); Andrew Holman & David Osborne, *The Battle for Worker Freedom: How Government Unions Fund Politics Across the Country*, Commonwealth Foundation 14 (December 2023)[11] (noting that in 2021–2022, the four largest public-sector unions spent over $708 million—outspending the defense, transportation, and construction industries—95.7% of which landed in liberal coffers).

But union political activities extend far beyond merely raising and spending money. Public sector unions actively advocate regarding matters of public concern—often at the expense of those whom they are supposed to represent and serve.

The Court need look no further than this case. Even before the most recent nationwide spike in violent and public anti-Semitism on American college campuses,[12] PSC passed a radical resolution condemning Israel as "a settler colonial state," and falsely accusing it of practicing "apartheid" and "legalized racial discrimination." App. 93a. The resolution called for ending all American aid to Israel and for "discussions" related to the "Boycott, Divestment, and Sanctions (BDS)" movement. *Id.* at 94a–95a. Unsurprisingly, Petitioners consider this resolution and PSC to be anti-Semitic, Pet. at 1, and for good reason. The resolution, after all, denounces "the

11. https://www.commonwealthfoundation.org/wp-content/uploads/2023/12/Union-Political-Spending-Report-Dec2023.pdf.

12. *See*, *e.g.*, Paul Larkin, *The Resurgence of Antisemitism in American Higher Education*, Heritage Foundation (Aug. 6, 2024), https://www.heritage.org/education/report/the-resurgence-antisemitism-american-higher-education.

massacre of Palestinians by the Israeli state," App. 94a, but made no mention of the fact that Hamas began the 2021 attacks by firing rockets at Israel (aimed at nearly 1,000 targets and involving more than 4,000 rockets). Sam Sokol, *11 Days, 4,340 Rockets and 261 Dead: The Israel-Gaza Fighting in Numbers*, Haaretz (May 23, 2021).[13] Nor did the PSC pass any resolutions condemning, e.g., the violence simultaneously occurring in Syria, Nigeria, or India. This asymmetrical condemnation of Israel—a victim defending itself—combined with silence regarding atrocities committed by Muslim forces, indicates the true motivation behind the PSC's anti-Israel resolution.

Or at least a reasonable Jewish professor could believe. Regardless of where one falls on these issues, Petitioners and the representatives they are legally compelled to accept as their spokesmen in labor negotiations are obviously at odds. Certainly if the sponsors of a St. Patrick's Day parade can't be forced to include participants who wish to speak on social issues that the organizers would rather remain silent on, *Hurley v. Irish-Am. Gay, Lesbian & Bisexual Grp. of Bos.*, 515 U.S. 557, 572–81 (1995), and people with religious scruples cannot be constitutionally forced to salute the flag, *W. Va. Bd. of Ed. v. Barnette*, 319 U.S. 624 (1943), and attorneys cannot be forced to participate in a bar association that engages in non-germane political or ideological activities, *Keller v. State Bar of California*, 496 U.S. 1, 15–16 (1990), then certainly Jewish employees cannot be forced to submit to being legally and economically represented by a labor union that they reasonably view as anti-Semitic.

---

13. https://www.haaretz.com/israel-news/elections/2021-05-23/ty-article/.highlight/11-days-4-340-rockets-and-261-dead-the-israel-gaza-fighting-in-numbers/0000017f-ef54-d8a1-a5ff-ffde438f0000.

Obviously, the problem would be the same if the state forced Muslim professors to be represented by an Islamophobic union, if LGBTQ+ professors were coercively represented by a homophobic union, if female professors were forcibly represented by a misogynistic union, or if black professors were compelled to accept representation by a white supremacist union.

"[P]rominent members of the founding generation condemned laws requiring public employees to affirm or support beliefs with which they disagreed." *Janus*, 585 U.S. at 905. Indeed, they called such laws not only "tyrannical," but "*sinful*," *id.* (emphasis added), precisely because they recognized the close connection between speech, association, and *conscience*, particularly touching on religious matters. When the beliefs in question are so personal, religious, and sensitive in nature as those of fundamental religious or personal identity, as informed by the historical marginalization of minority groups, the constitutional dimensions are multiplied. *Cf. Emp. Div., Dep't of Hum. Res. of Or. v. Smith*, 494 U.S. 872, 881 (1990) (recognizing increased constitutional concern when speech and religion rights intersect).

For all those reasons, this case presents a crucial opportunity to address the continued viability of *Knight*, and its acceptance of the principle of compulsory representation. The Court should consider the scope of Petitioners' First Amendment to completely disassociate from persons and organizations they abhor. The very act of disassociating is an expressive activity and should be protected to the same extent as other core political speech.

CONCLUSION

To address blatant injustice and to bolster the First Amendment's broad associational rights protections, the Court should *grant* the petition.

Respectfully submitted,

Timothy Sandefur*
Parker Jackson
Scharf-Norton Center for
Constitutional Litigation at
the Goldwater Institute
500 East Coronado Road
Phoenix, AZ 85004
(602) 462-5000
litigation@goldwaterinstitute.org

** Counsel of Record*

Counsel for Amicus Curiae Goldwater Institute