No. 18-719

In The Supreme Court of the United States

KATHLEEN URADNIK,

Petitioner,

v.

INTER FACULTY ORGANIZATION, ST. CLOUD STATE UNIVERSITY, AND BOARD OF TRUSTEES OF THE MINNESOTA STATE COLLEGES AND UNIVERSITIES,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Eighth Circuit

BRIEF IN OPPOSITION FOR RESPONDENTS ST. CLOUD STATE UNIVERSITY, AND BOARD OF TRUSTEES OF THE MINNESOTA STATE COLLEGES AND UNIVERSITIES

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QUESTION PRESENTED

Does a public sector union's status as the exclusive bargaining representative of all employees in the unit violate the First Amendment rights of non-members who are not required to join or financially support the union and remain free to communicate with their employer, to criticize the union, and to associate with whomever they please?

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STATEMENT OF THE CASE

1. In 1971, the Minnesota Legislature enacted the Public Employment Labor Relations Act ("PELRA") to regulate labor relations in the public sector. 1971 Minn. Laws Extra Sess. ch. 33 (currently codified at Minn. Stat. ch. 179A); *see also City of Richfield v. Local No. 1215, Int'l Ass'n of Fire Fighters*, 276 N.W.2d 42, 45 (Minn. 1979). The Legislature did so in response to "widespread dissatisfaction with the prevailing system of public employment labor relations" in Minnesota. *AFSCME Councils 6, 14, 65 & 96, AFL-CIO v. Sundquist*, 338 N.W.2d 560, 575 (Minn. 1983), *superseded by statute on other grounds*.

The Minnesota Legislature recognized that "unique approaches to negotiations and resolutions of disputes between public employees and employers are necessary" due to the critical services the government provides to the public and the harm caused by public-sector labor disputes. Minn. Stat. § 179A.01(b). The Legislature therefore sought, through PELRA, "to prevent labor disputes and the resulting harmful impact on the public" by promoting "orderly and constructive relationships between all public employers and their employees" while also protecting "the rights of the public employee, the public employer, and the public at large." Minn. Stat. § 179A.01(a), (c); *Int'l Ass'n of Fire Fighters*, 276 N.W.2d at 49.

To accomplish these legislative objectives, PELRA divides most public employees into bargaining units and authorizes the employees in each unit to designate

an exclusive representative to bargain with their employer. Minn. Stat. §§ 179A.06, subd. 2, 179A.10. A union must receive the majority of votes cast in an election to be certified as the exclusive representative of a bargaining unit. Minn. Stat. § 179A.12. PELRA does not require public employees to form a union, and they are not required to join a union even if one is certified as the exclusive representative. Minn. Stat. § 179A.06, subd. 2.[1] In fact, it is an "unfair labor practice" for a public employer to interfere, restrain or coerce employees in the exercise of their right not to associate with a union. Minn. Stat. § 179A.13, subds. 1(a), 2.

When a unit of public employees chooses to certify a union as their exclusive representative, PELRA requires their public employer to "meet and negotiate" in good faith with the union regarding "terms and conditions of employment," which is limited to hours, compensation, certain fringe benefits, grievance procedures, and personnel policies affecting the employees' working conditions. Minn. Stat. §§ 179A.03, subds. 11, 19, 179A.07, subd. 2. The employer and the union are not required to agree on any proposal or make any concessions. Minn. Stat. § 179A.07, subd. 2. Any agreement reached by the employer and the union must be submitted to the Minnesota Legislature to be

[1] PELRA clearly states that the employees decide whether they will be represented by a union. *Id.*; *see also* Minn. Stat. § 179A.12, subds. 3, 7, 10. Petitioner's assertion that the union is "state-appointed" is unsupported by the text of the pertinent statutes. (*See* Pet. 3.)

accepted or rejected. Minn. Stat. §§ 3.855, 43A.06, subd. 1(c), 43A.18, subd. 1.

For professional employees, like university faculty, PELRA requires their employer to "meet and confer" with their representative on "policies" and other employment matters beyond the terms and conditions of employment. Minn. Stat. §§ 179A.03, subds. 10, 13, 179A.07, subd. 3, 179A.08. The Minnesota Legislature required these discussions because professional employees "possess knowledge, expertise, and dedication which is helpful and necessary to the operation and quality of public services and which may assist public employers in developing their policies." Minn. Stat. § 179A.08, subd. 1. If a unit of professional employees has elected to certify a union as their exclusive representative, the union serves as the "meet and confer" representative. Minn. Stat. § 179A.07, subd. 4.

Although PELRA requires public employers to conduct these two formal processes with the union, PELRA does not prevent professional employees from having open and direct communication with their employer about the same subject matter in every other setting. Minn. Stat. § 179A.07, subd. 4. PELRA also does not restrict the right of any public employee "to express or communicate a view, grievance, complaint, or opinion on any matter related to the conditions or compensation of public employment or their betterment, so long as this is not designed to and does not interfere with the full faithful and proper performance of the duties of employment or circumvent the rights

of the exclusive representative." Minn. Stat. § 179A.06, subd. 1.

2. Respondent Inter Faculty Organization ("IFO") has been elected and certified as the exclusive representative for traditional teaching faculty at the seven universities in Respondent Minnesota State's system, including Respondent St. Cloud State University. (Pet. App. 3–4.) Petitioner Kathleen Uradnik is a professor at St. Cloud State University. (*Id.* at 3.) She is not a member of the IFO, but pursuant to PELRA, she is part of the bargaining unit represented by it during the formal "meet and negotiate" and "meet and confer" processes with the State Respondents. Minn. Stat. §§ 179A.03, subd. 8, 179A.07, subd. 2–4, 179A.08; *see also* Pet. App. 4.

Although Petitioner is excluded from the formal "meet and negotiate" and "meet and confer" processes, she can and often does communicate with university administrators on a variety of governance matters. (Dist. Ct. Doc. 30 ¶ 3.) For example, she was instrumental in the creation of a program that allows students to receive a bachelor's degree from SCSU and a juris doctor degree from Mitchell Hamline School of Law in six years rather than seven. (*Id.* ¶ 5.) She has communicated her views regarding the university's listserv restrictions and free speech on campus. (*Id.* ¶ 6.) She has also been actively involved in the decision-making process for the political science department, including serving as Department Chair. (Dist. Ct. Doc. 31 ¶ 6.)

3. Nineteen years after Petitioner started working at SCSU, she filed this lawsuit claiming, among other things, that designating the IFO as the exclusive representative of the faculty pursuant to PELRA violates her First Amendment rights of free speech and association because it authorizes the IFO to speak to her employer on her behalf and compels her to associate with the IFO against her will. (Pet. App. 28.) She filed a motion for a preliminary injunction seeking to enjoin the State Respondents from regarding the IFO as her exclusive representative. (Pet. App. 3.)

The State Respondents opposed the motion, arguing that Petitioner's claim was foreclosed by *Minn. State Bd. for Cmty. Colls. v. Knight*, 465 U.S. 271 (1984), in which this Court rejected a First Amendment challenge by non-member faculty to the same Minnesota laws at issue in this case. This Court explained that exclusive representation does not infringe the instructors' speech or associational rights because "[t]he state has in no way restrained [the dissenters'] freedom to speak on any education-related issue or their freedom to associate or not to associate with whom they please, including the exclusive representative." *Id.* at 288. The State Respondents also cited to *Bierman v. Dayton*, 900 F.3d 570 (8th Cir. 2018), in which the Eighth Circuit used *Knight* to reject the same arguments advanced by Petitioner.

The district court denied Petitioner's motion for a preliminary injunction. (Pet. App. 3.) The court concluded, based on *Knight* and *Bierman*, that Petitioner was unlikely to succeed on the merits because this

Court and the Eighth Circuit "have already rejected her arguments." (Pet. App. 6–7, 11.)

The court also concluded that even if *Knight* and *Bierman* did not apply, exclusive representation satisfies exacting scrutiny. (*Id.* at 8–11.) It explained that exclusive representation serves the compelling state interests of labor peace and "providing Minnesota's public sector employees with representation and greater bargaining power." (*Id.* at 10.) Furthermore, "these state interests could not be accomplished through significantly less restrictive means" because PELRA is "already tailored to minimize First Amendment speech and associational harms." (*Id.*) Indeed, non-members are not required to join the union, they are not charged a fee, they can speak with their employers directly, and they can freely criticize the union. (*Id.*)

In addition, the court found that the remaining preliminary injunction factors weighed against upsetting the status quo that has existed for decades. (*Id.* at 11–12.) For example, the court found that Petitioner failed to demonstrate any harm, let alone irreparable harm, because she can speak to university administrators freely, she "has never been forced to join or associate with the IFO," and her lack of membership "has not harmed her career, as she has received tenure, chaired her department, and even started her own programs and courses." (*Id.*) The court also found that a preliminary injunction "would cause great harm" to the State Respondents, the IFO, and the public interest. (*Id.* at 12.)

Petitioner appealed to the Eighth Circuit and promptly asked it to summarily affirm, conceding that *Bierman* foreclosed her claims. The Eighth Circuit did so, stating that Petitioner "cannot show a likelihood of success on the merits." (*Id.* at 2 (citing *Janus v. Am. Fed'n of State, Cty., & Mun. Emps., Council 31*, 138 S. Ct. 2448, 2478 (2018); *Harris v. Quinn*, 134 S. Ct. 2618, 2640 (2014).)

REASONS FOR DENYING THE PETITION

Petitioner has not identified any compelling reasons to grant certiorari. *See* Sup. Ct. R. 10 ("A petition for a writ of certiorari will be granted only for compelling reasons."). Indeed, the Eighth Circuit's decision does not conflict with any decision of this Court or any other court. *Cf.* Sup. Ct. R. 10(a), (c) (Court grants certiorari when there is a circuit split or the lower court "decided an important federal question in a way that conflicts with relevant decisions of this Court"). On the contrary, this Court settled the issue long ago in *Knight*, which every lower court to consider this question has recognized. *Cf.* Sup. Ct. R. 10(c) (Court grants certiorari when the case involves an important question of federal law that "has *not* been, but should be, settled by this Court") (emphasis added). In any event, this expedited, interlocutory appeal is a poor vehicle for considering the question presented. *See*, *e.g.*, *Hamilton-Brown Shoe Co. v. Wolf Bros. & Co.*, 240 U.S. 251, 258 (1916) (lack of a final judgment "itself alone furnishe[s] sufficient ground for the denial" of certiorari).

I. The Eighth Circuit's Decision Does Not Conflict with a Decision of Any Other Circuit.

The First, Second, Seventh, Eighth, and Ninth Circuits have all recently concluded, consistent with *Knight*, that exclusive representation does not violate the First Amendment rights of non-members. *Mentele v. Inslee*, 916 F.3d 783 (9th Cir. 2019); Pet. App. 1–2; *Bierman*, 900 F.3d at 572, *petition for cert. filed*, No. 18-766 (Dec. 13, 2018); *Hill v. Serv. Emps. Int'l Union*, 850 F.3d 861 (7th Cir.), *cert. denied*, 138 S. Ct. 446 (2017); *Jarvis v. Cuomo*, 660 F. App'x 72 (2d Cir. 2016), *cert. denied*, 137 S. Ct. 1204 (2017); *D'Agostino v. Baker*, 812 F.3d 240 (1st Cir.), *cert. denied*, 136 S. Ct. 2473 (2016). This Court has already considered and denied petitions for certiorari in *Hill*, *Jarvis*, and *D'Agostino*, which were similar to this petition. Petition for Writ of Certiorari, *Hill v. Serv. Emps. Int'l Union*, 138 S. Ct. 446 (2017), 2017 WL 2591420 at *19–26; Petition for Writ of Certiorari, *Jarvis v. Cuomo*, 137 S. Ct. 1204 (2017), 2016 WL 7190381 at *15–23; Petition for Writ of Certiorari, *D'Agostino v. Baker*, 136 S. Ct. 2473 (2016), 2016 WL 2605061 at *6–17.

Furthermore, while Petitioner suggests that this Court's decision in *Janus* changed the law in this area, two circuits addressed this issue in three post-*Janus* decisions, and they uniformly held that exclusive representation in the public sector remains constitutional. *Mentele*, 916 F.3d at 789; Pet. App. 1–2; *Bierman*, 900 F.3d at 572. Indeed, in *Bierman*, the Eighth Circuit held that *Janus* and *Harris* "do not supersede *Knight*" because "the constitutionality of

exclusive representation standing alone was not at issue" in those cases. 900 F.3d at 574; *see also* Pet. App. 2 (citing *Janus*, 138 S. Ct. at 2478; *Harris*, 134 S. Ct. at 2640).

The Ninth Circuit also rejected the argument that *Janus* supersedes *Knight*. *Mentele*, 916 F.3d at 789. The Ninth Circuit explained that the cases "presented different questions . . . and *Janus* never mentions *Knight*." *Id.* The court further concluded that *Janus* "expressly affirm[s] the propriety of mandatory union representation" by making it "clear that the degree of First Amendment infringement inherent in mandatory union representation is tolerated in the context of public sector labor schemes." *Id. Janus* therefore does not "revise the analytical underpinnings of *Knight* or otherwise reset the longstanding rules governing the permissibility of mandatory exclusive representation." *Id.*

Because the Circuits have uniformly rejected Petitioner's arguments, there is no conflict for this Court to resolve. *See* Sup. Ct. R. 10(a).[2]

II. This Court Has Already Settled the Question Presented.

The Circuits have acted uniformly because this Court already conclusively determined that exclusive

[2] District courts in Maine and Ohio have also recently rejected these arguments. *Reisman v. Assoc. Faculties of Univ. of Maine*, 356 F. Supp. 3d 173 (D. Me.), *appeal docketed*, No. 18-2201 (1st Cir. Dec. 7, 2018); *Thompson v. Marietta Educ. Ass'n*, No. 2:18-cv-628 (S.D. Ohio Jan. 14, 2019).

representation does not violate the First Amendment rights of non-members. In *Knight*, a group of Minnesota community college faculty instructors, who were not members of the union elected to represent the faculty bargaining unit, challenged the constitutionality of exclusive representation as authorized by PELRA. 465 U.S. at 278. Like Petitioner in this case, the instructors argued that exclusive representation violated their First Amendment speech and associational rights. *Id.* at 288–90. This Court summarily affirmed the constitutionality of exclusive representation in public sector collective bargaining. *Id.* at 279. It also rejected the instructors' argument with respect to the "meet and confer" process, holding that they were "[u]nable to demonstrate an infringement of any First Amendment right." *Id.* at 291.

The Court explained that exclusive representation did not infringe the instructors' speech and associational rights because "[t]he state has in no way restrained [the dissenters'] freedom to speak on any education-related issue or their freedom to associate or not to associate with whom they please, including the exclusive representative." *Id.* at 288. The Court emphasized that the objecting non-members were "free to form whatever advocacy groups they like," and they "are not required to become members of [the union]." *Id.* at 289.

The same analysis applies here. As in *Knight*, Petitioner's freedom *not* to associate is unimpeded. She is not required to join a union. Minn. Stat. §§ 179A.06, subd. 2, 179A.13, subd. 2. She is also free to associate

with any group or represent herself in advocating any education-related position, including opposition to any proposed agreement between the State and the union. Minn. Stat. § 179A.06, subd. 1; *Knight*, 465 U.S. at 289 ("Appellees are free to form whatever advocacy groups they like.").

Petitioner remains free to speak to relevant decision-makers on any subject. Minn. Stat. §§ 179A.06, subd. 1, 179A.07, subd. 4; *Knight*, 465 U.S. at 289 (concluding that PELRA does not restrain instructors' freedom to speak on any education-related issue). She may petition the Governor of Minnesota, state legislators, the Minnesota State Board of Trustees, and administrators at her university if she so desires as to any issue or aspect of higher education. *Id.* She is also free to criticize the IFO and make clear that she disagrees with its positions. *Id.* In fact, Petitioner has frequently communicated her views on education issues to SCSU throughout her employment. (Dist. Ct. Doc. 30.)

Furthermore, as in *Knight*, the State Respondents understand that the IFO's positions do not represent Petitioner's views, but rather the collective viewpoint of the faculty. (Dist. Ct. Doc. 28 ¶ 10); *Knight*, 465 U.S. at 276 (noting that the State considered the views presented by the union to be the official collective position and recognized that not every instructor agrees with the official faculty view on every policy question); *accord D'Agostino*, 812 F.3d at 244 ("[W]hen an exclusive bargaining agent is selected by majority choice, it is readily understood that employees in the minority,

union or not, will probably disagree with some positions taken by the agent answerable to the majority. And the freedom of the dissenting appellants to speak out publicly on any union position further counters the claim that there is an unacceptable risk the union speech will be attributed to them contrary to their own views. . . .").

Although Petitioner attempts to distinguish her claims from *Knight*, Pet. 10–13, every court to consider these arguments has found them unconvincing. *Bierman*, 900 F.3d at 574 ("There is no meaningful distinction between this case and *Knight*."); *Mentele*, 916 F.3d at 788–89 (rejecting challenger's attempt to distinguish *Knight*); Pet. App. 6–7 (same); *Reisman*, 356 F. Supp. 3d at 176–77 (same); *Thompson v. Marietta Educ. Ass'n*, No. 2:18-cv-628, slip op. at 8–9 (S.D. Ohio Jan. 14, 2019) (same); *see also D'Agostino*, 812 F.3d at 243 (rejecting same argument Petitioner makes here based on *Knight*); *Jarvis*, 660 F. App'x at 74 (same); *Hill*, 850 F.3d at 864 (same). As the Eighth Circuit put it, "a *fair* reading of *Knight* is not so narrow." *Bierman*, 900 F.3d at 574 (emphasis added).

Indeed, although Petitioner characterizes the *Knight* opinion as not addressing compelled speech or association, Pet. 12, this Court spent an entire section of that case discussing the First Amendment speech and associational rights of non-members. 465 U.S. at 288–90; *see also id.* at 295–96 (Brennan, J., dissenting) (stating that it is "crucial" to recognize that the faculty's "First Amendment right to be free from compelled associations with positions or views that they do

not espouse" is "at stake here"). This section is not "off-hand *dicta*" as Petitioner asserts, Pet. 13; it is directly applicable precedent. *Accord Mentele*, 916 F.3d at 788 ("Given the importance of that analysis to the Court's opinion, we do not view those statements as dictum.").[3]

Accordingly, certiorari is unwarranted because this Court already settled whether exclusive representation violates the First Amendment rights of non-members.[4]

III. The Eighth Circuit's Decision Does Not Conflict with Any Decisions of This Court.

Contrary to Petitioner's assertion, the lower courts' denial of a preliminary injunction in this case does not conflict with *Janus* or any other decision of this Court. *Janus* dealt solely with whether a state may compel non-members to pay a fair-share fee to a union. *Accord Bierman*, 900 F.3d at 574 ("[T]he constitutionality of exclusive representation standing alone was not at issue" in *Janus*); *Mentele*, 916 F.3d at 789 (constitutionality of exclusive representation "was not

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[3] Petitioner's suggestion that this portion of the analysis in *Knight* was supported solely by *Abood v. Bd. of Educ.*, 431 U.S. 209 (1977) is also erroneous. *See Mentele*, 916 F.3d at 787 (*Knight* "observ[ed] that *Abood* did not address whether exclusive representation infringed the non-union members' associational rights." (citing *Knight*, 465 U.S. at 291 n.13)).

[4] To grant the preliminary injunction requested by Petitioner, this Court would need to overrule *Knight*. The Petition, however, does not ask the Court to do so.

presented or argued" in *Janus*). The opinion does not even cite, much less overrule, *Knight*.

Janus also does not support Petitioner's argument that exclusive representation in and of itself is unconstitutional. Indeed, *Janus* distinguished exclusive representation from the issue of fair-share fees. *Janus*, 138 S. Ct. at 2465 (it is "simply not true" that "designation of a union as the exclusive representative of all the employees in a unit and the exaction of agency fees are inextricably linked"); *accord Harris*, 134 S. Ct. at 2640. With respect to exclusive representation, this Court stated that "[i]t is . . . not disputed that the State may require that a union serve as exclusive bargaining agent for its employees" and "States can keep their labor-relations systems exactly as they are" with the exception of fair-share fees. *Janus*, 138 S. Ct. at 2478, 2485 n.27; *see also id.* at 2471 n.7 ("[W]e are not in any way questioning the foundations of modern labor law.").

Petitioner's repeated reliance on the "impingement" language in *Janus* is misplaced. Pet. 1, 3, 9, 13–14. As detailed above, the full text of the opinion makes clear that exclusive representation remains constitutional, which is consistent with *Knight*. *See also Mentele*, 916 F.3d at 789 (*Janus* "expressly affirm[ed] the propriety of mandatory union representation"); *Janus*, 138 S. Ct. at 2478 (stating that impingement caused by exclusive representation "would not be tolerated in

other contexts" (emphasis added)).[5] States simply cannot "go further still and require" non-members to pay fair-share fees. *Janus*, 138 S. Ct. at 2478. Such fees cross the line drawn by this Court, whereas exclusive representation does not. *Id.*

Petitioner's reliance on *Knox v. Serv. Emps. Int'l Union, Local 1000*, 567 U.S. 298 (2012) is similarly misplaced. *Knox* only "concerns the procedures that must be followed when a public-sector union announces a special assessment or mid-year dues increase." 567 U.S. at 322 n.9.

Because the Eighth Circuit's decision in this case is consistent with this Court's precedent, including *Janus*, there is no conflict for this Court to resolve.

IV. This Expedited, Interlocutory Appeal Is a Poor Vehicle to Consider This Issue.

This appeal is not, as Petitioner contends, an ideal vehicle for this Court to decide the constitutionality of exclusive representation. Petitioner is appealing the

[5] As the district court concluded, exclusive representation serves the compelling state interests of labor peace and "providing Minnesota's public sector employees with representation and greater bargaining power," Pet. App. 10, which is especially important where, as here, the faculty plays a unique and significant role in campus affairs. (Dist. Ct. Doc. 28 ¶¶ 4–5.) "[T]hese state interests could not be accomplished through significantly less restrictive means" because PELRA is "already tailored to minimize First Amendment speech and associational harms." (Pet. App. at 10); *accord Mentele*, 916 F.3d at 791 (concluding that exclusive representation serves compelling interests and no significantly less restrictive alternatives exist).

denial of a preliminary injunction, which was summarily affirmed by the Eighth Circuit at Petitioner's request. "A preliminary injunction is an extraordinary remedy never awarded as of right," and it requires consideration of the harms to Respondents and the public. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008). Petitioner's failure to address the "great harm to both [Respondents] and the public interest" that would be caused by preliminarily enjoining "the foundations of modern labor law" is telling. *Id.*; Pet. App. 12; *Janus*, 138 S. Ct. at 2471 n.7.

In any event, the interlocutory nature of this appeal by itself is a sufficient ground for denying the petition. *Hamilton-Brown*, 240 U.S. at 258; *see also Va. Military Inst. v. United States*, 508 U.S. 946, 946 (1993) (Scalia, J., concurring in denial of certiorari) ("We generally await final judgment in the lower courts before exercising our certiorari jurisdiction."). This Court only grants certiorari to review interlocutory judgments in "extraordinary cases." *Hamilton-Brown*, 240 U.S. at 258; *see also*, *e.g.*, *Office of Senator Mark Dayton v. Hanson*, 550 U.S. 511, 515 (2007) (holding that there were no "special circumstances that justify the exercise of our discretionary certiorari jurisdiction to review the Court of Appeals' affirmance of the interlocutory order entered by the District Court"); Stephen M. Shapiro, et al., Supreme Court Practice 285 (10th ed. 2013) ("[I]n the absence of some such unusual factor, the interlocutory nature of a lower court judgment will generally result in a denial of certiorari."). This case is not extraordinary because the

question presented was settled by this Court decades ago, and the Eighth Circuit's decision does not conflict with a decision of this Court or any other court.

In addition, this case is not a good vehicle for certiorari review because the precise scope of Petitioner's requested injunction is unclear. *See Mount Soledad Mem'l Ass'n v. Trunk*, 567 U.S. 944 (2012) (Alito, J., concurring in denial of certiorari) ("Because no final judgment has been rendered and it remains unclear precisely what action the Federal Government will be required to take, I agree with the Court's decision to deny the petitions for certiorari.").

In Petitioner's motion for a preliminary injunction, she asked the court to enjoin the Respondents "from holding out and regarding the Union as [her] representative and agent." (Dist. Ct. Doc. 18.) Her proposed order, however, states that Respondents are enjoined from "implementing, enforcing, or giving any effect to" any portion of Minnesota law or a collective bargaining agreement that recognizes the union as the representative of *all non-members*. (Dist. Ct. Doc. 19-3.) Petitioner then filed a reply brief stating:

> The Union may continue speaking, and it may continue negotiating terms and conditions of employment and other policy concessions with the Board. Likewise, the Board may continue to negotiate with the Union the terms and conditions of employment that it offers to its employees and continue to apply the terms of its collective-bargaining agreement to all bargaining-unit members.

(Dist. Ct. Doc. 36.) Because these three statements conflict, and there is no clarity regarding precisely what action the State Respondents could or could not take with respect to the non-member faculty at seven universities, certiorari should be denied.

CONCLUSION

For all of these reasons, this Court should deny the petition for a writ of certiorari.

Respectfully submitted,

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