No. 18-766

In The

Supreme Court of the United States

Bierman, et al.

Petitioners,

v.

Dayton, et al.,

Respondents.

On Petition for a Writ of Certiorari to the U.S. Court of Appeals for the Eighth Circuit

BRIEF OF THE CATO INSTITUTE AS *AMICUS CURIAE* SUPPORTING PETITIONERS

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QUESTION PRESENTED

Whether a state law compelling home-based workers to associate with a labor union violates the First and Fourteenth Amendment rights to freedom of speech and association.

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The Cato Institute was established in 1977 as a nonpartisan public policy research foundation dedicated to advancing the principles of individual liberty, free markets, and limited government. Cato's Robert A. Levy Center for Constitutional Studies was established to restore the principles of limited constitutional government that are the foundation of liberty. Toward those ends, Cato publishes books and studies, conducts conferences and forums, and produces the annual *Cato Supreme Court Review*.

This case concerns Cato because it checks the government power to burden individuals' exercise of their constitutional freedoms of association and expression.

INTRODUCTION AND SUMMARY OF ARGUMENT

Petitioners are parents who provide in-home care to disabled family members participating in Minnesota's Medicaid Individual Providers of Direct Support Services Representation Act. Minnesota expanded its Public Employee Labor Relations Act ("PELRA") to cover these in-home workers. Under the law, public employees may petition by majority vote to unionize. If successful, the union has exclusive bargaining rights with the government for employment

[1] Rule 37 statement: All parties received timely notice of intent to file this brief. Blanket consent was filed by both parties. Further, no party's counsel authored this brief in any part and *amicus* alone funded its preparation or submission.

terms. Petitioners may choose not to join the union, but may not engage in activities, including negotiations, that would "interfere with . . . the rights of the exclusive representative." Minn. Stat. §§ 179A.06, Subdiv.1. This effectively designates the union as their exclusive representative to speak and lobby on their behalf. Under Minnesota law, the PELRA participant, or "customer," is the employer of the PA [personal assistant] may hire or fire the PELRA worker as they see fit. *Id.* at § 179A.54 Subdiv. 4.

Nonetheless, while expressly preserving customers' rights to hire, supervise, and terminate these home-based providers, Minnesota designated the private workers as "public employees" of the state solely for the purposes of PELRA. Minn. Stat. § 179A.54, Subdiv. 2. Nearly 9,000 home-workers submitted a petition to unionize and be designated the exclusive representative and the state acceded.

The Eighth Circuit below, following *Minn. State Bd. for Cmty. Colleges v. Knight*, 465 U.S. 271 (1984), absolved Minnesota of the burden of demonstrating any justification for the abrogation of the rights of workers who are not hired, maintained, or supervised by the state, who do not labor in state facilities, and whom the state does not consider to be its employees for any other purpose. *Bierman v. Dayton,* 900 F.3d 570, 574 (8th Cir. 2018). In *Knight*, this Court accepted that *Abood v. Detroit Bd. of Ed.* 431 U.S. 209 (1977) validated state-compelled association with an exclusive representative and upheld such schemes against claims that they impair workers' ability to

speak directly to government. 465 U.S. 271, 289 n.11. Of course, last term in *Janus v. AFSCME*, 138 S. Ct. 2448 (2018), the Court upheld the rights of workers not to be compelled to support public-sector unions, overruling *Abood*. Ignoring the Court's admonition that *Abood*'s "clear boundaries" encompass only true "public employees," *Harris v. Quinn*, 134 S. Ct. 2618, 2638 (2014), the Eighth Circuit simply asserted that Minnesota's interests in efficient negotiation justifies compelling association with a labor union.

The lower court attempts to have it both ways: it holds that, according to *Knight*, requiring exclusive representation "in no way" infringes upon the rights of association—yet also acknowledges that this Court in *Janus* held such exclusivity requirements significantly infringe upon that freedom. This inconsistent holding provides a roadmap for lawmakers and union officials in the post-*Harris* and post-*Janus* world to circumvent the First Amendment's protection against compelled association and speech. It allows unions to commandeer the negotiation rights of those who do not wish to join their ranks.

Indeed, the Minnesota law at issue is at the leading edge of a nationwide movement over the past two decades to organize home-based care workers, including medical assistants and family child-care providers, and thereby to "reinvigorate organized labor." Peggie Smith, *The Publicization of Home-Based Care Work in State Labor Law*, 92 Minn. L. Rev. 1390, 1390 (2008). Well over a dozen states have already implemented schemes like Minnesota's—in which a state

agency is designated as the employer of record for home workers and empowered to recognize a union representative on their behalf—through legislation or (particularly in the family child-care context) executive order. There is no limiting principle in the decision below to prevent the similar conscription of private workers into public-employment status, in violation of their First Amendment rights. Any industry, profession, or (direct or indirect) recipient of government subsidies or fees—including doctors and nurses participating in state Medicaid programs, attorneys representing the indigent in state courts, foster parents, and employees of businesses receiving state tax credits—would be subject to this same force if *Janus*'s protections are not applied here.

In sum, this case presents a question of great and recurring importance that the Court will inevitably be compelled to address. In the light of states' increasing use of sham employment relationships to circumvent First Amendment protections and the ongoing injury to petitioners and others similarly situated, the Court should act now to protect workers' rights—before this phenomenon takes greater root in labor law.

ARGUMENT

I. THE DECISION BELOW FAILS TO PROPERLY SCRUTINIZE MINNESOTA'S INFRINGEMENT OF THE FREEDOM OF ASSOCIATION

The Eighth Circuit improperly relieved Minnesota of the burden of demonstrating a compelling interest

to justify its infringement of home-based providers' First Amendment rights, holding that workers who provide a service that is subsidized by government may be forced to associate with a labor union that speaks in their name.

A. *Janus* Subjects Infringements of the Freedom of Association to at Least "Exacting" Judicial Scrutiny

The Court has recognized that the freedom of association guaranteed by the First Amendment "plainly presupposes a freedom not to associate." *Roberts v. U.S. Jaycees*, 468 U.S. 609, 623 (1984) (citing *Abood*, 431 U.S. at 234–35). If this means anything, it means the ability not to associate with advocacy with which you disagree. This freedom may be impinged only by "regulations adopted to serve compelling state interests, unrelated to the suppression of ideas, that cannot be achieved through means significantly less restrictive of associational freedoms." *Id.*; *Boy Scouts of Am. v. Dale*, 530 U.S. 640, 648 (2000) (same); *Elrod v. Burns*, 427 U.S. 347, 362 (1976) ("exacting scrutiny"). This is a balancing test: "the associational interest in freedom of expression has been set on one side of the scale, and the state's interest on the other." *Boy Scouts*, 530 U.S. at 658–59. And even the government's compelling state interests—eradicating discrimination, assuring equal access to places of public accommodation—can be outweighed by the burden of intrusion on associations that are inherently expressive. *Hurley v. Irish-American Gay, Lesbian and*

Bisexual Group of Boston, 515 U.S. 557, 574–75 (1995); *Boy Scouts*, 530 U.S. at 659.

The Eighth Circuit erred in assuming that *Knight* takes precedence over *Janus*. *Bierman v. Dayton,* 900 F.3d 570, 574 (8th Cir. 2018). First, *Knight* never answered the question of what level of scrutiny to apply. Instead it considering only whether a law limiting bargaining to an exclusive representative, thereby excluding employees from such bargaining, "violates the constitutional rights of professional employees within the bargaining unit who are not members of the exclusive representative." 465 U.S. at 273. *Knight* found no impairment of associational rights because the employees were not required to become members of the exclusive representative and remained "free to form whatever advocacy groups they like." *Id.* at 289. Without ruling on the point, *Knight* assumed that *Abood* generally validated compelled association with a labor union. *Id.* at 289 n.11, 291 n.13. But the Court has since clarified that *Abood* was flawed, and that its reasoning for compelled association was inherently weak. *Janus*, 138 S. Ct. at 2463–69.

Even if *Janus's* protections don't apply, *Abood's* justification for compelling association does not apply here. *Harris* explains that *Abood*'s rationale in sanctioning compelled association with a labor union "is based on the assumption that the union possesses the full scope of powers and duties generally available under American labor law." 134 S. Ct. at 2636. It follows, then, that "*Abood* itself has clear boundaries; it applies to public employees" and does not "encompass

partial-public employees, quasi-public employees, or simply private employees." *Id.* at 2638. Lest there be any doubt, *Harris* expressly "confine[d] *Abood*'s reach to full-fledged state employees." *Id.* If even in those circumstances *Abood* was "weak," how much more so here, where the workers are as far from public employees as the private home can be.

Regardless of whether *Harris* controls, Minnesota cannot satisfy the *Janus* standard. Whether the standard is exacting or strict scrutiny, *Janus* held that neither "labor peace" nor avoiding "free riders" is a sufficient reason to infringe on First Amendment rights. *Janus*, 138 S. Ct. at 2463–70.

First, Minnesota has no interest in maintaining "labor peace" among household workers or family members merely because they provide services to individuals who participate in a state program or are subject to state regulation. "Labor peace" is not an empty semantic vessel that the state may fill by asserting that it is an employer. Instead, its contents were set at a time when Congress's Commerce Clause power was considered less robust than today, and the "labor peace" doctrine reflects its roots, referring to the pacification of those types of industrial discord that pose a threat to interstate commerce. *Maryland v. Wirtz*, 392 U.S. 183, 191 (1968) (explaining that the National Labor Relations Act was passed to address "substandard labor conditions" that could lead to "strikes and other forms of industrial strife or unrest, which have the intent or the necessary effect of burdening or obstructing commerce"); *see also NLRB v.*

Jones & Laughlin Steel Corp., 301 U.S. 1, 41–43 (1937); *Ry. Emp. Dept. v. Hanson*, 351 U.S. 225, 233 (1956); *Int'l Ass'n of Machinists v. Street*, 367 U.S. 740, 776 (1961) (Douglas, J., concurring).

Abood expressly adopted this "familiar doctrine[]" as a justification for compelled speech and association in limited circumstances. 431 U.S. at 220; *id.* at 224 (explaining that a Michigan agency-shop provision was justified by the same "evils that the exclusivity rule in the Railway Labor Act was designed to avoid"). It described that doctrine thus:

> The designation of a single representative avoids the confusion that would result from attempting to enforce two or more agreements specifying different terms and conditions of employment. It prevents inter-union rivalries from creating dissension within the work force and eliminating the advantages to the employee of collectivization. It also frees the employer from the possibility of facing conflicting demands from different unions, and permits the employer and a single union to reach agreements and settlements that are not subject to attack from rival labor organizations.

431 U.S. at 220–21.

But labor-management issues are necessarily absent here. For example, Minnesota does not manage the personal assistants who provide services to the program participants and exercises no control over

labor conditions. Indeed, the collective-bargaining here is more for the good of the government than for the peace of the laborers. Further, the confusion, rivalries, and dissension that may arise in a workplace absent an exclusive-representative deal are inapplicable where there is no common or state-provided workplace at all. Personal assistants carry out their duties in private homes, where union activities are expressly barred. *Cf. Perry Educ. Ass'n v. Perry Local Educators' Ass'n*, 460 U.S. 37, 52 (1983) (finding that "exclusion of the rival union may reasonably be considered a means of insuring labor-peace *within the schools*") (emphasis added). Because the state does not manage personal assistants or childcare providers—and takes no responsibility for their working conditions—it lacks the power to bargain over employment terms that implicate labor peace.

Moreover, because the scope of bargaining under these programs is so narrow, there can be no serious claim that the union's exclusive representation has freed the state from any great burden due to "conflicting demands" by home-based personal assistants and childcare providers. Surely the state faces more numerous and diverse demands by beneficiaries seeking additional benefits—groups that it has yet to attempt to organize coercively—and other recipients and would-be recipients of state benefits. Petitioners have no greater or qualitatively different relationships with the state than other indirect recipients of state benefits such as doctors serving Medicaid beneficiaries. They are, if anything, further attenuated from the

state's actions than direct beneficiaries, such as the participants whom they serve.

Federal and state labor laws reflect the judgment that the organization of household workers does not further the interest of labor peace. The National Labor Relations Act specifically excludes "any individual employed…in the domestic service of any family or person at his home" from coverage. 29 U.S.C. § 152(3). The Ninth Circuit, interpreting the NLRA shortly after its passage, described Congress's logic: "[T]here never would be a great number suffering under the difficulty of negotiating with the actual employer and there would be no need for collective bargaining and conditions leading to strikes would not obtain." *N. Whittier Heights Citrus Ass'n v. NLRB*, 109 F.2d 76, 80 (9th Cir. 1940). For similar reasons, until this past decade, states generally excluded such workers from coverage under their collective-bargaining statutes. *See* Peggie Smith, *Organizing the Unorganizable*, 79 N.C. L. Rev. 45, 61 n.71 (2000) (listing statutes).

Nor may Minnesota rely on its interest in preventing "free riders" from taking advantage of the benefits of union representation; the Court has already rejected the proposition free-riders are enough of a compelling interest to override First Amendment protections. *Janus*, 138 S. Ct. at 2466–69.

The Eighth Circuit's decision presses far beyond *Abood* and *Knight* to present a roadmap for states to compel independent workers or contractors to associate with a union for no other purpose than to bolster

the ranks of organized labor and promote speech favored by the state and its union allies. For good reason, this Court has never upheld compelled association detached from "some broader regulatory scheme," apart from the speech itself. *United States v. United Foods, Inc.*, 533 U.S. 405, 415 (2001). "Were it sufficient to say speech is germane to itself, the limits observed in *Abood* and *Keller* would be empty of meaning and significance." *Id.* The Court should act to avoid that very result here.

B. Minnesota's Exclusive-Representation Scheme Flunks Exacting Scrutiny Because It Compels Association for No Purpose Other Than Speech

There can be no question that Minnesota's scheme to compel personal assistants' and childcare providers' association with labor unions flunks traditional First Amendment scrutiny. As in *United Foods*, Minnesota has instituted a system of compelled association with "speech in the context of a program where the principal object is speech itself." 533 U.S. at 415.

This is so because, as a matter of law, the state and union lack the traditional labor-management relationship that might be the basis for any broader regulatory activity. Federal law specifies the basic requirements for a Medicaid waiver program, including that the state provide "payment for part or all of the cost of home or community-based services . . . which are provided pursuant to a written plan of care." 42

U.S.C. § 1396n(c)(1).[2] State law, in turn, lays out specific and objective requirements for personal assistants. Crucially, state law is explicit that the customer—not the state or any other party—"is responsible for controlling all aspects of the employment relationship between the customer and the PA," from hiring to evaluation and termination. Minn. Stat. § 179A.54, Subdiv. 2.

It is thus the customer—not the state—who is responsible for workplace conditions, supervision, and every aspect of the employment relationship but for one: compensation. The state has obligated itself only to pay for care provided by personal assistants. Accordingly, the union here can fulfill no role besides lobbying the state for higher wages or more generous benefits—that is, advocacy on behalf of its members.

But Minnesota has no legitimate interest, let alone a "substantial" one, in compelling home-based personal assistants and childcare providers to join in a third party's "feedback" to the state for their own good. "The First Amendment mandates that we presume that speakers, not the government, know best both what they want to say and how to say it." *Riley v. Nat'l Fed'n of the Blind*, 487 U.S. 781, 790–91 (1988). A state "may not substitute its judgment as to how best to speak for that of speakers and listeners." *Id.* at 791. Nor may it "sacrifice speech for efficiency."

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[2] Federal regulations provide further requirements. See 42 C.F.R. § 440.180 (requirements for home- or community-based services); 42 C.F.R. § 441.301 (waiver requirements).

Id. at 795. And if the state has no legitimate interest in compelling speech, it certainly has no "vital" interest in compelling association for the sole purpose of facilitating that speech.

Even if compelling "feedback" were a legitimate state interest, the means selected by Minnesota are far too blunt. "If the State has open to it a less drastic way of satisfying its legitimate interests, it may not choose a legislative scheme that broadly stifles the exercise of fundamental personal liberties." *Elrod*, 427 U.S. at 363. In particular, a state may override the freedom of expressive association only where its interests "cannot be achieved through means significantly less restrictive of associational freedoms." *Roberts*, 468 U.S. at 623. If the state's genuine purpose is to seek feedback from personal assistants and childcare providers, it might survey or interview them or undertake any number of far "less drastic" alternatives. It therefore may not command them to assemble *for the very purpose* of expressive association.

Whether viewed as a burden on associational or expressive rights, Minnesota's scheme to compel the organization and speech of personal assistants who service participants cannot survive traditional First Amendment scrutiny, reflecting the serious injury that the decision below works on the rights of Petitioners and those similarly situated.

II. THE PETITION PRESENTS QUESTIONS OF GREAT AND RECURRING IMPORTANCE

The Court's decision in *Harris* brought to the fore states' imposition of exclusive representatives on home-based workers who receive government subsidies. *Harris* and *Janus*, having curtailed their right to agency fees, labor unions have contrived new ways to leverage exclusive representation to increase their own membership, dues collections, and power. More than a dozen states have, like Minnesota here, established legally fictitious employer relationships to facilitate the compelled organization of home-care workers and home-based childcare providers. The Eighth Circuit's decision sanctions these efforts, while encouraging other states to accede to union campaigns to do the same, at the expense of their citizens' right to be free from compelled association.

Although to date these campaigns have focused on personal assistants and home childcare providers like petitioners, there is no principled way to limit them to those fields. Unless reversed, the decision below leaves all recipients of state funds vulnerable to compelled association with labor unions.

A. Home-Based Workers Across the Country Are Being Denied Their First Amendment Rights

Though a recent phenomenon, the use of sham employment relationships to support mandatory union representation has spread rapidly across the nation.

In less than two decades since SEIU waged a "massive campaign to pressure policymakers" in Los Angeles to authorize union bargaining for homecare workers. *See generally* Linda Delp & Katie Quan, *Homecare Worker Organizing in California: An Analysis of a Successful Strategy*, 27 Lab. Stud. J. 1, 11 (2002). Home-based care workers "have become darlings of the labor movement" and "helped to reinvigorate organized labor." Smith, *Publicization of Home-Based Care Work*, at 1390. From around zero in 1999, now well more than 600,000 home workers are represented by SEIU alone. Kris Maher, *Minnesota Home-Care Workers Say Yes to Union*, Wall St. J., Aug. 26, 2014, https://on.wsj.com/2RJctuL.

This quick growth is the result of a concerted campaign by national unions to boost sagging labor-union membership through the organization of individuals who provide home-based services to Medicaid recipients. Since the SEIU's Los Angeles victory in 1999, unions have undertaken successful campaigns to establish nominal employers for homecare workers in Oregon (2000), Washington (2001), Illinois (2003), Michigan (2004), Wisconsin (2005), Iowa (2005), Massachusetts (2006), Ohio (2009), Pennsylvania (2010), Maryland (2011), Connecticut (2012), Minnesota (2013), and Vermont (2013). See Smith, *Publicization of Home-Based Care Work*, at 1404; Maher, *supra*; Catherine L. Fisk and Margaux Poueymirou, *Harris v. Quinn and the Contradictions of Compelled Speech,* 48 Loy. L.A. L. Rev. 439, 446 n.20 (2015). (Four states—Michigan, Ohio, Pennsylvania, and

Wisconsin—subsequently repealed this authority.) These campaigns have "been hailed as labor's biggest victory in over sixty years." Patrice M. Mareschal, *Agitation and Control: A Tactical Analysis of the Campaign Against New Jersey's Quality Home Care Act* 14 (2005), https://bit.ly/2D6iN7C.

This model spread quickly beyond homecare providers. Over the past decade, unions directed their efforts to organizing home-based childcare providers, including childcare provided by family members who receive public support or subsidies. *See generally* Helen Blank, et al., *Getting Organized: Unionizing Home-Based Child Care Providers* (2013). By February 2007, seven states had recognized unions as the exclusive representative of home-based child care providers; over the next three years, an additional seven followed suit. *Id.* at 5. In at least five of these states, collective bargaining was instituted by executive order, not legislation, reflecting the controversial nature of this project. Blank, *supra*, at 5. Two states, so far, have mandated some foster parents to support an exclusive representative. Or. Rev. Stat. § 443.733; Wash. Rev. Code § 41.56.029. And Illinois has recently extended exclusive representation to nurses and therapists who participate in certain Medicare programs. *See* 2012 Ill. Legis. Serv. P.A. 97-1158.

While campaigns to organize home-based workers can be exceptionally expensive, owing to the changes to state law that are required, the representation of these workers can be quite lucrative for unions, which may explain the rapid spread of this phenomenon.

Although unions are no longer able to extract compulsory fees from home-based workers, they have leveraged power as exclusive representatives to aid their member-recruiting, through recruitment meetings for providers and the states' distribution of membership materials to providers. *See Seidemann v. Bowen*, 499 F.3d 119, 125–26 (2d Cir. 2007). Unions also take advantage of onerous opt-out requirements to push more workers into membership and drive up dues collections. *Id.* (conceding as much). *Cf. Knox v. SEIU*, 567 U.S. 298, 321 (2012). Notwithstanding *Harris* and *Janus*, exclusive representation of home-based workers remains a lucrative enterprise.

Given the vast sums of money and numbers of workers involved, as well as the gravity of the infringement of those workers' rights, it is natural that the issues raised by the petition have arisen in other litigation challenging similar arrangements. *See*, *e.g.*, *D'Agostino v. Baker,* 812 F.3d 240 (1st Cir. 2016); *Jarvis v. Cuomo,* 660 Fed. App'x 72 (2d Cir. 2016); *Mentele v. Inslee*, 2016 U.S. Dist. Lexis 69429 (W.D. Wash. 2016); *Bierman v. Dayton*, 2017 WL 29661 (D. Minn. 2017). If the Court does not act now, it will inevitably confront these issues in a future case.

B. No Limiting Principle Prevents the Lower Court's Reasoning from Reaching Doctors, Nurses, Lawyers, and Government Contractors

Many professional workers receive state funds, directly or indirectly, and future cases will likely have

to deal with attempts to unionize workers with only the smallest connection to governmental employment. This is a result of the lower courts' misunderstanding and misapplication of the Court's decision in *Knight*, which—as interpreted by those courts—cannot logically be limited to personal assistants and childcare providers.

In the Eighth Circuit's view, a state's imposition of an exclusive representative to speak for its citizens is not subject to any scrutiny, it's merely "foreclosed" by *Knight*. *Bierman,* 900 F.3d at 574. The state, may have legitimate interests in hearing the concerns of providers receiving state subsidies and in having efficient access to this information. But the court did not even analyze whether this is sufficient to appointing an exclusive representative to speak for providers.

But when would these circumstances ever not be relevant and worth addressing? By the lower court's reasoning, a state may appoint an exclusive representative to speak in the name of essentially any group of citizens, particularly those who are recipients of state funds. And it makes no difference that, as here, the state's control over their work is minimal or non-existent; its interest in quelling disruptive labor disputes is non-existent; and there is no meaningful free-rider problem in sight. Illinois, for example, imposes numerous conditions on medical providers, such as doctors, seeking to participate in its Medicaid program. *See* 89 Ill. Admin. Code § 140.11 *et seq*. Approved providers are paid by the state for care that they provide to beneficiaries, according to state

regulation and at rates set by the state. *Id.* § 140.23(a). The state even reserves the right to impose prior approval requirements on all services, *id.* § 140.40, as well as the right to conduct an audit of all services, *id.* § 140.30. Given that the state exercises far greater control over Medicaid providers than personal assistants or childcare providers, the decision below would allow Minnesota to force doctors, dentists, or nurses who provide services to Minnesota Medicaid beneficiaries to accept a mandatory representative to speak for them and "bargain" over the terms of their participation in the program.

Attorneys also may be swept up under this standard. Illinois law, for example, provides for the appointment of counsel on appeal to indigent defendants convicted of felonies and directs the state court to review the services rendered and approve payment. 725 Ill. Comp. Stat. 5/121-13(b). Again, the state specifies the attorney's duties and provides for her payment. She may therefore be made to associate with a union—despite that, as a practical matter, the state exercises no control over the discharge of her duties and that its interest in her representation by a labor union is commensurately minimal. The same would be true for any state contractor, recipient of state benefits, farmer receiving subsidies, and potentially even employees of businesses receiving state tax credits or other incentives to create jobs within the state.

In short, the decision below brooks no limiting principle as to when government may impose a representative on citizens to speak and lobby on their

behalf, in their names. It runs roughshod over the principle that the First Amendment safeguards a freedom of association that "plainly presupposes a freedom not to associate," *Roberts v. U.S. Jaycees*, 468 U.S. at 623 (1984), and a freedom of speech that bars government from acting to "compel the endorsement of ideas that it approves," *Knox*, 567 U.S. at 309.

CONCLUSION

The decision below upholds a state law designed to achieve no purpose other than to circumvent the petitioning workers' First Amendment rights to be free of compelled association and expression. The petition for a writ of certiorari should be granted.

Respectfully submitted,

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