No. 20-1643

In the Supreme Court of the United States

ARTHUR BAISLEY,

Petitioner,

v.

INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS,

Respondent.

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

REPLY BRIEF FOR THE PETITIONER

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TABLE OF CONTENTS

REPLY ARGUMENT

The Court should grant review to make clear that the First Amendment and federal law protect employees regulated under the Railway Labor Act from opt-out regimes—regimes which "create[ ] a risk that the fees paid by nonmembers will be used to further political and ideological ends with which they do not agree." *Knox v. SEIU, Loc.* 1000, 567 U.S. 298, 312 (2012). Respondent International Association of Machinists does not dispute the importance of the question presented, which implicates those employees' fundamental constitutional and statutory rights. Instead, IAM largely parrots the Fifth Circuit's decision below, ignores this Court's precedents, and relies on dicta this Court has already repudiated. IAM's brief underscores the need for this Court's review.

1. The brief in opposition reinforces the need for this Court to clarify that this Court's precedents bind the lower courts. *Railway Employees' Department v. Hanson* held the First Amendment is implicated under RLA § 2, Eleventh, 45 U.S.C. § 152, Eleventh, when unions and employers compel employees to pay unions money as a condition of continued employment. 351 U.S. 225, 232 (1956). And the Court reaffirmed that holding when analyzing the procedures required to collect money from employees under RLA § 2, Eleventh in *Ellis v. Railway Clerks*, 466 U.S. 435, 455–56 (1984). *See* Pet.Br. 10–13.

Hanson and *Ellis* are binding Court precedents. Yet IAM acts as if they are not. IAM, like the Fifth Circuit, disregards these precedents and argues a footnote in *Janus v. AFSCME*, 138 S. Ct. 2448 (2018), "forecloses" applying First Amendment scrutiny to RLA § 2, Eleventh. Res.Br. 8–10 (citing *Janus*, 138 S.

Ct. at 2479 n.24). But the Court in that footnote said it was *not* resolving the open and disputed question of whether there is state action under private-sector labor statutes. *Janus*, 138 S. Ct. at 2479 n.24. *Janus* did not overrule the Court's *Hanson* and *Ellis* precedents applying First Amendment scrutiny to compulsory fees imposed under the RLA.

The Fifth Circuit's failure to apply First Amendment scrutiny to IAM's opt-out regime conflicts with *Hanson* and *Ellis*. Likewise, the Fifth Circuit's failure to hold opt-out regimes unconstitutional conflicts with *Knox*, 567 U.S. at 312–14, and *Janus*, 138 S. Ct. at 2486, in which the Court strongly suggested and then held opt-out regimes violate the First Amendment. *See* Pet.Br. 12–13. Certiorari is warranted to correct this conflict.

2. IAM also ignores this Court's precedents interpreting RLA § 2, Eleventh to avoid constitutional problems. *See Machinists v. Street,* 367 U.S. 740, 749–50 (1961); *Ellis*, 466 U.S. at 444–45. After *Knox* and *Janus*, the Fifth Circuit should have construed RLA § 2, Eleventh to forbid opt-out requirements. Indeed, this construction is the most logical interpretation of RLA 2, Eleventh's text and reflects the RLA's history and structure. *See* Pet.Br. 13–17.

IAM does not confront these precedents but doubles down on the Fifth Circuit's flawed reasoning that *Street* held the RLA allows opt-out regimes as a statutory matter. Res.Br. 4–7. Not so. As the Court made clear in *Knox*, *Street*'s language that "dissent is not to be presumed" is dicta and inconsistent with the principle that courts "do not presume acquiescence in the loss of fundamental rights." *Knox*, 567 U.S. at 312–13 (citations & quotations omitted). There is no basis in

this Court's precedents for upholding IAM's opt-out regime.

At bottom, the Fifth Circuit's reliance on *Street*'s dicta—and its failure to engage in any statutory analysis of whether First Amendment principles should inform what the statute requires—defies this Court's precedents interpreting the RLA to avoid constitutional problems. And without this Court's intervention, courts, like the Fifth Circuit here, will continue to misconstrue *Street*'s dicta and uphold burdensome opt-out requirements under the RLA.

3. In *Knox*, the Court held that once it is recognized a "nonmember cannot be forced to fund a union's political or ideological activities," there is no "justification for putting the burden on the nonmember to opt out" of paying for those activities. *Knox*, 567 U.S. at 312. Given that explicit ruling, the Fifth Circuit should have held IAM's opt-out regime breaches its Duty of Fair Representation. *See* Pet.Br. 18.

IAM responds that its opt-out regime is not "arbitrary" because of "longstanding practice and established case law." Res.Br. 7 n.2 (citing Pet.App. 2). But that is not a justification for IAM's opt-out requirement. Nor does it rebut this Court's more recent holding in *Knox* that there is no "justification" for opt-out regimes. Indeed, IAM does not mention—much less confront—this Court's recent precedent in *Knox*.

The Duty of Fair Representation exists to protect nonmember employees from unions that wield government-backed power. *See Steele v. Louisville & N.R. Co.*, 323 U.S. 192, 198 (1944); Pet.Br. 18. But if lower courts, like the Fifth Circuit here, can disregard this Court's precedent when applying the Duty of Fair Representation, then that duty becomes a toothless

doctrine. The Court should grant the petition and make clear the RLA's Duty of Fair Representation protects nonmember employees—employees who are forced by the statute to associate with a union—from the improbable presumption they want to fund IAM's political activities.

CONCLUSION

The Fifth Circuit's decision is paradoxical. It defies this Court's longstanding precedents in *Hanson* and *Ellis* that the First Amendment is implicated by RLA § 2, Eleventh, but treats as binding precedent language in *Street* that this Court in *Knox* explicitly said was flawed dicta, 567 U.S. at 312–13. The Fifth Circuit's decision conflicts with this Court's First Amendment and RLA precedents concerning forced union fees. The Court should grant the petition.

Respectfully submitted,

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