No. 21-1372

IN THE

Supreme Court of the United States

HOLLIE ADAMS, ET AL.,

Petitioners,

v.

TEAMSTERS UNION LOCAL 429, ET AL.

Respondents.

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

COUNTY OF LEBANON, RESPONDENT'S BRIEF IN OPPOSITINON

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QUESTION PRESENTED

Whether the Petitioners lack standing to challenge Union and County Respondents for monetary relief under 42 U.S.C. § 1983 for receiving and spending agency fees to pay for collective bargaining representation prior to *Janus v. AFSCME Council 31,* 138 S. Ct. 2448 (2018), as the Third Circuit made no error of law, there is unity amongst the Circuit Courts of Appeal as to this issue, and Petitioners' raise new issues within the writ, as to whether *Janus* applies to union members who signed union membership cards with dues authorization deductions?

PARTIES TO THE PROCEEDING

Petitioners Hollie Adams, Jody Weaber, Karen Un-ger, and Chris Felker are natural persons and citizens of the Commonwealth of Pennsylvania.

Respondent Teamsters Union Local 429 is a labor union headquartered in Wyomissing, Pennsylvania, and includes among its members municipal government employees across central Pennsylvania.

Respondent Lebanon County is a Pennsylvania County and public employer.

Respondent Joshua Shapiro is a natural person and the Attorney General of Pennsylvania. Respondents James M. Darby, Albert Mezzaroba, and Robert H. Shoop Jr. are natural persons and members of the Pennsylvania Labor Relations Board.[1]

[1] Respondents Joshua Shapiro, James M. Darby, Albert Mezzaroba, and Robert H. Shoop Jr., (collectively, the "Commonwealth Defendants"), were listed as defendants in this case with respect to Count II of the Complaint only, which challenged Pennsylvania's exclusive representation system. Petitioners do not appeal Count II to this Court. Commonwealth Defendants Rule 14.1(b)(i), and served pursuant to Rule 12.6.

RELATED PROCEEDINGS

This case arises directly from the decision of the Third Circuit in *Adams v. Teamsters Local Union 429*, No. 20-1824 (3d Cir.) (judgment entered January 20, 2022).

The Third Circuit affirmed the district court's entry of summary judgment in *Adams v. Teamsters Local Union 429,* No. 1: 19-CV-336 (M.D. Pa. March 31, 2020) in favor of all defendants.

TABLE OF CONTENTS

PAGE

QUESTION PRESENTED..... i

PARTIES TO THE PROCEEDING..... ii

RELATED PROCEEDINGS..... iii

TABLE OF AUTHORITIES..... v

INTRODUCTION..... 1

OPINIONS BELOW..... 2

STATEMENT OF THE CASE..... 3

REASONS FOR DENYING THE WRIT 5

I. Petitioners lack standing and fail to identify an error of law made by the Third Circuit in the application of *Janus*. 6

II. The lower circuit courts have unanimously held that unions are not subject to retrospective monetary liability under Section 1983 for having collected pre-*Janus* agency fees and are unified that Janus does not apply to Petitioners or those like them... 9

III. There is no other justification for this Court's intervention. 11

TABLE OF AUTHORITIES

PAGE

Abood v. Detroit Bd. Of Ed.,
431 U.S. 209 (1977) 3

Agostini v. Felton,
521 U.S. 203, 237 (1997) 12

Allen v. Cooper,
140 S. Ct. 994, 1003 (2020) 12

Belgau v. Inslee,
975 F.3d 940, 945 (9th Cir. 2020) 9

Bennett v. AFSCME Council 31,
991 F.3d 724 (7th Cir. 2021) 9

California v. Rooney,
483 U.S. 307, 311 (1987) 11

Casanova v. Machinists Local 701,
141 S. Ct. 1283 (2021) 10

Danielson v. Inslee,
141 S. Ct. 1265 (2021) 10

Diamond v. Pa. State Educ. Ass'n,
972 F. 3d 262 (3d Cir. 2020).....8

TABLE OF AUTHORITIES

PAGE

Fischer v. Governor of New Jersey,
No. 19-3914, 2021 U.S. App. LEXIS 1158, 2021
WL 141609, 842 Fed. Appx. 741 (3d Cir.
Jan.15, 2021) 9

Hendrickson v. AFSCME Council 18,
992 F.3d 950 (10th Cir. 2021) 9

Janus v. AFSCME Council 31,
138 S. Ct. 2448 (2018) .....passim

Janus v. AFSCME Council 31,
141 S. Ct. 1282 (2021) 10

LaSpina v. SEIU Pennsylvania State Council,
985 F.3d 278 (3d Cir. 2021) 6, 7

Lee v. Ohio Educ. Ass'n,
141 S. Ct. 1264 (2021) 10

Michigan v. Bay Mills Indian Cmty.,
572 U.S. 782, 798 (2014),
134 S. Ct. 2024 12

Mooney v. Ill. Educ. Ass'n,
141 S. Ct. 1283 (2021) 10

Ogle v. Ohio Civ. Serv. Emps. Ass'n,
141 S. Ct. 1265 (2021) 10

TABLE OF AUTHORITIES

PAGE

Oliver v. SEIU Local 668,
830 F. App'x 76 (3d Cir. 2020).....9

Wholean v. CSEA SEIU Local 2001,
955 F. 3d 332 (2d Cir. 2020), *cert. denied,*
___ S. Ct. _, 2021 WL 1163740 (Mar. 29, 2021) ...10

INTRODUCTION

The lower circuit courts, including the court below, unanimously and correctly held that unions are not subject to retrospective monetary liability in suits under 42 U.S.C. § 1983 for having collected agency fees prior to *Janus v. AFSCME Council 31,* 138 S. Ct. 2448 (2018), in accordance with state law and this Court's then controlling precedent. Petitioners point to no error of law in the application of *Janus* in the Third Circuit's decision in the instant case, there is no split amongst the circuits which require this Court's clarification, and this Court has denied more than seven petitions for writ of certiorari since January of 2021 that raised the same questions presented here. Accordingly, there are no new developments in the short timeframe since this Honorable Court's decision in *Janus* that would make this question necessary for the Court's review. The petition, as the others, should be denied.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Third Circuit as reported at *Adams v. Teamsters Local Union 429,* ____ F. 3d ____ (3d Cir. Jan. 20, 2022), (App. 1. - App.11).

The orders of the United States District Court for the Middle District of Pennsylvania are reported at *Adams v. Teamsters Local Union 429,* ___ F. Supp. 3d ___ (M.D. Pa. March 31, 2020), (App. 42 – App. 50, App. 51 – App. 52).

STATEMENT OF THE CASE

When the Petitioners were hired, they had a choice to join a union and pay dues or not join and pay "fair share" fees. Prior to 2018, it was lawful for unions to charge fair share fees to nonmembers. The employees, all of whom work for Lebanon County, chose to join Teamsters Union Local 429 (the Union).

In 2018, this Court held in *Janus v. Am. Fed. of State, Cty., and Mun. Emps., Council 31,* 138 S. Ct. 2448 (2018), that state laws authorizing unions to charge fair share fees violated the First Amendment. Therefore, after *Janus*, the Petitioners faced a different choice: pay union dues or pay no fees.

After *Janus* the Petitioners resigned from the Union. The Union stopped charging them dues and the County stopped withholding dues and remitting to Union. The Union also refunded dues that had automatically been deducted after Petitioners resigned. Nevertheless, the Petitioners sued, as they sought a refund of all dues paid before resignation from the Union.

In Petitioners' view, they should have had the choice to either pay union dues or to pay nothing even before this Court's decision in *Janus.* Since this choice was not afforded to Petitioners because of then existing law, *Abood v. Detroit Bd. Of Ed.,* 431 U.S. 209 (1977), they claim that their First Amendment rights were violated. Petitioners also assert that Pennsylvania's exclusive-representation

law, making a union the exclusive bargaining agent for employees, violates the First Amendment.

Petitioners filed their Complaint in February 2019. The Complaint names as defendants the Local Union 429, the County of Lebanon, the Pennsylvania Attorney General, and members of Pennsylvania's Labor Relations Board. The parties filed cross motions for summary judgment. The Magistrate Judge issued a Report and Recommendation, recommending the District Court grant Defendants' motion for summary judgment. On March 31, 2020, the United States District Court for the Middle District of Pennsylvania adopted the Magistrate Judge's recommendations and issued an order in favor of Defendants and dismissed Petitioners' claims. On April 15, 2020, Petitioners filed an appeal to the United States Court of Appeals for the Third Circuit, who affirmed the District Court's order granting summary judgment to the Respondents. Petitioners filed a Petition for a Writ of Certiorari to this Court on April 20, 2022.

REASONS FOR DENYING THE WRIT

The petition presents the question whom does this Court's affirmative consent waiver requirement set forth in *Janus* apply: nonmembers currently or previously employed in agency shop arrangements, like Mark Janus – as several lower courts have held – or employees, like Petitioners, who sign an agreement to pay a union, such as union membership card or dues deduction authorization. This specific question merely presents a different wording to the question that this Court and the lower courts have answered time and again: Whether the employees should be granted monetary relief under 42 U.S.C. § 1983 for receiving and spending agency fees to pay for collective bargaining representation prior to *Janus*? Petitioners contend that they are entitled to retroactive relief and that the affirmative consent waiver requirement should apply to them. However, since *Janus* at least seven courts of appeals and more than 30 district courts – including the Third Circuit in the decision Petitioners ask this court to review – have specifically stated that Petitioners are not entitled to retroactive relief. Further, there is no disagreement amongst the lower courts in the application of *Janus* as the Petitioners lack standing to seek a refund of union dues paid before they resigned from the union. Petitioners' claims for prospective injunctive and declaratory relief are moot because they have not shown their employers or the union will continue to assess union dues.

I. Petitioners lack standing and fail to identify an error of law made by the Third Circuit in the application of *Janus*.

The United States Court of Appeals for the Third Circuit recently conducted an analysis of a factually similar case on the issue of refund dues in *LaSpina v. SEIU Pennsylvania State Council*, 985 F.3d 278 (3d Cir. 2021). In *LaSpina*, the Third Circuit found that a former union member has "no standing to seek a refund of any portion of the union dues she made prior to *Janus* because she cannot tie the payment of those dues to the Union's unconstitutional deduction of fair-share fees from nonmembers." *Id.* at 281, 287. *LaSpina* is factually similar to the instant case as it involves an employee, in an exclusive representation employment situation, who joined the union rather than paying a fair share fee and who then, after *Janus*, resigned from the union and sued to get a refund of union dues. The Third Circuit dismissed *LaSpina* and did the same with the instant case finding that Petitioners lack standing to seek a refund of union dues paid before they resigned from the union. Further, Petitioners Adams and Weaber continue to seek damages for union dues paid after they resigned from the union. However, this argument fails on multiple fronts, as the claims for these damages are now moot because Adams and Weaber were reimbursed all dues paid during said period and, further, they fail to state a claim under the First Amendment.

Also, the Third Circuit correctly applied *Janus* when it held that employees, like the Petitioners here, who sign union card/dues deduction agreements are not subject the affirmative consent waiver requirement. App. 6 (relying on *LaSpina,* 985 F.3d at 288**.** The correct application of *Janus* shows that the Petitioners have no First Amendment claim in this case because, as stated in *Janus*, an employee must provide affirmative consent before an agency fee or any other payment to a union may be deducted from a nonmember's wages only applies to "nonmembers currently or previously employed in agency shop arrangements" and not employees who joined the union prior to the *Janus* decision.

In short, the *Janus* waiver analysis does not apply to employees who joined a union prior to the *Janus* decision because they consented to pay the union and have fees deducted by the County. Petitioners consented to this for the better part of two decades. Petitioners also assert that when they agreed to join and pay the union, they were nonmembers. This is wholly inaccurate, and there is no evidence to support the Petitioners claim of this nonmember status. In fact, Petitioner Unger originally chose to not join the Union in 2015 and then subsequently chose to the join the Union in November 2017.

Further, according to *Janus,* any agreement to pay must constitute "affirmative consent" to pay, must be "freely given," "shown by clear and compelling evidence," and "cannot be presumed."

Petitioners voluntarily joined the union and knowingly and willingly signed their union cards to have funds removed from their pay by the County for the better part of two decades. They also knowingly and willingly took advantage of the numerous benefits and union representation afforded to them during the better part of two decades while being union members. One of the Petitioners actually left the union and rejoined it several years later. It is difficult to see how such affirmative decisions to not join the union in 2015 and subsequently choosing to join the union two years later were decisions not made knowingly and willingly. Also, there is a recognized good faith defense which protects the County and union withholding dues from Petitioners' paychecks prior to this Court's decision in *Janus*. App. 32-35 (citing *Diamond v. Pa. State Educ. Ass'n,* 972 F. 3d 262 (3d Cir. 2020)). The Third Circuit has also held that retrospective monetary relief is unavailable where the defendant "successfully claim[s] to have relied substantially and in good faith on both a state and unambiguous Supreme Court precedent validating that statute." Pet. App. A at 23 (quoting Janus II, 942 F.3d at 367).

A former union member has no standing to seek a refund of any portion of the union dues made prior to *Janus*, the County and union properly withheld funds from Petitioners' paychecks in good faith prior to the *Janus* decision, and the affirmative waiver requirement does not apply to Petitioners. Petitioners fail to identify an error law in the application of *Janus* by the Third Circuit.

II. The lower courts have unanimously held that unions are not subject to retrospective monetary liability under Section 1983 for having collected pre-*Janus* agency fees and are unified that the *Janus* affirmative waiver requirement does not apply to Petitioners or those like them.

Petitioners contend that this Court should grant their petition in order to resolve a widespread mis-application of this Court's ruling in *Janus* throughout the circuit courts of appeals. Throughout the circuits, the lower courts have held that this Court's decision in *Janus* does not apply to Petitioners or those in their situation. *See, e.g., Fischer v. Governor of New Jersey,* No. 19-3914, 2021 U.S. App. LEXIS 1158, 2021 WL 141609, at *1-2 (3d Cir. Jan. 15, 2021) (nonprecedential decision); *Oliver v. SEIU Local 668,* 830 F. App'x 76 (3d Cir. 2020) (nonprecedential decision); *Bennett v. AFSCME Council 31,* 991 F.3d 724 (7th Cir. 2021)*; Belgau v. Inslee,* 975 F.3d 940, 945 (9th Cir. 2020), petition for cert. docketed, No. 20-1120 (U.S. Feb. 16, 2021); *Hendrickson v. AFSCME Council 18,* 992 F.3d 950 (10th Cir. 2021). The circuit courts are unified as to their understanding and application of the affirmative waiver requirement with regards to Petitioners and others who are similarly situated. Accordingly, this Court provided more than adequate guidance as to this issue in *Janus,* as the consensus throughout the circuits is unified that the affirmative waiver requirement does not apply to Petitioners foregoing a First Amendment claim.

Further, the lower courts are unified in the application of *Janus* in that Petitioners and those similarly situated employees are not entitled to monetary relief for Section 1983 claims. There is no split amongst the circuits which require this Court's clarification, and this Court has denied more than seven petitions for certiorari since January of 2021, that have raised this very question. *See Wholean v. CSEA SEIU Local 2001*, _ S. Ct. _, 2021 WL 1163740 (Mar. 29, 2021); *Janus v. AFSCME Council 31*, 141 S. Ct. 1282 (2021); *Mooney v. Ill. Educ. Ass'n*, 141 S. Ct. 1283 (2021); *Danielson v. Inslee*, 141 S. Ct. 1265 (2021); *Casanova v. Machinists Local 701*, 141 S. Ct. 1283 (2021); *Lee v. Ohio Educ. Ass'n*, 141 S. Ct. 1264 (2021); *Ogle v. Ohio Civ. Serv. Emps. Ass'n*, 141 S. Ct. 1265 (2021).

Accordingly, the lower courts, including the court below, have unanimously and correctly held that unions and the employer are not subject to retrospective monetary liability in suits under 42 U.S.C. § 1983 for having collected agency fees prior to *Janus*. Every court that has tackled the question of monetary relief under Section 1983 and a County or union's reliance on then-valid state laws and then-binding precedent of this Court has resulted in the same outcome: such reliance precludes monetary relief under Section 1983 for pre-*Janus* agency fees. There is a consensus amongst the courts of appeals, which also includes more than 30 district court decisions.

III. There is no other justification for this Court's intervention.

Petitioners contend that review of the decision below is justified because, "This case became one of dozens of cases filed by government employees who joined the union prior to the *Janus* decision…" and "the Ninth Circuit is currently considering a trio of cases where the union has provided a small opt-out window that is triggered only after multiple years, rather than the usual one-year window." Petition at 9, 17. As stated already, however, every court to consider these claims has held that the affirmative waiver requirement does not apply to employee Petitioners and that the Respondents are not subject to Section 1983 monetary liability. The unanimous consensus amongst the circuit courts of appeals is that Section 1983 claims for pre-*Janus* agency fees are meritless and that a former union member has no standing to seek a refund of any portion of the union dues paid prior to *Janus*.

Accordingly, it is not necessary for this Court to provide further guidance on the issues.

Petitioners contend that this case is an "excellent vehicle" for this Court to provide guidance to the affirmative waiver requirement post-*Janus*. However, the questions presented have been previously decided with uniformity. This Court should not grant review solely to correct purported errors in a decision below.

As this Court has often stated, it "reviews judgments, not statements in opinions." *California v. Rooney*, 483 U.S. 307, 311 (1987) (per curiam) (citation omitted). That principle applies here, as the Third Circuit's judgment—in accord with the judgment of every court to address Section 1983 claims seeking the repayment of pre-*Janus* agency fees—is that unions and the employer are not liable to repay such fees.

Stare decisis is "a 'foundation stone of the rule of law.'" *Allen v. Cooper*, 140 S. Ct. 994, 1003 (2020) (quoting *Michigan v. Bay Mills Indian Cmty.*, 572 U.S. 782, 798 (2014)). This Court seldom overrules its precedents. Moreover, this Court has held that when a precedent of this Court is directly on point, that precedent is the law of the land binding on all lower courts, even if subsequent decisions have criticized that precedent. *Agostini v. Felton*, 521 U.S. 203, 237 (1997). Accordingly, this case—in which the Respondents were acting in accordance not only with the requirements of state law but also with this Court's governing precedent—would not provide a suitable vehicle for this Court to consider deviating from the established and unanimous consensus amongst the courts as to the application of *Janus* as to the affirmative waiver requirement.

CONCLUSION

The petition for certiorari should be denied.

Respectfully submitted,

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