No. 21-1372

IN THE
Supreme Court of the United States

HOLLIE ADAMS, JODY WEAVER, KAREN UNGER, and CHRIS FELKER,

Petitioners,

v.

TEAMSTERS UNION LOCAL 429; LEBANON COUNTY; ATTORNEY GENERAL JOSH SHAPIRO, *in his official capacity*, and JAMES M. DARBY, ALBERT MEZZARORA, and ROBERT H. SHOOP, JR., *in their official capacities as members of the Pennsylvania Labor Relations Board*,

Respondents.

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

BRIEF IN OPPOSITION OF RESPONDENT TEAMSTERS UNION LOCAL 429

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QUESTION PRESENTED

Whether public employees who voluntarily joined a union, signed written agreements to pay membership dues via payroll deduction for a one-year period, and received membership rights and benefits in return, suffered a violation of their First Amendment rights when their employer made the deductions that they affirmatively and unambiguously authorized?

CORPORATE DISCLOSURE STATEMENT

Respondent Teamsters Union Local 429 is not a corporation and has no parent corporations. No corporation or any other entity owns stock in Respondent.

PARTIES TO THE PROCEEDING

In the proceedings below, Petitioners Hollie Adams, Jody Weaber, Karen Unger, and Chris Felker were the plaintiffs before the district court, and the appellants before the Court of Appeals.

Teamsters Union Local 429 and the County of Lebanon were defendants in the district court and appellees before the Court of Appeals.

Additionally, four Commonwealth of Pennsylvania officers were defendants before the district court and appellees before the Court of Appeals. These officials were Attorney General Josh Shapiro and three members of the Pennsylvania Labor Relations Board—James M. Darby, Albert Mezzaroba, and Robert H. Shoop, Jr. The Pennsylvania officials were all sued in their official capacity.

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 entry of summary judgment by the district court in favor of all defendants in *Adams v. Teamsters Local Union 429*, No. 1:19-CV-336 (M.D. Pa. March 21, 2020).

TABLE OF CONTENTS

TABLE OF AUTHORITIES

TABLE OF AUTHORITIES—Continued

TABLE OF AUTHORITIES—Continued

TABLE OF AUTHORITIES—Continued

INTRODUCTION

The lower courts unanimously and correctly have held that the deduction of union dues pursuant to a public employee's voluntary union membership and dues deduction authorization agreement does not violate the employee's First Amendment rights. These decisions, which include the Ninth Circuit's decision in *Few v. United Teachers L.A.*, 2022 U.S. App. LEXIS 2545 (9th Cir. Jan. 27, 2022) (unpublished) (citing *Belgau v. Inslee*, 975 F.3d 940, 950-52 (9th Cir. 2020)), a case in which this Court denied certiorari in the prior Term, *see* 142 S. Ct. 2780 (2022)—are a straightforward application of this Court's precedent establishing that "the First Amendment does not confer . . . a constitutional right to disregard promises that would otherwise be enforced under state law . . ." *Cohen v. Cowles Media Co.*, 501 U.S. 663, 672 (1991). Nothing in this Court's decision in *Janus v. AFSCME Council 13*, 138 S. Ct. 2449 (2018), which addressed the constitutionality of agency-fee requirements for nonmembers of unions who did not consent to such payments, alters the enforceability of contracts in which union members agreed to pay union dues for a set period of time.

In fact, since June 2021, this Court has denied nine petitions for certiorari that raised the same question presented here about the enforceability of union membership agreements.[1] There have been no devel-

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[1] *Few v. United Teachers Los Angeles*, 142 S. Ct. 2780 (U.S. 2022); *Grossman v. Hawaii Gov't Emps. Ass'n*, 142 S. Ct. 591 (2021); *Smith v. Bieker*, 142 S. Ct. 593 (2021); *Wolf v. UPTE-CWA 9119*, 142 S. Ct. 591 (2021); *Hendrickson v. AFSCME Council 18*, 142 S. Ct. 423 (2021); *Bennett v. AFSCME, Council 31*, AFL-CIO, 142 S. Ct. 424 (2021); *Troesch v. Chicago*

opments in the brief time since those denials that would make the decision below worthy of this Court's review. Thus, considering the unanimous consensus among lower courts on this issue and Petitioners' failure to present any other reason this question should be considered by this Court, the Petition should be denied.

STATEMENT OF THE CASE

A. Background.

1. Respondent Teamsters Union Local 429 ("the Union" or "Local") is a labor union headquartered in Wyomissing, Pennsylvania and includes among its members municipal government employees. D. Ct. ECF 36, ¶ 2 (Defendants' Joint Statement of Material Facts Not in Dispute) (hereinafter "Joint Statement").[2] The Union is an "Employe organization" and "Representative" within the meaning of the Pennsylvania Public Employe Relations Act, Act of Jun. 2, 1993, P.L. 45, No. 15, 43 P.S. §1101 *et seq.*, ("PERA") at 43 P.S. §1101.301(3) and (4), respectively. *Id.* Pursuant to Section 401 of PERA, the Union is the democratically chosen representative of a bargaining unit of municipal employees of Lebanon County, Pennsylvania. *Id.* ¶¶ 8, 14; 43 P.S. §1101.401.

Petitioners Hollie Adams, Christopher Felker, and Jody Weaber all became employees of Lebanon County and shortly thereafter chose to voluntarily join the

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Teachers Union, 142 S. Ct. 425 (2021); *Fischer v. Murphy, Gov. of N.J.*, 142 S. Ct. 426 (2021); *Belgau v. Inslee*, 141 S. Ct. 2795 (2021).

[2] Petitioners accepted Defendants' Joint Statement of Material Facts Not in Dispute "as a complete and accurate rendition of the relevant facts." D. Ct. ECF 43-2, p. 2.

Union by signing membership agreements and dues authorizations. Joint Statement, ¶¶ 1 19, 20, 32, 33, 53, 54. After Petitioner Karen Unger was hired, she chose not to join the union or sign a union authorization. Instead, she paid a fair share fee as a nonmember. *Id*. ¶¶ 42, 43. Approximately two years after working for Lebanon County, Petitioner Unger signed a membership agreement and dues authorization. *Id*. ¶ 44; D. Ct. ECF 50, ¶ 2 (Defendants' Supplemental Joint Statement of Material Facts Not in Dispute) (hereinafter "Supplemental Statement").[3]

The membership applications signed by Petitioners read in pertinent part:

> I voluntarily submit this Application for Membership in Local Union ____, affiliated with the International Brotherhood of Teamsters, so that I may fully participate in the activities of the Union. I understand that by becoming and remaining a member of the Union, **I will be entitled to attend membership meetings, participate in the development of contract proposals for collective bargaining, vote to ratify or reject collective bargaining agreements, run for Union office or support candidates of my choice, receive Union publications and take advantage of programs available only to Union members.** I understand that only as a member of the Union will I be able to determine the course the Union takes to represent me in negotiations to improve my wages, fringe benefits and working conditions. And, I understand that the Union's strength and ability to represent my interests depends upon my exercising my right, as guar-

[3] Petitioners acknowledged that "for purposes of summary judgment, Plaintiffs accept the facts as stated in the Joint Supplemental Statement of Facts." D. Ct. ECF 53, p. 5.

anteed by federal law, to join the Union and engage in collective activities with my fellow workers.

I understand that under the current law, I may elect "nonmember" status, and can satisfy any contractual obligation necessary to retain my employment by paying an amount equal to the uniform dues and initiation fee required of members of the Union. I also understand that if I elect not to become a member or remain a member, I may object to paying the pro-rata portion of regular Union dues or fees that are not germane to collective bargaining, contract administration and grievance adjustment, and I can request the Local Union to provide me with information concerning its most recent allocation of expenditures devoted to activities that are both germane and non-germane to its performance as the collective bargaining representative sufficient to enable me to decide whether or not to become an objector. I understand that nonmembers who choose to object to paying the pro-rata portion of regular Union dues or fees that are not germane to collective bargaining will be entitled to a reduction in fees based on the aforementioned allocation of expenditures, and will have the right to challenge the correctness of the allocation. The procedures for filing such challenges will be provided by my Local Union, upon request.

I have read and understand the options available to me and submit this application to he admitted as a member of the Local Union.

Supplemental Statement ¶ 4 (emphasis added). The membership application enumerates the benefits conferred to those who choose membership and makes clear that one can decide to be a nonmember. *Id.*

The dues authorizations signed by Petitioners, entitled the "Dues Checkoff Authorization and Assignment," stated:

> I, _____ hereby authorize my employer to deduct from my wages each and every month an amount equal to the monthly dues, initiation fees and uniform assessments of Local Union ___ and direct such amounts so deducted to be turned over each month to the Secretary-Treasurer of such Local Union for and on my behalf.
>
> This authorization is voluntary and is not conditioned on my present or future membership in the Union.
>
> This authorization and assignment shall be irrevocable for the term of the applicable contract between the union and the employer **or for one year, whichever is the lesser, and shall automatically renew itself for successive yearly or applicable contract periods thereafter, whichever is lesser,** unless I give written notice to the company and the union at least sixty (60) days, but not more than seventy-five (75) days before any periodic renewal date of this authorization and assignment of my desire to revoke same.

Joint Statement ¶ 6 (emphasis added).

Thus, under the dues authorizations—which were voluntary by their terms—Petitioners committed to have an amount equal to monthly dues, initiation fees and uniform assessments deducted from their paychecks and remitted to the Union until the anniversary of the date that they signed the dues authorization; on that date, the authorization automatically would renew unless it had been revoked. *Id.*

The provisions in Petitioners' dues authorizations stating that dues deductions would be irrevocable for a one-year period incorporated the same terms Congress has authorized for federal employees, postal employees, and employees covered by the National Labor Relations Act and the Railway Labor Act. *See* 5 U.S.C. §7115(a)-(b); 39 U.S.C. §1205; 29 U.S.C. §186(c)(4); 45 U.S.C. §152, Eleventh (b).[4] A one-year irrevocability period for a union member's dues authorizations "provides [the union] with financial stability by ensuring a predictable revenue stream" and allowing it to "make long-term financial commitments without the possibility of a sudden loss of revenue," and prevents individuals "from gaming the [u]nion's system of governance" by "pay[ing] dues for only a month to become eligible to vote in a [u]nion officer election" or access a member-only benefit "and then reneg[ing] on all future financial contributions." *Fisk v. Inslee*, 2017 U.S. Dist. LEXIS 170910, at *9 (W.D. Wash. Oct. 16, 2017), *aff'd*, 759 F. App'x 632 (9th Cir. 2019).

2. Prior to June 27, 2018, Pennsylvania's Public Employee Fair Share Fee Law, Act of Jun. 2, 1993, P.L. 45, No. 15, 43 P.S. §§1102.1-1102.9, and this Court's precedent permitted unions and public employers to enter into collective bargaining agreements requiring nonmembers to pay "fair-share" or "agency" fees to cover their portion of the costs of collective bargaining representation. *See Abood v. Detroit Bd. of Educ.*, 431 U.S. 209 (1977). Under *Abood*, agency fees

[4] The United States Department of Justice determined more than 70 years ago that union dues deduction authorizations with an annual window for revocations comport with 29 U.S.C. §186, which regulates dues authorizations for employees covered by the National Labor Relations Act. Justice Department's Opinion on Checkoff, 22 LRRM (BNA) 46, 46-47 (1948).

could be collected to cover the nonmembers' share of union costs germane to collective bargaining representation, but not to cover a union's political, ideological, or membership activities. 431 U.S. at 235-36. When Petitioners became union members, the collective bargaining agreement between Lebanon County and the Union provided for the collection of agency fees from nonmembers. Joint Statement ¶ 18.

In *Janus v. AFSCME Council 31*, 128 S. Ct. 2448 (2018), this Court held that *Abood* "is now overruled" and that a public employer's requirement that nonmembers pay agency fees as a condition of employment "violates the First Amendment and cannot continue." *Id*. at 2486. *Janus* did not involve voluntary union membership agreements, and the Court explained that: "States can keep their labor-relations systems exactly as they are—only they cannot force nonmembers to subsidize public-sector unions." *Id*. at 2485 n. 27.

3. After *Janus*, Petitioners each sent letters to the Union requesting to resign their union membership and end dues deductions. Joint Statement ¶¶ 22, 24, 35, 46, 56, 57. Petitioners Adams and Unger sent their respective letters on July 10, 2018, but Petitioner Unger's letter was not received by the Union until late August 2018; Petitioner Weaber sent her letter on July 16, 2018; and Petitioner Felker sent his letter on September 28, 2018.[5] *Id*. With repect to Petitioners Felker and Unger, the Union and Lebanon County ceased dues deductions shortly after receipt of their letters in 2018. *Id*. ¶¶ 36, 47. With respect to Petitioners Adams and Weaber, the Union separately informed them that, under the terms of the dues autho-

[5] None of the letters sent by Petitioners indicated that they sought reimbursement for dues paid prior to the date of their respective letters. Joint Statement ¶¶ 22, 24, 35, 46, 56, 57.

rizations that they signed, they were bound to pay dues until their next annual revocation window, which were in March 2019 and June 2019, respectively. *Id.* ¶¶ 23, 25, 58. Upon the Union's request to the County, dues deductions ceased for Petitioners Adams and Weaber with their payroll checks dated February 28, 2019.[6] *Id.* ¶¶ 26, 27. In May 2019, the Union remitted to Petitioners via separate checks all membership dues received from the time each originally made their respective request to end membership until dues deductions ceased, plus interest. *Id.* ¶¶ 31, 41, 51, 64. In mid-June 2019, each Petitioner cashed his or her check provided by the Local. Supplemental Statement ¶ 12.

B. Proceedings below.

On February 27, 2019, Petitioners filed suit under 42 U.S.C. §1983, contending that the union dues that they paid pursuant to their membership applications and dues authorizations—both before and after this Court's *Janus* decision—were deducted from their paycheck in violation of the First Amendment and must be paid back by the Union. Appendix to Petition ("Pet. App.") 4, 6, 7. Petitioners also contended that Pennsylvania's exclusive representation law, in which a union is the exclusive representative for bargaining unit employees, violated the First Amendment. Pet. App. 4. The case was assigned to District Judge Sylvia H. Rambo. The parties filed cross motions for summary judgment, in which Respondents sought dismissal of all claims asserted against them, and Petitioners sought judgment in their favor. Pet. App. 22.

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[6] Petitioners incorrectly state that the County ceased dues deductions by May 2019. Petition 6. Dues deductions ended for Petitioners Felker and Unger in 2018 and for Petitioners Adams and Weaber on February 28, 2019.

On December 5, 2019, Magistrate Judge Martin C. Carlson issued a thorough Report and Recommendations regarding the parties' respective cross motions for summary judgment. Pet. App. 12-41. In sum, the Magistrate Judge recommended that the motions for summary judgment filed by all Respondents should be granted and that the one filed by Petitioners should be denied. Pet. App. 40. He concluded that (1) Petitioners' requests for prospective monetary, declaratory, and injunctive claims relief were moot; (2) Petitioners' request for retroactive payment of membership dues lacked merit and was barred by the good faith defense; and (3) Petitioners' constitutional challenge to exclusive representation failed based on long-existing Supreme Court precedent. Pet. App. 26-40. The district court adopted the recommendations of the Magistrate Judge in their entirety. Pet. App. 42-52.

On appeal, the Third Circuit affirmed. *See* Pet. App. 1-11 (Roth, J., joined by Chagares, J. and Porter, J.). The Third Circuit indicated that Petitioners chose to become union members when they became employees of Lebanon County. In doing so, they paid full dues, rather than paying less in the form of fair share fees if they had declined union membership. Despite this choice, Petitioners alleged that Respondents violated their First Amendment rights because, prior to the decision in *Janus*, "they should have had the choice to pay dues or pay nothing at all." Pet. App. 4.

Relying upon its precedential decision in *LaSpina v. SEIU Pennsylvania State Council*, 985 F.3d 278 (3d Cir. 2021), involving similar facts, the Third Circuit affirmed the district court's decision. Pet. App. 5-6. The Third Circuit held that Petitioners "lack standing to seek a refund of union dues paid before they resigned the union." Pet. App. 6. Furthermore, the Third

Circuit concluded that Petitioners' "claims for prospective injunctive and declaratory relief are moot because they [had] not shown their employers or the union will continue to assess union dues." *Id*. In reaching this conclusion the Third Circuit declared that Petitioners claims "are now moot because they have been reimbursed and, in any event, they fail to state a claim under the First Amendment." *Id*. Finally, the Third Circuit rejected Petitioners' challenge to Pennsylvania's exclusive representation law and held that "consistent with every Court of Appeals to consider a post-*Janus* challenge to [such a statute], the law does not violate the First Amendment." *Id.*

REASONS FOR DENYING THE WRIT

In *Cohen v. Cowles Media Co.*, 501 U.S. 663, 672 (1991), this Court held that "the First Amendment does not confer . . . a constitutional right to disregard promises that would otherwise be enforced under state law . . ." In relying upon *LaSpina, supra*, the Third Circuit correctly concluded that the enforcement of a public employee's own voluntary, affirmative written agreement to pay union membership dues, for which the employee received membership rights and benefits in return, does not violate the employee's First Amendment rights and that Petitioners lack standing to advance such an argument.

Petitioners provide no good reason for this Court to review the Third Circuit's unpublished, non-precedential decision below. They concede that there is no circuit split and, instead, recognize that four other circuits, including the Third Circuit, and dozens of district courts have rejected indistinguishable claims. Petition 2-3, 9, 10. These courts have recognized that *Janus v. AFSCME, Council 13*, 138 S. Ct. 2448 (2018), did not invalidate voluntary dues authorization agreements

by employees like Petitioners who affirmatively chose to become union members. Instead, it held only that public employees who elect not to join a union have a First Amendment right not to be compelled, as a condition of employment, to pay fees to the union. Where, by contrast, a public employee agrees to become a union member and pay union dues in exchange for union membership rights and benefits, *Cohen* makes clear that the First Amendment does not permit the employee to renege on that agreement. That is so even where the employee contends that she would not have entered into the agreement if the legal landscape had been different at the time. It is well established that changes in the law—even constitutional law—do not provide a basis to void contractual obligations.

I. Petitioners' request for certiorari is nonjusticiable because they lack standing and their case is moot, as correctly determined by the Third Circuit.

This Court should deny the Petition for Certiorari in this matter because it is nonjusticiable. As the Third Circuit held, Petitioners lack standing to advance their claims, and their case is moot. App. 5-6. Without challenging that conclusion, Petitioners request that this Court review this matter on a separate ground which the Third Circuit did not consider given its conclusion that no case or controversy exists. Petitioners effectively ask this Court to issue an advisory opinion.

It is well-established that Article III courts are courts of limited jurisdiction, and plaintiffs advancing federal claims must have standing to do so. *Spokeo, Inc., v. Robins*, 578 U.S. 330, 338 (2016). To have standing, a party must have "personal injury fairly traceable to the defendant's allegedly unlawful conduct and likely to be redressed by the requested re-

lief." *Already, LLC v. Nike, Inc.*, 568 U.S. 85, 90-91 (2013). Furthermore, standing must exist throughout the entire course of the litigation, including the appellate process. *Id*. The rule on standing prevents federal courts from considering or deciding "hypothetical or abstract disputes" or issuing advisory opinions. *TransUnion LLC v. Ramirez,* 141 S. Ct. 2190, 2203 (2021).

Petitioners lost standing to pursue their retroactive claims when they sent their resignation letters to Local 429 and the Union issued refunds of their dues. At that point, Petitioners no longer had standing to pursue those claims against the Union. Additionally, the Third Circuit correctly concluded that with respect to Petitioners' claims seeking reimbursement of membership dues before *Janu*s was decided, they had no standing to pursue such claims because they "cannot tie the payment of those dues to the Union's unconstitutional deduction of fair-share fees from nonmembers." App. 5 (quoting *LaSpina*, 985 F.3d at 281).

Nor do Petitioners have a judiciable claim for prospective declaratory or injunctive relief as those claims are moot, as correctly found by the Third Circuit. App. 6. Petitioners are no longer union members, and no longer pay membership dues. Furthermore, they cannot argue that their claims fall within the exception to the mootness doctrine, *i.e.*, that they are capable of repetition but likely to evade review. *See Turner v. Rogers*, 564 U.S. 431, 440 (2011). There is simply no way that Petitioners will pay membership dues again unless they affirmatively agree to do so by signing membership agreements and dues authorizations. Thus, whether they pay membership dues in the future is completely within their control.

For these reasons, this Court should deny the Petition for Certiorari because there is no justiciable controversy existing between Petitioners and Respondents.

II. The lower courts unanimously have rejected Petitioners' argument that *Janus* invalidated voluntary union membership agreements.

Petitioners contend that review is justified because the multiple courts that have considered the issue they raise and rejected it are "ignor[ing] this Court's holding in *Janus* that nonmembers who consent to pay money to a union must meet the waiver standards before money is deducted from their paychecks . . .." Petition 10. But, as demonstrated by the unanimity of the lower courts in addressing this question, Petitioners are simply in error. As Petitioners acknowledge, the lower courts have unanimously rejected Petitioners' argument and there is no circuit split on the issue. Petition 2-3, 9, 10.

Petitioners voluntarily chose to become union members and signed dues authorizations. Petitioners affirmatively and unambiguously agreed to pay union dues. Joint Statement ¶¶ 20, 33, 44, 54; *see also* Petition 1 ("Petitioners . . . signed union membership cards/dues deduction authorizations before this Court's decision in *Janus*."); *id*. ("At the time they signed the union membership card/dues deduction authorization, Petitioners were nonmembers agreeing to have money deducted from their paychecks to pay the union.").[7] The circuit courts that have ad-

[7] While Petitioners allege that they were "nonmembers" who signed membership and dues authorization agreements, they never have explained what they mean by "nonmember." Nor have they cited to anything in the record to support this claim. By signing the membership and dues authorization agreements, they became members and voluntarily agreed to pay union dues. In fact, Petitioner Unger initially chose to be a nonmember and pay fair share fees, and two years later chose to become a mem-

dressed the issue have all "recogniz[ed] that *Janus* does not extend a First Amendment right to avoid paying union dues" that a public employee affirmatively agreed to pay as part of a private contract through which the employee received the benefits of union membership. *Belgau*, 975 F.3d at 951, *cert. denied*, 141 S. Ct. 2795 (2021); *see also Fischer v. Governor of N.J.*, 842 F. App'x 741, 753 & n.18 (3d Cir. 2021) (unpublished), *cert. denied*, 142 S. Ct. 426 (2021); *Oliver v. SEIU Local 668*, 830 F. App'x 76, 79, 80 (3d Cir. 2020) (unpublished) [8]

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ber and pay union dues. Pet. App. 6, n.12.

[8] *See Fischer*, 842 F. App'x at 753 & n.18 (". . . *Janus* does not give Plaintiffs the right to terminate their commitments to pay union dues unless and until those commitments expire under the plain terms of their membership agreements."), *cert. denied*, 142 S. Ct. 426 (2021); *Oliver*, 830 F. App'x at 79 (unpublished) ("Oliver was faced with a constitutional choice—whether or not to join the Union—and she chose to become a member."); *Few v. United Teachers Los Angeles*, 2022 U.S. App. LEXIS 2545 (9th Cir. 2022) (unpublished) (noting that summary judgment was appropriate on the claims for back dues pre-*Janus* because *Belgau* controls this issue), *cert denied*, 142 S. Ct. 2780 (2022); *Bennett v. Council 31 of the AFSCME, AFL-CIO*, 991 F.3d 724, 729–33 (7th Cir. 2021), *cert. denied*, 142 S. Ct. 424 (2021) ("*Janus* said nothing about union members who, like Bennett, freely chose to join a union and voluntarily authorized the deduction of union dues, and who thus consented to subsidizing a union."); *Hendrickson v. AFSCME Council 18,* 992 F.3d 950, 961 (10th Cir. 2021), *cert. denied*, 142 S. Ct. 423 (2021); *see also*, *LaSpina*, 985 F.3d at 287 (3d Cir. 2021); *Grossman v. Hawaii Gov't Emps. Ass'n*, 854 F. App'x 911, 912 (9th Cir. 2021) (unpublished), *cert. denied*, 142 S. Ct. 591 (2021); *Smith v. Bieker*, 854 F. App'x 937 (9th Cir. 2021) (unpublished), *cert. denied*, 142 S. Ct. 593 (2021); *Wolf v. Shaw*, 2021 U.S. App. LEXIS 28039 (9th Cir. Sept. 16, 2021) (unpublished), *cert. denied sub nom.*, *Wolf v. UPTE-CWA 9199*, 142 S. Ct. 591 (2021); *Wagner v. University of Washington*, 2022 U.S. App. LEXIS 14295, at *2-4 (9th Cir. May 25, 2022) (unpublished);

This Court has recently denied petitions for certiorari in nine of those cases. *See supra* at 1, n.1. Dozens of district courts have reached the same conclusion.[9] Given the unanimous consensus of the lower courts and therefore a lack of any circuit split, there is no reason for this Court to deign to consider such an issue.

III. The Third Circuit's unpublished decision faithfully applies this Court's precedents.

Notwithstanding that the lower courts have uniformly rejected the arguments that Petitioners have pressed in this case, they ask this Court to grant their Petition "to correct the lower courts' misapplication of this Court's decision in *Janus* . . ." Petition 4. Even taken at face value, this would not be sufficient to grant certiorari, as "the misapplication of a

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Littler v. Ohio Ass'n of Pub. Sch. Employees, 2022 U.S. App. LEXIS 8182, at *15-16 (6th Cir. Mar. 28, 2022) (unpublished); *Troesch v. Chicago Teachers Union, Local Union No. 1*, 2021 U.S. App. LEXIS 19108 (7th Cir. Apr. 15, 2021) (unpublished), *cert. denied*, 142 S. Ct. 425 (2021).

[9] *See*, *e.g.*, *Smith v. SEIU, Local 668*, 566 F.Supp.3d 251, 262-64 (M.D. Pa. 2021) (pending appeal to the Third Circuit); *Barlow v. SEIU, Local 668*, 566 F.Supp.3d 289, 297-300 (M.D. Pa. 2021) (pending appeal to the Third Circuit); *Biddiscombe v. SEIU, Local 668*, 566 F.Supp.3d 269, 280-82 (M.D. Pa. 2021) (pending appeal to the Third Circuit); *Fultz v. Am. Fed'n of State, Cnty. & Mun. Emps., Council 13*, 551 F. Supp. 3d 518, 525-26 (M.D. Pa. 2021) (pending appeal to the Third Circuit); *Mendez v. Cal. Teachers Ass'n*, 419 F. Supp. 3d 1182, 1186 (N.D. Cal. 2020) *aff'd*, 854 F. App'x 920 (9th Cir. 2021); *Allen v. Ohio Civil Serv. Emps. Ass'n AFSCME, Local 11*, 2020 U.S. Dist. LEXIS 48481, at *33-34, n.10 (S.D. Ohio Mar. 20, 2020) (citing, in footnote 10, to "the unanimous post-*Janus* district court decisions holding that employees who voluntarily chose to join a union. . . cannot renege on their promises to pay union dues").

properly stated rule of law" generally does not warrant this Court's review. *See* Court Rule 10. In any event, there is no conflict between the Third Circuit's decision and *Janus*.

In *Janus*, this Court held that agency-fee requirements for public employees—by which an employee who declined to become a union member was nonetheless required, as a condition of employment, to pay a service fee to the union that represented her bargaining unit—are not consistent with the First Amendment. 138 S. Ct. at 2486. This case does not involve any involuntary agency-fee requirement. Petitioners are public employees who voluntarily became union members, expressly and affirmatively agreed to pay membership dues, and received membership rights and benefits in return. Petitioners did not experience any violation of their First Amendment rights when Lebanon County made dues deductions that they had expressly authorized because "the First Amendment does not confer . . . a constitutional right to disregard promises that would otherwise be enforced under state law . . ." *Cohen*, 501 U.S. at 672.

Petitioners erroneously contend that *Janus* imposed a new, multi-factor "waiver" analysis whenever a public employee elects to join a union and pay membership dues. Petition 1-2. As the lower courts uniformly have recognized, *Janus* did not change the law governing the formation and enforcement of voluntary contracts between unions and their members. The relationship between unions and their members was not at issue in *Janus*. *See Janus*, 138 S. Ct. at 2485 n. 27 ("States can keep their labor-relations systems exactly as they are—only they cannot force *nonmembers* to subsidize public-sector unions.") (emphasis added).

Petitioners' argument contradicts this Court's decision in *Cohen*, which did not apply a special, heightened "waiver" analysis to a newspaper's promise not to reveal the identity of a confidential source, because the government's enforcement of the promise did not give rise to any First Amendment right that needed to be waived. 501 U.S. at 669. Rather, the Court held that the First Amendment is not implicated by a promise that is enforceable under generally applicable principles of state law. *Id*. The same is true here. Private parties often enter into contracts that restrict their constitutional rights—such as arbitration agreements and nondisclosure agreements—and the government routinely honors those commitments. Outside the context of criminal suspects in custody or criminal defendants pleading guilty, a voluntary, affirmative, and unambiguous agreement is sufficient. *See*, *e.g.*, *Schneckloth v. Bustamonte*, 412 U.S. 218, 234-49 (1973) (consent to search is waiver of Fourth Amendment right against involuntary searches). In fact, Petitioners' reliance upon *D.H. Overmyer Co. v. Frick Co.*, 405 U.S. 174 (1972) to argue otherwise is misplaced. Petition 14. In that case, this Court merely "assum[ed]," for purposes of argument and without deciding whether a heightened "waiver" analysis actually applied to a procedure that would overwise violate due process, that the parties' contract would have constituted a valid waiver in any event. *Id*. at 185-86.

The passage from *Janus* on which Petitioners rely concerns workers who never joined the union ("nonmembers") and never affirmatively authorized membership dues deductions:

> Neither an agency fee nor any other payment to the union may be deducted from a *nonmember's* wages, nor may any other attempt be made to collect such

> a payment, unless the employee affirmatively consents to pay. By agreeing to pay, *nonmembers* are waiving their First Amendment rights, and such a waiver cannot be presumed. Rather, to be effective, the waiver must be freely given and shown by "clear and compelling" evidence. Unless employees clearly and affirmatively consent before any money is taken from them, this standard cannot be met.

138 S. Ct. at 2486 (emphasis added, citations omitted). The Court cited "waiver" cases in this passage not to tacitly overrule *Cohen*, but to make clear that the States cannot presume from nonmembers' inaction that they wish to support a union.[10]

As the lower courts unanimously have recognized, *Janus* did not prohibit voluntary dues payments but "made clear that a union may collect dues when an 'employee affirmatively consents to pay.'" *Bennett*, 991 F.3d at 732 (quoting *Janus*, 138 S. Ct. at 2486). Petitioners conceded here that they chose to join the Union and signed membership and dues authorization agreements. By doing so, Petitioners "clearly and

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[10] The four "waiver" cases *Janus* cited concerned whether waiver could be found solely from the plaintiff's inaction. *See Johnson v. Zerbst*, 304 U.S. 458, 468-69 (1938) (addressing whether *pro se* defendant had properly waived his Sixth Amendment right to counsel by failing to ask that counsel be appointed); *Coll. Sav. Bank v. Fla. Prepaid Postsecondary Educ. Expense Bd.*, 527 U.S. 666, 675-80 (1999) (rejecting argument that State has "constructively" waived its sovereign immunity by engaging in activity that Congress decided to regulate); *Knox v. SEIU, Local 1000*, 567 U.S. 298, 315, 322 (2012) (nonmembers of union could not be deemed to consent to union political assessment through their silence); *Curtis Publ'g Co. v. Butts*, 388 U.S. 130, 142-44 (1967) (libel defendant could not be deemed to have waived through its silence, libel defense later recognized in *N.Y. Times Co. v. Sullivan*, 376 U.S. 254 (1964)).

affirmatively consent[ed]," *Janus*, 138 S. Ct. at 2486, to dues payments.

Petitioners also contend that their otherwise-valid membership and dues deduction agreements were invalidated because this Court's later decision in *Janus* changed the options available to nonmembers going forward. Petition 14. But it is well-established that contractual commitments are not voided by later changes in the law affecting potential alternatives to entering the contract, "even when the change is based on constitutional principles . . ." *Coltec Indus., Inc. v. Hobgood*, 280 F.3d 262, 277 (3d Cir. 2002). Even in cases involving plea agreements—contracts that waive constitutional rights, *Puckett v. United States*, 556 U.S. 129, 137 (2009), this Court has held that the fact that a defendant may have accepted a plea agreement in part to avoid an alternative later deemed unconstitutional does not provide a basis for voiding that agreement. *See Brady v. United States*, 397 U.S. 742, 757 (1970); *see also Hendrickson*, 992 F.3d at 964 ("But *Brady* shows that even when a 'later judicial decision[]' changes the 'calculus' motivating an agreement, the agreement does not become void or voidable."); *Bennett*, 991 F.3d at 731 ("a subsequent change in the law cannot retrospectively alter the parties' agreement.") (quotation marks and citation omitted). Here, the Court's decision in *Janus* does not permit Petitioners to escape their prior contractual agreement to pay union dues.

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

While all of the lower courts—including the Third Circuit below—have held that it does not violate the First Amendment for dues to be deducted from an employee's paychecks pursuant to the clear terms of a dues authorization agreement that an individual signed, Pe-

titioners spend a good portion of their Petition focusing on cases that involve issues not presented by this case and are otherwise irrelevant. Petition 15-28.

For example, they discuss a district court case, *Ramon Baro v. Lake County Federation of Teachers Local 504*, 2022 U.S. Dist. LEXIS 56106 (N.D. Ill. March 28, 2022), in which plaintiff, a public employee, agreed that she voluntarily signed a dues authorization in 2019, after *Janus*, at a time when she believed that she was required to join the union. *Id.* at *3-4. She later realized that was not the case. *Id.* at *3-4. When she sought to leave the union, she was told incorrectly that she was required to pay dues whether she remained a member or not. *Id.* at *4. In responding to plaintiff's claim that her choice to join the union was not binding because it was "ill-informed," the court declared that "it is aware of no authority (including *Janus*) that imposes a duty of informed consent to apply for membership in a union." *Id.* at *17. Thus, the district court found that her signing of the dues authorization constituted a valid waiver of her First Amendment rights. *Id.* at *18 (citing *Bennett*, 991 F.3d at 731).

While Petitioners argue that *Ramon* supports their Petition, it is factually distinct from this case. In this case, Petitioners do not allege that they unknowingly signed membership and dues authorization agreements pursuant to a misunderstanding that they must become members. Petitioners acknowledged that they understood the terms of the membership agreement and that they chose to sign them. Their only argument is that the agreements that they signed are not valid because they do not believe that signing those agreements waived their constitutional rights. But every court to consider the issue disagrees, and, thus, their citation to a case with different facts does not provide any incentive for the Court to grant their Petition.

Similarly, Petitioners cite to three cases before the Ninth Circuit in which the court is considering the enforceability of dues authorizations in which a member only has a narrow window to opt-out of the agreement "that is triggered only after multiple years, rather than the usual one-year window." Petition 17. As in the case with *Ramon*, those cases are distinct. Pursuant to Petitioners' dues authorizations, they had the contractual right to revoke their membership on an annual basis during a fifteen (15) day opt out period. In fact, the Union ultimately accepted all Petitioners' revocations and reimbursed them for all dues paid after they sent their letters to the Union, plus interest.

Petitioners have failed to even approach sufficient grounds for this Court to grant their Petition where Petitioners inappropriately rely upon factually dissimilar, irrelevant cases. Instead, this case is factually part and parcel with the other nine cases that this Court has already declined to consider.

CONCLUSION

The Petition for certiorari should be denied.

Respectfully submitted,

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August 24, 2022