**No. _____**

IN THE

# Supreme Court of the United States

ARIADNA RAMON BARO,

*PETITIONER*,

*V.*

LAKE COUNTY FEDERATION OF TEACHERS LOCAL 504, IFT-AFT/AFL-CIO *and* WAUKEGAN COMMUNITY SCHOOL DISTRICT NO. 60,

*RESPONDENTS.*

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

## PETITION FOR A WRIT OF CERTIORARI

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May 8, 2023

## QUESTION PRESENTED

In *Janus v. AFSCME*, this Court held that government employers may not withhold money from an employee on behalf of a union unless the employee affirmatively consents to waive their First Amendment right to not pay money to a union. 138 S. Ct. 2448, 2486 (2018). Waiver cannot be presumed and must be freely given and shown by clear and compelling evidence. *Id*.

Petitioner Ariadna Ramon Baro signed a union membership card believing that she was required to join the union and not knowing that she had a right to not pay money to the union.

The question presented is may a government employer withhold money from an employee on behalf of a union based solely on the employee's signature on a union membership card when the employer does not have clear and compelling evidence that the employee knew of their right under *Janus* to not pay money to a union and intended to waive that right?

## PARTIES TO THE PROCEEDING

Petitioner Ariadna Ramon Baro is a natural person, a citizen of Spain, and a J-1 Visa holder. She is employed by Waukegan Community Unit School District No. 60 as an English-as-a-second-language teacher for high school students.

Respondent Lake County Federation of Teachers Local 504, IFT-AFT/AFL-CIO is a labor union representing public employees of Waukegan Community Unit School District No. 60.

Respondent Waukegan Community Unit School District No. 60 is an Illinois public school district organized under the Illinois School Code, 105 Ill. Comp. Stat. 1 *et seq*.

## RULE 29.6 STATEMENT

As Petitioner is a natural person, no corporate disclosure is required under Rule 29.6.

## STATEMENT OF RELATED CASES

The proceedings in other courts that are directly related to this case are:

- *Ramon Baro v. Lake County Federation of Teachers, Local 504, et al.*, No. 22-1722, United States Court of Appeals for the Seventh Circuit. Judgment entered January 6, 2023. A timely petition for rehearing *en banc* was denied on February 7, 2023.
- *Ramon Baro v. Lake County Federation of Teachers, Local 504, et al.*, No. 20-cv-02126, United States District Court for the Northern District of Illinois. Judgment entered March 29, 2022.

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The United States District Court for the Northern District of Illinois order of March 28, 2022, dismissing Petitioner's complaint is reproduced at App. 13–32. The United States Court of Appeals for the Seventh Circuit affirmed the lower court's judgment on January 6, 2023, in a published opinion, *Ramon Baro v. Lake County Federation of Teachers, Local 504, et al.*, 57 F.4th 582 (7th Cir. 2023), reproduced at App. 1–10.

## JURISDICTION

The Seventh Circuit issued its opinion on January 6, 2023, and denied a timely-filed petition for rehearing *en banc* on February 7, 2023. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The First Amendment provides in relevant part that "Congress shall make no law . . . abridging the freedom of speech."

42 U.S.C. § 1983, states:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial of-

> ficer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable.

## STATEMENT OF THE CASE

Petitioner Ariadna Ramon Baro, a native of Barcelona, Spain, began her employment under a J-1 Visa program with Waukegan Community Unit School District No. 60 (the "District") as an English-as-a-second-language teacher for high school students during the 2019–2020 school year. App. 2, 39.

In August 2019, Ms. Ramon Baro attended an orientation meeting held by the District. App. 2. The District also gave Lake County Federation of Teachers, Local 504, IFT-AFT/AFL-CIO (the "Union") time at the orientation meeting to speak about the union. App. 2.

During that presentation, the Union's representative told Ms. Ramon Baro and her fellow teachers how much money in union dues they would have to pay and gave them a form to sign to join the Union. App. 2. Ms. Ramon Baro was not told that joining or paying the Union was optional. App. 39.

Believing it to be required, she filled out the union membership form and turned it in to the representative. App. 2–3, 15, 39. The union membership agreement authorizes the Union "to deduct from [an employee's] earnings on a regular pro rata basis . . . [a]n amount equal to the current annual membership dues as certified by [the Union] . . . for a period of one year[.]" App. 3. The union membership card itself does not state that joining is voluntary and not a condition of her employment. S.A. 44. At the time she signed the

union membership agreement, Ms. Ramon Baro was unaware of the Supreme Court's *Janus* decision. App. 40.

A few days later, Ms. Ramon Baro learned that union membership and paying the union were, in fact, not required. App. 3. On August 30, 2019, she sent letters both to the District and the Union resigning her membership. App. 3.

On September 13, 2019, a pair of union representatives emailed the teachers of Ms. Ramon Baro's school, including Ms. Ramon Baro, to invite them to join the union. App. 40. The initial email from one of the representatives, Cara Wyatt, stated, "I am contacting you to extend an invitation to join the Waukegan teacher's union." App. 40. In a follow-up email, another representative, Nathaniel Weber, sent an email adding, "Just to clarify, you will pay union dues regardless of whether or not you are a member." App. 15, 39. This statement by Mr. Weber was not true, but Ms. Ramon Baro did not know it was not true. App. 15, 39. In fact, this Court held in *Janus*, 138 S. Ct. at 2486, that requiring government employees to pay money to a union without their consent violates the First Amendment. App. 40. Ms. Ramon Baro believed the statement by Mr. Weber—that she would have to pay dues regardless of her union membership status—meant that her request to resign was effectively denied. App. 15, 40.

In January 2020, the District began deducting dues from Ms. Ramon Baro's paychecks and remitting them to the Union. App. 4. Under Illinois state statute, the District is required to withhold dues from members on behalf of the Union, as the exclusive representative for its employees. 115 ILCS 5/11.1(a).

On February 3, 2020, Ms. Ramon Baro again contacted her union representative and the payroll department of the District and explained that she wanted to resign her membership and stop paying dues. App. 4. The payroll department told Ms. Ramon Baro that it could not stop dues deductions and that she must speak to the Union. App. 4, 16. Andy Friedlieb, President of the Waukegan Teachers Council, contacted her explaining that she would have to wait until August to resign her membership and stop union dues from being deducted. App. 4, 16.

Ms. Ramon Baro filed her initial complaint in this case on April 3, 2020, claiming that the District and the Union violated her First Amendment rights under *Janus* by withholding dues from her paycheck without her affirmative consent to waive her right to not pay money to the Union. App. 4. On April 15, she received a letter from the Union's president, Michael T. McGue, dated April 10, 2020, informing her that she was no longer a member of the Union, and that dues would stop being withheld from her paycheck. App. 4. The letter also included a check for $829.30, representing "a full refund of all [Ms. Ramon Baro's] dues plus an additional five hundred dollars for your efforts in pursuing this matter." App. 4. Ms. Ramon Baro responded to Mr. McGue's letter on April 17, 2020, referring him to her counsel, and returning the check. App. 4.

Ms. Ramon Baro filed a First Amended Complaint on April 24, 2020, adding a claim for punitive damages. App. 17, 37-47. The District and the Union filed respective motions to dismiss, which were fully briefed. App. 4, 17. The district court granted Defendants' motions on March 28, 2022. App. 4, 13-32.

The district court, in its Memorandum Opinion and Order, first determined that Ms. Ramon Baro's claims were not mooted by the cessation of her dues deductions and the Union's letter and refund check. App. 18-21. However, the district court granted the motions to dismiss because it held that Ms. Ramon Baro's Amended Complaint did not implicate the First Amendment. App. 22. According to the district court, "Plaintiff voluntarily joined the union" and *Janus* did not impose "a duty of informed consent to apply for membership in a union." App. 24, 28-29.

Ms. Ramon Baro filed a timely Notice of Appeal on April 27, 2022, App. 4, and the Seventh Circuit affirmed, holding that "[a]ll circuits to consider the issue have agreed that *Janus* creates no new waiver requirement before a valid union contract can be enforced. The voluntary signing of a union membership contract is clear and compelling evidence that an employee has waived her right not to join a union." App. 6-7 (citations omitted).

Ms. Ramon Baro filed a timely motion for rehearing *en banc* on January 20, 2023, and the Seventh Circuit denied that motion on February 7, 2023. App. 35-36.

## REASONS FOR GRANTING THE PETITION

This Court should grant this petition because the Seventh Circuit and other lower courts have effectively erased this Court's holding in *Janus v. AFSCME, Council 31*, that government employers may not withhold money from an employee on behalf of a union unless the employee affirmatively consents to waive their First Amendment right to not pay money to a union. 138 S. Ct. 2448, 2486 (2018). The Seventh

Circuit and other lower courts have limited *Janus* to its facts—agency fees are unconstitutional—while ignoring this Court's legal reasoning. *See id.* ("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.'") (citations omitted). As a result, without this Court's intervention, many government employees will join public-sector unions without knowing of the right to not pay money to a union set forth in *Janus* and will be effectively waiving that First Amendment right without knowing about it. That result is not only contrary to this Court's decision in *Janus*, but it is contrary to this Court's long-held precedent on waiving a constitutional right.

In this case, the Seventh Circuit held that "*Janus* creates no new waiver requirement before a valid union contract can be enforced. The voluntary signing of a union membership contract is clear and compelling evidence that an employee has waived her right not to join a union." App. 6-7 (citations omitted). Neither of these conclusions is consistent with the language of this Court's *Janus* opinion.

First, the affirmative consent requirement is not voided simply because a government employee voluntarily signs a union membership agreement. Rather, it is the employee's ostensible agreement to pay money to the union that triggers the *Janus* waiver analysis. *Janus*, 138 S. Ct. at 2486 ("*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." (emphasis added) (citations omitted)). When the government acts to withhold money on behalf of a public sector union, a supposedly voluntary agreement to pay money to the union does not abrogate waiver analysis under *Janus*; it requires it. In holding otherwise, the Seventh Circuit and other lower courts misinterpreted *Janus*.

Second, an employee's signature on a union membership card does not *per se* constitute clear and compelling evidence of the employee's waiver of her First Amendment rights. As this Court stated in *Janus*, "[W]aiver cannot be presumed . . . [it] must be freely given and shown by 'clear and compelling' evidence." 138 S. Ct. at 2486. Relying only on an employee's signature on a union membership card presumes waiver because it presumes that the employee knew of, and is therefore intended to waive, her right to not pay money to the union. Because knowledge of one's constitutional rights is necessary to effectively waive them, *Johnson v. Zerbst*, 304 U. S. 458, 464 (1938), a government employer must have clear and compelling evidence that an employee knew she had a right to not pay money to the union and that she intended to relinquish that right before it may withhold money from her paycheck.

Thus, the Seventh Circuit was wrong to dismiss Petitioner's Amended Complaint by holding that *Janus* does not apply when an employee signs a union card and that an employee's signature on a union card automatically meets the waiver requirement. In this case, Petitioner's union membership card did not meet the waiver requirement because Respondents never

obtained clear and convincing evidence that Petitioner knew of her right not to pay the union and intended to waive it.

This Court should grant the petition because allowing the Seventh Circuit's decision and the reasoning of the Seventh Circuit and other lower courts to stand would render *Janus*'s affirmative consent waiver requirement meaningless.

## I. This Court should grant the petition because the Seventh Circuit's opinion contradicts this Court's decision in *Janus v. AFSCME*.

In *Janus v. AFSCME, Council 31*, this Court held that an Illinois law allowing government employers to withhold agency fees from nonconsenting employees on behalf of public sector unions violated those employees' First Amendment rights. 138 S. Ct. 2448, 2486 (2018). In doing so, this Court stated that:

> 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. *Johnson v. Zerbst*, 304 U. S. 458, 464 (1938). Rather, to be effective, the waiver must be freely given and shown by "clear and compelling" evidence. *Curtis Publishing Co. v. Butts*, 388 U. S. 130, 145 (1967) (plurality opinion). Unless employees

> clearly and affirmatively consent before any money is taken from them, this standard cannot be met.

*Janus*, 138 S. Ct. at 2486 (some citations omitted).

This paragraph makes clear that (1) agency fees or other payments withheld by a government employer to unions without an employee's consent are unconstitutional, and (2) when an employee does consent to pay money to a union, that employee's consent must meet this Court's standards for waiver of constitutional rights—requiring clear and affirmative consent, freely given, and shown by clear and compelling evidence—before a government employer may withhold money from an employee's paycheck on behalf of a union.

Further, a valid waiver of First Amendment rights requires clear and compelling evidence that the individual *knew* of her First Amendment rights and chose to waive them. *See Janus*, 138 S. Ct. at 2486 (citing *Johnson v. Zerbst*, 304 U.S. 458, 464 (1938) and *Curtis Publishing Co. v. Butts*, 388 U. S. 130 (1967), requiring knowledge of a constitutional right to waive it); *see also, Brookhart v. Janis*, 384 U.S. 1, 4 (1966) (for a waiver of constitutional rights to be effective "it must be clearly established that there was an intentional relinquishment or abandonment of a known right or privilege").

Government employers cannot presume that their employees have knowledge of their right to not pay money to a union under *Janus*. *Zerbst*, 304 U.S. at 465. Thus, government employers may not withhold union dues or fees from government workers without clear and compelling evidence that those workers

have knowledge of their right not to pay money to a union.

Applying this standard to the facts alleged in this case, the question is whether Petitioner's signing of the union membership card constitutes clear and compelling evidence that she knew that she had a right to not pay money to the Union and that she intentionally wished to relinquish that right.

### A. The Seventh Circuit failed to apply the affirmative consent waiver requirement set forth in *Janus*.

In denying Petitioner's claim the Seventh Circuit, failed to properly apply *Janus*'s affirmative consent waiver requirement, stating that "*Janus* creates no new waiver requirement before a valid union contract can be enforced. The voluntary signing of a union membership contract is clear and compelling evidence that an employee has waived her right not to join a union." App. 6-7 (citations omitted).

These two sentences seemingly contradict each other. If there is no First Amendment right at issue that can be waived—as the first sentence asserts—there is no basis for finding that Petitioner's signature of the union card constitutes a waiver of her rights—as the second sentence asserts. Nothing in the Seventh Circuit's opinion explains these bases as alternatives for affirming the district court.

Furthermore, both justifications given by the Seventh Circuit for denying Petitioner's claim contradict this Court's decision in *Janus*.

First, the Seventh Circuit's conclusion that Petitioner's claim "does not implicate her First Amendment rights" based on its conclusion that she agreed

to pay the union in a valid contract, App. 6, not only misunderstands Petitioner's claim, but also misunderstands this Court's holding in *Janus*. Petitioner has not raised a contract claim seeking to void her membership in the union. Rather, Petitioner has raised a *constitutional* claim based on her right not to have the government withhold money from her paycheck on behalf of a union in the absence of clear and compelling evidence that she waived her First Amendment rights. It is Petitioner's government employer's withholding of money from her paycheck based on state law and the collective bargaining agreement between the school district and the union, not the union membership card, that violates Petitioner's First Amendment rights. Indeed, the contract between Petitioner and the union itself could not be the basis of the government employer's withholding of money from Petitioner.

When the government withholds money on behalf of a public-sector union, a supposedly voluntary agreement to pay money to the union does not abrogate waiver analysis under *Janus*; it requires it. *Janus*, 138 S. Ct. at 2486 ("*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." (emphasis added) (citations omitted)). In holding otherwise, the Seventh Circuit and other lower courts have misinterpreted *Janus*.

Second, the Seventh Circuit's holding that the "voluntary signing of a union membership contract is clear and compelling evidence that an employee has

waived her right not to join a union" contradicts *Janus*. "[W]aiver cannot be presumed . . . [but] must be freely given and shown by 'clear and compelling' evidence." *Janus*, 138 S. Ct. at 2486. Relying only on an employee's signature on a union membership card presumes waiver because it presumes that the employee knew of, and therefore intended to waive, her right to not pay money to the union. Because knowledge of one's constitutional rights is necessary to effectively waive them, *Zerbst*, 304 U.S. at 464, a government employer must have clear and compelling evidence that an employee knew she had a right to not pay money to the union and that she intended to relinquish that right before it may withhold money from her paycheck.

This is a fact-specific inquiry. Thus, the Seventh Circuit was wrong to hold that an employee's signature on a union card automatically meets the waiver requirement. And in this case, Petitioner's union membership card did not meet the waiver requirements because Respondents never had evidence that Petitioner knew of her right not to pay the union and intended to waive it.

The union membership card did not provide any indication that Petitioner had or would waive a First Amendment right to not pay money to the Union by signing. App. 44. Nor did the Defendants inform her of her right to not join or pay money to the Union before she signed the union membership card. App. 44. Petitioner mistakenly believed that she was required to join and pay the Union, App. 39, and as a Spanish citizen working on a J-1 visa, she had no reason to know of American constitutional law. App. 44. Fur-

ther, a few weeks after signing the union card, Petitioner's mistaken belief was reinforced when a representative of the union sent an email to Petitioner and other teachers at her school stating: "Just to clarify, you will pay union dues regardless of whether or not you are a member." App. 40.

### B. The Seventh Circuit's decision would allow government employers to withhold money from employees who do not know of their right to not pay money to a union set forth in *Janus*.

The Seventh Circuit reasons that *Janus* only applies to employees who were forced to pay agency fees. App. 7. But if *Janus*'s holding were limited only to those nonmembers who had agency fees withheld from their paychecks without their consent, then why did this Court explicitly refer to nonmembers who "agree[] to pay" money to the union? *Janus*, 138 S. Ct. at 2486. Neither Mr. Janus nor any other agency-fee payer ever agreed to pay anything to the union; agency fees were by nature compulsory. By referring to nonmembers who agreed to pay money to a union, this Court referred to situations in which someone who was not *already* a union member ostensibly agreed to start paying the union. That is exactly the situation Petitioner found herself in. And, after *Janus*, the only nonmember employees who would "agree[] to pay" money to a public-sector union would be those who are not already members—in other words, the very people to whom *Janus*'s affirmative consent waiver requirement applies.

If the Seventh Circuit's decision in this case is allowed to stand, then courts will apply no constitu-

tional scrutiny when a government employer withholds money from an employee's paycheck so long as a union can produce a union card with that employee's signature. Under the Seventh Circuit's decision, unions—and union-friendly government employers—will have every incentive to ensure that government employees remain ignorant of their *Janus* rights,[1] and will make every effort to ensure that employees sign a union card without knowledge of their *Janus* rights.

Indeed, in the wake of this Court's decision in *Janus*, union-friendly state legislatures have already adopted legislation intended to make it hard for government employees to know their constitutional rights under *Janus*. For example, in Illinois, where this case takes place, after *Janus* struck down the Illinois agency fee statute, Illinois amended Section 11.1 of Illinois's Education Labor Relations Act ("IELRA"), 115 Ill. Comp. Stat. §5/11.1 (as amended by P.L. 101-0620, eff. Dec. 20, 2019). IELRA prevents employers from "discouraging" union membership, which makes it less likely that an employer will risk informing its employees about their rights to not join or pay a union under *Janus*, because doing so could be seen as an unfair labor practice. IELRA also requires employers to give unions contact information about employees in their bargaining unit, while explicitly

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[1] A survey taken a year after the Court decided *Janus* found that 52 percent of teachers did not know that they did not have to pay money to a union as a nonmember. *One Year After Janus: Teacher Attitudes on Unions & Membership*, TeacherFreedom.org, June 2019, https://teacherfreedom.org/wp-content/uploads/2019/06/One-Year_After-Janus_Poll_Teacher_Freedom.pdf.

preventing any private third-party from obtaining the same contact information. This makes it more difficult for third-party organizations to inform public-sector workers about their *Janus* rights.

Similarly, on the day this Court decided *Janus*, California's then-Governor Jerry Brown signed Senate Bill 866 into law. A "budget rider" bill that went into effect immediately, it contains provisions that prohibit public employees from talking to their own employers—and employers from talking to their own employees—about payroll deductions, union membership, or their constitutional rights recognized by the *Janus* decision.

Laws like the ones in Illinois and California make it less likely that government employees in those states will learn about their constitutional rights under *Janus*. And if the decision at issue in this case is allowed to stand, such laws will make it more likely that government employees will waive their rights under *Janus* without knowing about them.

Courts do not tolerate this type of constitutional gamesmanship in other contexts, and there is no reason why they should tolerate it here. Deborah J. La Fetra, Miranda *for* Janus*: The Government's Obligation to Ensure Informed Waiver of Constitutional Rights*, 55 Loy. L.A. L. Rev. 405, 409 (Spring 2022).

If the lower court's holding is allowed to stand, then a union's behavior in obtaining those signatures will not be scrutinized. While Petitioner was told falsely that she would have to pay dues regardless of whether she was a union member by a union representative after she joined the union, App. 15, 40, under the lower court's decision it would not matter if an employee joined the union based on such false claims

by a union representative *before* she signed. According to the Seventh Circuit, so long as the employee signed a union card, no First Amendment scrutiny applies. Indeed, under such logic, there would be no constitutional issue if the union forged an employee's signature on a union card and told the government employer to withhold union dues from that employee's paycheck—and some courts, applying the Seventh Circuit's reasoning, have already reached exactly that conclusion. *See Ochoa v. Public Consulting Group, Inc.*, 48 F.4th 1102 (9th Cir. 2022); *Wright v. SEIU Local 503*, 48 F.4th 1112 (9th Cir. 2022).

Thus, this Court should grant the petition to ensure that lower courts follow *Janus* and that government employees do not unknowingly waive their constitutional rights.

## II. This case is an excellent vehicle for this Court to correct the lower courts' failure to properly implement *Janus*.

Until now, every case asking this Court to enforce *Janus's* affirmative consent waiver requirement has involved the same fact pattern: an employee who joined a public-sector union *before* this Court decided *Janus* sought to stop the withholding of membership dues after *Janus* without having to wait for that employee's contractual opt-out window. These employees argued that, when they signed a union card, they could not have provided affirmative consent because their only options at the time were to either pay the union as a member or pay agency fees to the union as a nonmember. And in each of these cases, the lower courts held that such employees who signed a union membership before *Janus* were not subject to the affirmative consent waiver requirement set forth in *Janus* because they had voluntarily consented to pay.

In this case, Petitioner claims that because she signed a union membership card *after Janus* without knowing that she had a right to not join or pay money to a union, that she did not provide affirmative consent to waive her right to not pay the union and her government employer could not withheld money from her paycheck on behalf of the union.

This case is an excellent vehicle for the Court to address the application of *Janus* because Petitioner seeks to apply *Janus* on a forward-looking basis, and asks the question of when, if ever, does the Court's requirement in *Janus* that a government employer obtain affirmative consent to waive one's right to not pay a union apply to a nonmember employee who signs a union membership agreement.

The Seventh Circuit's opinion in this case entirely relies on the reasoning of the lower courts' decisions involving an employee who joined a public-sector union *prior* to this Court's *Janus* decision. App. 6-7 (relying on the Seventh Circuit's decision in *Bennett v. AFSCME, Council 31*, 991 F.3d 724 (7th Cir. 2021)).

In *Bennett*, plaintiff signed a union membership card and became a member of the union, before this Court's *Janus* decision. *Bennett*, 991 F.3d at 726–27. At that time, she was required to either join the union and pay union dues or pay agency fees to the union. *Id.* at 726. The union membership card Ms. Bennett signed contained a provision limiting her ability to stop the withholding of union dues from her wages to a 15-day window corresponding to the anniversary of her signing the union membership card. *Id.* at 728. After she learned of the *Janus* decision, Ms. Bennett attempted to resign her union membership and stop her union dues deductions. *Id.* at 727. The union responded that, pursuant to the union membership card

she signed, Ms. Bennett could not revoke her union dues authorization until a specific "window period." *Id*. Ms. Bennett filed a complaint alleging that the school district and the union violated her First Amendment rights by holding her to the opt-out window in her union membership card and continuing to withhold dues from her wages without her affirmative consent to waive her right to not pay the union. *Id.* at 729–30.

The Seventh Circuit held that the First Amendment did not provide Ms. Bennett with "a right to renege on her bargained-for commitment to pay union dues" simply because the legal framework that existed at the time of her signing the union membership agreement subsequently changed. *Id*. at 731 (citing *Fischer v. Governor of New Jersey*, 842 Fed. App'x 741 (3d Cir. 2021) (nonprecedential decision); *Belgau v. Inslee*, 975 F.3d 940 (9th Cir. 2020)).

Thus, this case is also an excellent vehicle for this Court to address the application of *Janus* because every circuit court of appeals that will likely hear cases addressing the application of *Janus* on a forward-looking basis have already denied application of *Janus* in cases like *Bennett*.

This case is also an excellent vehicle to address the application of *Janus* because the legal issues are straightforward, the facts are undisputed since the case was decided on a motion to dismiss, and neither the district court nor the appellate court held the Petitioner's claim to be moot, allowing this Court to address the substantive question in this case without having to resolve a side issue like mootness. *But see*, *Hendrickson v. AFSCME Council 18*, 992 F.3d 950 (10th Cir. 2021) (holding plaintiff's claims moot when the union attempted to pay the plaintiff's dues back).

Finally, this case is an excellent vehicle to address the application of *Janus* because waiting to do so will result in more and more employees unknowingly waiving their rights, like Petitioner here, as the lower courts have allowed government employers to withhold union dues without employees' knowledge of their *Janus* rights. *See Elrod v. Burns*, 427 U.S. 347, 373 (1976) ("The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.").

## CONCLUSION

For the reasons stated above, this Court should grant the petition for writ of certiorari.

Respectfully submitted,

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