No. _____

IN THE

Supreme Court of the United States

RICHARD J. PELTZ-STEELE,

PETITIONER,

V.

UMASS FACULTY FEDERATION, LOCAL 1895 AMERICAN FEDERATION OF TEACHERS, AFL-CIO; MARTIN MEEHAN, *IN HIS OFFICIAL CAPACITY AS PRESIDENT OF THE UNIVERSITY OF MASSACHUSETTS*; MARJORIE WITTNER, KELLY STRONG, *AND* JOAN ACKERSTEIN, *IN THEIR OFFICIAL CAPACITIES AS MEMBERS OF THE COMMONWEALTH EMPLOYMENT RELATIONS BOARD*; AND ANDREA CAMPBELL, *IN HER OFFICIAL CAPACITY AS ATTORNEY GENERAL OF THE COMMONWEALTH OF MASSACHUSETTS*,

RESPONDENTS.

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

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Does a state law forcing a government employee to accept a union of which the employee is not a member to speak and negotiate on their behalf as their exclusive representative violate the employee's First Amendment rights?

PARTIES TO THE PROCEEDING

Petitioner, Richard J. Peltz-Steele, is a natural person and citizen of the State of Rhode Island.

Respondent Martin Meehan is a natural person and the President of the University of Massachusetts. Marjorie Wittner, Kelly Strong, and Joan Ackerstein, are natural persons and members of the Commonwealth Employment Relations Board. Respondent Andrea Campbell is a natural person and the Attorney General of Massachusetts.[1]

Respondent UMass Faculty Federation, Local 1895 American Federation of Teachers, AFL-CIO, is a labor union representing public employees in the Commonwealth of Massachusetts.

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:

- *Peltz-Steele v. UMass Faculty Federation*, 22-1466, United States Court of Appeals for the First Circuit. Judgment entered February 14, 2023.
- *Peltz-Steele v. UMass Faculty Federation*, No. 1:21-cv-11590, United States District Court for the District of Massachusetts. Judgment entered May 12, 2022.

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[1] Respondent Campbell is substituted for previous party Attorney General Maura Healey, who held office when the case was pending below. *See* Fed. R. App. P. 43(c)(2).

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INTRODUCTION

As a condition of his employment, Richard Peltz-Steele, a law professor at the University of Massachusetts School of Law at Dartmouth, is compelled by Commonwealth of Massachusetts law to accept UMass Faculty Federation, Local 1895, American Federation of Teachers, AFL-CIO ("the Union") as his exclusive bargaining representative for all terms and conditions of his employment, even though he is not a member of the Union.

This Court has on at least three recent occasions recognized that schemes compelling public-sector employees to associate with labor unions impose a "significant impingement" on those employees' First Amendment rights. *Knox v. SEIU, Local 1000*, 567 U.S. 298, 310-11 (2012); *Harris v. Quinn*, 573 U.S. 616, 647 (2014); *Janus v. AFSCME, Council 31*, 138 S. Ct. 2448, 2483 (2018). Most recently, in *Janus*, this Court recognized that a state's appointment of a labor union to speak for its employees as their exclusive representative constitutes "a significant impingement on associational freedoms that would not be tolerated in other contexts." 138 S. Ct. at 2478. These "exclusive bargaining" schemes cannot be squared with the Court's First Amendment jurisprudence. The First Amendment protects "[t]he right to eschew association for expressive purposes," *Janus*, 138 S. Ct. at 2463, and "[f]reedom of association . . . plainly presupposes a freedom not to associate." *Roberts v. United States Jaycees*, 468 U. S. 609, 623 (1984).

In upholding this arrangement, the courts below believed themselves bound by this Court's decision in *Minnesota State Board for Community Colleges v. Knight*, 465 U.S. 271 (1984), which they held stands

for the proposition that exclusive bargaining schemes are constitutional. But *Knight* did not consider a compelled-speech or compelled-association challenge to exclusive-bargaining schemes, as this case does. Rather, the claim in *Knight* was that public workers had a right to be heard by the state in certain "meet and confer" sessions with union representatives.

This Court should grant the petition to clarify that *Knight* is not a license for unions to speak on behalf of dissenting employees, and clarify that exclusive representative schemes like the one at issue here violate public employees' rights of speech and association.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the First Circuit is reported at *Peltz-Steele v. Umass Faculty Fed'n*, 60 F.4th 1 (1st Cir. 2023), and reproduced at App. 3.

The opinion of the United States District Court for the Central District of California is reported at *Peltz-Steele v. Umass Faculty Fed'n*, No. 21-11590-WGY, 2022 U.S. Dist. LEXIS 153515 (D. Mass. Aug. 25, 2022) and reproduced at App. 23.

JURISDICTION

The First Circuit issued its opinion and judgment on February 14, 2023. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

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

42 U.S.C. § 1983 provides:

> 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 officer 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 Richard Peltz-Steele is Chancellor Professor at the University of Massachusetts School of Law at Dartmouth, where he teaches torts and media-related topics. App. 7. His research interests include civil and human rights and freedom of expression, which have instilled in him a strong sense of the importance of First Amendment values.

The Union is a labor organization under Massachusetts law, Mass. Gen. Laws ch. 150E, § 1. App. 28. Acting under color of state law, the University and the Union entered into a collective bargaining agreement recognizing the Union as the exclusive representative for the bargaining unit that includes Professor Peltz-Steele. App. 29. Massachusetts law provides:

> the commission shall certify and the public employer shall recognize as the exclusive representative for the purpose of collective bargaining of all the employees in the bargaining unit an employee organization which has received a written majority authorization . . .

Mass. Gen. Laws ch. 150E, § 4; App. 5. The law further provides that:

> The exclusive representative shall have the right to act for and negotiate agreements covering all employees in the unit and shall be responsible for representing the interests of all such employees without discrimination and without regard to employee organization membership.

Mass. Gen. Laws ch. 150E, § 5; App. 5.

Once a union is designated the exclusive representative of all employees in a bargaining unit, it negotiates wages, hours, and terms and conditions of employment for all employees, even employees who are not members of the union or who do not agree with the positions the union takes on those subjects. App. 6.

The Commonwealth Employment Relations Board has certified the Union as the exclusive bargaining representative for the employee unit that includes Professor Peltz-Steele. App. 7. Professor Peltz-Steele, however, is not a member of the Union. *Id*. Nonetheless, the Union is the exclusive representative for the bargaining unit that includes Professor Peltz-Steele, and it represents Professor Peltz-Steele and others in the bargaining unit with respect to negotiation over wages, hours, and terms and conditions of employment. Mass. Gen. Laws ch. 150E, § 6.

In response to financial losses related to the COVID-19 pandemic, the University and the Union agreed to a Memorandum of Understanding cutting employee salaries at UMass Dartmouth to make up the shortfall for the 2020–2021 school year. App. 8. On September 4, 2020, Union President Grant O'Rielly sent an email to represented employees outlining its negotiations with the University. App. 30. According to O'Rielly's email, the University initially asked only for a 5% across-the-board cut to employee pay. Without an agreement, the University would have to lay off some "80+ employees." App. 8. The Union rejected this proposal, instead demanding a "progressive" structure that would impose different cuts on different employees depending on their salary levels. The University agreed to the Union proposal. App. 30.

The Union and the University rejected or failed to consider a variety of other options, such as a reduction in redundant administrative staff, extended voluntary furloughs, intangible incentives such as faculty course releases, or tapping into the UMass System's $114 million dollar "rainy day fund," which exists for just such an emergency. App. 31. The MOU between the University and the Union provided instead that salary reductions occur based on a formula, with no reduction for the first $30,000 of salary and then "[f]or each $5000 in excess of this threshold there shall be a salary reduction calculated as a percentage of the faculty or staff member's marginal salary. This percentage reduction shall start at 5% (0.05) and shall increase by 1 percentage point (0.01) for each step up to a maximum of 10% (0.10)." App. 30.

For Professor Peltz-Steele this formula resulted in a cut in income of about 12%, when including a law-school specific cut of $7,500 in research support that had already been imposed. App. 31.[2] Due to the Commonwealth of Massachusetts system of exclusive representation, Professor Peltz-Steele must accept the agreement the Union negotiated on his behalf and on behalf of all persons in the bargaining group, regardless of whether they are members; Professor Peltz-Steele is prevented from negotiating separately with his employer, or even proposing an alternative solution to the University's financial situation.[3] App. 31.

Procedural History

On September 28, 2021, Professor Peltz-Steele filed his complaint alleging that forcing him to associate with the Union as his exclusive representative violates his First Amendment rights. App. 7.

Respondents filed Motions to Dismiss. The district court held a hearing on the motions on May 11, 2022, and the next day entered an order dismissing Professor Peltz-Steele's complaint. App. 22. The district court dismissed Count I—Professor Peltz-Steele's claim that exclusive bargaining violated his First

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[2] In between the district court and First Circuit decisions, the University paid its employees back for these cuts. But this in no way changes Professor Peltz-Steele's desire to not associate with and be represented by the Union.

[3] Before the district court, Professor Peltz-Steele also alleged that he was prevented from individually filing a grievance regarding the actions taken by his employer or the union. App. 5. But because the parties all agree that an employee in the bargaining unit can bring a grievance to their employer without being represented by the Union, Professor Peltz-Steele allowed this count to be voluntarily dismissed. He did not appeal this claim.

Amendment rights—because it felt itself bound by this Court's decision in *Knight*.[4] App. 47. Professor Peltz-Steele filed a timely notice of appeal on June 6, 2022. For reasons unclear to Petitioner, after the notice of appeal, on August 25, 2022, the district court entered a Memorandum of Decision explaining the district court's decision to grant Defendants' motions to dismiss as to Count I of Professor Peltz-Steele's complaint. App. 23.

On appeal, the First Circuit likewise ruled that this Court's decision in *Knight*—along with Circuit precedent interpreting it—foreclosed Petitioner's Claim. App. 4. The First Circuit issued its opinion and judgment on February 14, 2023, App. 1, and this Petition now follows.

SUMMARY OF ARGUMENT

Under Massachusetts law, Professor Peltz-Steele must allow the Union to act for and negotiate agreements on behalf of him and all employees in his bargaining unit. This arrangement is both compelled speech—the Union speaks on behalf of the employees, as though its speech is the employees' own speech—

[4] In its initial written docket order, the district court mistakenly inverted its ruling stating that it dismissed Count I of the Complaint with the assent of Plaintiff, and that as to Count II the Court found that it was bound by First Circuit precedent and dismissed it on the merits. After Professor Peltz-Steele filed an unopposed motion to correct the record, the district court corrected its entry to state what it had actually held on May 11, 2022: that Count I was dismissed on the merits because the district court found it was bound by First Circuit precedent and Count II—alleging that Plaintiff was denied his ability to file a grievance—was dismissed with the assent of Plaintiff.

and compelled association—the Union represents everyone in the bargaining unit without any choice or alternative for dissenting employees not to associate. Both violate Professor Peltz-Steele's First Amendment rights.

The courts below held that this case was controlled by this Court's decision in *Minnesota State Board for Community Colleges v. Knight*, 465 U.S. 271 (1984). But *Knight* did not decide whether such employees can be forced to associate with the union. Rather, *Knight* addressed the issue of whether the "restriction on participation in the nonmandatory-subject exchange process violates the constitutional rights of professional employees." 465 U.S. at 273.

This Court should grant the petition to clarify that *Knight* does not exempt state-mandated public sector union exclusive bargaining scheme from First Amendment scrutiny, and to hold that such schemes are inconsistent with the Supreme Court's free-speech and free-association jurisprudence.

REASONS FOR GRANTING THE PETITION

I. State law compelling Professor Peltz-Steele to associate with the Union as his exclusive representative violates his First Amendment rights to free speech and freedom of association.

The Massachusetts Public Sector Collective Bargaining Statute empowers the Union to "act for and negotiate agreements covering all employees in the unit"—including Professor Peltz-Steele, who must accept this as a condition of his employment—and to "represent[] the interests of all such employees." Mass.

Gen. Laws ch. 150E, § 5. These "interests" are precisely the sort of policy decisions that *Janus* recognized are necessarily matters of public concern. 138 S. Ct. at 2467.

"By its selection as bargaining representative, [a union] . . . become[s] the agent of all the employees, charged with the responsibility of representing their interests fairly and impartially." *Wallace Corp. v. NLRB*, 323 U.S. 248, 255 (1944). This mandatory agency relationship is akin to "the relationship . . . between attorney and client," and to that between trustee and beneficiary. *ALPA v. O'Neill*, 499 U.S. 65, 74-75 (1991).

Unlike other principals represented by agents, however, "an individual employee lacks direct control over a union's actions." *Teamsters Local 391 v. Terry*, 494 U.S. 558, 567 (1990). That is because exclusive representation "extinguishes the individual employee's power to order his own relations with his employer and creates a power vested in the chosen representative to act in the interests of all employees." *NLRB v. Allis-Chalmers Mfg. Co.*, 388 U.S. 175, 180 (1967). In this way, "[t]he powers of the bargaining representative are 'comparable to those possessed by a legislative body both to create and restrict the rights of those whom it represents.'" *Sweeney v. Pence*, 767 F.3d 654, 666 (7th Cir. 2014) (quoting *Steele v. Louisville & N.R. Co.*, 323 U.S. 192, 202 (1944)).

As a result, exclusive representatives can, and often do, pursue agendas that do not benefit individuals subject to their mandatory representation. *See Knox v. Service Employees*, 567 U.S. 298, 310-11 (2012); *Abood v. Detroit Board of Education*, 431 U.S. 209, 222 (1977), overruled on other grounds by *Janus*, 138 S. Ct.

at 2478. Exclusive representatives also can enter into agreements that bind everyone subject to their representation. *See Ford Motor Co. v. Huffman*, 345 U.S. 330, 338 (1953). Thus, for example, union representatives can waive employees' right to bring discrimination claims against their employer in court by agreeing that employees must submit such claims to arbitration. *See 14 Penn Plaza LLC v. Pyett*, 556 U.S. 247 (2009). A represented individual "may disagree with many of the union decisions but is bound by them." *Allis-Chalmers,* 388 U.S. at 180.

Unsurprisingly, given a union's power to speak and contract for individuals against their will, this Court has long recognized that exclusive representation impacts and restricts individual liberties. *See Pyett*, 556 U.S. at 271 (holding "[i]t was Congress' verdict that the benefits of organized labor outweigh the sacrifice of individual liberty that this system necessarily demands"); *Vaca v. Sipes*, 386 U.S. 171, 182 (1967) (noting "[t]he collective bargaining system . . . of necessity subordinates the interests of an individual employee to the collective interests of all employees in a bargaining unit"); *Am. Commc'ns Ass'n v. Douds*, 339 U.S. 382, 401 (1950) (holding "individual employees are required by law to sacrifice rights which, in some cases, are valuable to them" under exclusive representation, and that "[t]he loss of individual rights for the greater benefit of the group results in a tremendous increase in the power of the representative of the group—the union").

When the Commonwealth certifies the Union to represent the bargaining unit, it forces all employees in that unit to associate with the Union. This coerced association authorizes the Union to speak on behalf of

the employees even if the employees are not members, even if the employees do not contribute fees, and even if the employees disagree with the Union's positions and speech.

This arrangement has two constitutional problems. First, it compels speech because the Union speaks on behalf of the employees, as though its speech is the employees' own speech. Second, it compels association because the Union represents everyone in the bargaining unit without giving dissenting employees the choice not to associate.

Legally compelling Professor Peltz-Steele to associate with the Union violates his First Amendment rights. While it has not had occasion to directly address this issue, this Court has held that "designating a union as the exclusive representative of nonmembers substantially restricts the nonmembers' rights." *Janus*, 138 S. Ct. at 2469; *see also Harris v. Quinn*, 573 U.S. 616, 649 (2014); *Knox*, 567 U.S. at 310-11 (2012). Indeed, "[f]orcing free and independent individuals to endorse ideas they find objectionable is always demeaning. . . . [A] law commanding involuntary affirmation of objected-to beliefs would require even more immediate and urgent grounds than a law demanding silence." *Janus*, 138 S. Ct. at 2464 (2018) (quoting *W. Va. Bd. of Ed. v. Barnette*, 319 U. S. 624, 633 (1943) (internal quotation marks omitted)). Exclusive representation forces employees "to voice ideas with which they disagree, [which] undermines" First Amendment values. *Janus*, 138 S. Ct. at 2464. Massachusetts law commands Professor Peltz-Steele's involuntary affirmation of beliefs he rejects. The fact that he retains the right to speak for himself in certain circumstances

does not negate the fact that the Union negotiates as his representative in his employment relations.

Exclusive representation is also forced association: Professor Peltz-Steele is forced to associate with the Union as his exclusive representative simply by the fact of his employment in this particular bargaining unit. "Freedom of association . . . plainly presupposes a freedom not to associate." *Roberts v. United States Jaycees*, 468 U.S. 609, 623 (1984). Yet Professor Peltz-Steele has no such freedom, no choice about his association with the Union; it is imposed—indeed coerced—by the Commonwealth's laws.

Mandatory associations are "exceedingly rare because . . . [they] are permissible only when they serve a 'compelling state interes[t] . . . that cannot be achieved through means significantly less restrictive of associational freedoms.'" *Knox,* 567 U.S. at 309 (quoting *Roberts*, 468 U.S. at 623). The Supreme Court has required the government to satisfy this level of scrutiny to justify mandatory associations in a variety of contexts. This includes where the government required employees and contractors to affiliate with political parties, *see Elrod v. Burns*, 427 U.S. 347, 362-63 (1976); *O'Hare Truck Serv., Inc. v. City of Northlake*, 518 U.S. 712, 714-15 (1996); where it required groups to associate with unwanted individuals, *see Roberts*, 468 U.S. at 623; *Hurley v. Irish-Am. Gay, Lesbian & Bisexual Grp.*, 515 U.S. 557, 577-78 (1995); *Boy Scouts of Am. v. Dale*, 530 U.S. 640, 658-59 (2000); and where it required individuals to financially support exclusive representatives. *See Janus*, 138 S. Ct. at 2483; *Harris*, 573 U.S. at 647; *Knox*, 567 U.S. at 309-10.

Exclusive representation is therefore subject to at least exacting scrutiny, if not strict scrutiny. *See Knox*

v. SEIU, Local 1000, 567 U.S. 298, 310-11 (2012). It must "serve a compelling state interest that cannot be achieved through means significantly less restrictive of associational freedoms." *Id.* at 310. This the Union and Massachusetts Defendants cannot show.

Unions and state governments have asserted various interests that compelling the association of employees supposedly serves. One interest often proffered is "labor peace," meaning the "avoidance of the conflict and disruption that it envisioned would occur if the employees in a unit were represented by more than one union" because "inter-union rivalries would foster dissension within the work force, and the employer could face 'conflicting demands from different unions.'" *Janus*, 138 S. Ct. at 2465.

This justification is particularly inapplicable to Professor Peltz-Steele because he does not seek to introduce a competing union into the bargaining mix but only to ensure that the Union does not speak on his behalf. Furthermore, in *Janus* this Court assumed, without deciding, that labor peace might be a compelling state interest, but rejected it as a justification for agency fees—that is, for compelling employees to pay money to a union as a condition of their employment. That interest should likewise be rejected as a justification for exclusive representation. This Court recognized that "it is now clear" that the fear of "pandemonium" if the union could not charge agency fees was "unfounded." *Janus*, 138 S. Ct. at 2465. To the extent that individual bargaining is claimed to raise the same

concerns of pandemonium, this too, remains insufficient. *Janus* rejected the invocation of this rationale due to the absence of evidence of actual harm. *Id*.

The "labor peace" concept was borrowed by *Abood*, 431 U.S. at 220-21, from the Court's jurisprudence concerning Congress's Commerce Clause power to regulate economic affairs. *See, e.g., NLRB. v. Jones & Laughlin Steel Corp.*, 301 U.S. 1, 41-42 (1937). That the promotion of labor peace might justify congressional regulation of economic affairs, subject only to rational-basis review, says nothing about whether labor-peace interests suffice to clear the higher bar of First Amendment scrutiny. The Court's cases recognize that the First Amendment does not permit government to "substitute its judgment as to how best to speak for that of speakers and listeners" or to "sacrifice speech for efficiency." *Riley v. Nat'l Fed'n of the Blind*, 487 U.S. 781, 791, 795 (1988). But that is in essence what the labor peace rationale does.

It may be that the University finds it convenient to negotiate with a single agent, and the Union may find it convenient to accrue all bargaining power to itself, but that cannot justify infringing First Amendment rights. The rights to speech and association cannot be limited by appeal to administrative convenience. *Police Dep't of Chicago v. Mosley*, 408 U.S. 92, 102 n.9 (1972) (in free speech cases, a "small administrative convenience" is not a compelling interest); *see also Tashjian v. Republican Party*, 479 U.S. 208, 218 (1986) (holding that a state could "no more restrain the Republican Party's freedom of association for reasons of its own administrative convenience than it could on

the same ground limit the ballot access of a new major party").

Although it might be quicker or more efficient for the University to negotiate only with the Union, "the Constitution recognizes higher values than speed and efficiency." *Stanley v. Illinois*, 405 U.S. 645, 656 (1972). Even if the University could claim that it saves monetary resources by negotiating only with the Union, the preservation of government resources is not an interest that can justify First Amendment violations. In other contexts, even where the state's burden was only rational-basis review, this Court has rejected such justifications. *See, e.g., Romer v. Evans*, 517 U.S. 620, 635 (1996) (rejecting the "interest in conserving public resources" in a case applying only heightened rational basis review); *see also Plyler v. Doe*, 457 U.S. 202, 227 (1982) ("a concern for the preservation of resources standing alone can hardly justify the classification used in allocating those resources"). Such claimed interests are not enough to leave Professor Peltz-Steele "shanghaied for an unwanted voyage." *Janus*, 138 S. Ct. at 2466.

Janus has already dispatched "labor peace" and the so-called "free-rider problem" as sufficiently compelling interests to justify this sort of mandate. 138 S. Ct. at 2465-69. And Professor Peltz-Steele is not seeking

the right to form a rival union or to force the government to listen to his individual speech; he only wishes to disclaim the Union's speech on his behalf.

II. The lower courts have misapplied *Knight* in upholding state-compelled union exclusive representative schemes as consistent with the First Amendment.

The courts below held that this case was controlled by this Court's decision in *Minnesota State Board for Community Colleges v. Knight*, 465 U.S. 271 (1984), and the First Circuit's decisions in *D'Agostino v. Baker*, 812 F.3d 240 (1st Cir. 2016), and *Reisman v. Associated Faculties of the University of Maine*, 939 F.3d 409 (1st Cir. 2019), both of which relied on *Knight*. But *Knight* did not decide whether government employees can be forced to associate with the union through exclusive representation.

Knight holds that employees do not have a right, as members of the public, to a formal audience with the government to air their views. *Knight* did not decide whether such employees can be forced to associate with the union. As the *Knight* court framed the issue, "The question presented . . . is whether this restriction on participation in the nonmandatory-subject exchange process violates the constitutional rights of professional employees." 465 U.S. at 273.

The plaintiffs in *Knight* were community college faculty who dissented from the certified union. *Id.* at 278. The Minnesota statute at issue required that their employer "meet and confer" with the union alone regarding "non-mandatory subjects" of bargaining. The statute explicitly prohibited negotiating separately with dissenting employees. *Id.* at 276. The

plaintiffs filed their suit claiming a constitutional right to take part in these negotiations.

The Court explained the issue it was addressing: "[A]ppellees' principal claim is that they have a right to force officers of the State acting in an official policy-making capacity to listen to them in a particular formal setting." *Id.* at 282. Confronted with this claim, this Court held that the employees had "no constitutional right to force the government to listen to their view, . . . as members of the public, as government employees, or as instructors in an institution of higher education." *Id.* at 283.

Knight did not address whether exclusive representation constitutes a mandatory expressive association. That is because this Court had already ruled on that issue years earlier in *Abood*, 431 U.S. at 220-21. *Abood* "rejected the claim that it was unconstitutional for a public employer to designate a union as the exclusive collective-bargaining representative of its employees." *Chicago Teachers Union v. Hudson*, 475 U.S. 292, 301 (1986); *see Knight v. Minn. Cmty. Coll. Faculty Ass'n*, 571 F. Supp. 1, 15 (D. Minn. 1982) (recognizing that "*Abood* squarely upheld the constitutionality of exclusive representation bargaining in the public sector"). *Abood* did so because it found "[t]he principle of exclusive union representation" to be justified by the labor peace interest. 431 U.S. at 220-21. *Knight* did not revisit the compelled association issue already decided in *Abood*. But *Abood* is no longer good law. This Court squarely overturned it in *Janus*. Thus, *Abood* cannot justify Massachusetts' exclusive bargaining statutory system.

The First Amendment guarantees citizens a right to speak. It does not deny government, or anyone else,

the right to ignore such speech. Unlike the plaintiffs in *Knight*, Professor Peltz-Steele does not claim that his employer—or anyone else—should be compelled to listen to his views. Instead, he asserts a right against the compelled association forced on him by exclusive representation.

The central issue in *Knight* was whether the plaintiffs could compel the government to negotiate with them instead of, or in addition to, the union. That question is fundamentally different from Professor Peltz-Steele's claim that the government cannot compel him to associate with the Union by authorizing the Union to bargain on his behalf. The fact that the government is entitled to listen only to the exclusive representative does not mean the government is free to dictate *who speaks and contracts* for individuals in their relations with government. The latter infringes on First Amendment rights, even if the former does not.

Knight is, therefore, not responsive to the question Professor Peltz-Steele now raises: whether someone else can speak in his name, with his imprimatur granted to it by the government. He does not contest the right of the government to choose whom it meets with, to "choose its advisors," or to amplify the Union's voice. He does not demand that the government schedule meetings with him, engage in negotiation, or satisfy any of the other demands made in *Knight*. He only asks that the Union not do so in his name.

The district court held that because Professor Peltz-Steele is free to join whatever advocacy group he wants, there is no compelled association. App 47. But this ignores the fact that the Court's "compelled-speech cases are not limited to the situation in which

an individual must personally speak the government's message." *Rumsfeld v. Forum for Academic and Institutional Rights, Inc.*, 547 U.S. 47, 63 (2006). Massachusetts' exclusive representation requirement takes away dissenting employees' "choice . . . not to propound a particular point of view," a matter "presumed to lie beyond the government's power to control," in the same way that compelling a parade organizer to accept a group carrying a banner with an unwanted message would do so. *Hurley*, 515 U.S. at 575. The fact that Professor Peltz-Steele must speak out to distance himself from the Union's speech on his behalf does not diminish his constitutional injury but escalates it. *Pacific Gas & Elec. Co. v. Public Util. Comm'n of Cal.*, 475 U.S. 1, 20-21 (1986) (plurality opinion); *Miami Herald Publishing Co. v. Tornillo*, 418 U.S. 241, 258 (1974). The government is not free to compel citizens to associate with advocacy groups so long as those citizens are otherwise free to speak. As Justice Scalia put it when addressing a similar contention in *Harris*, "I suppose the fact that you're entitled to speak against abortion would not justify the government in requiring you to give money to Planned Parenthood." Transcript of Oral Argument at 17, *Harris*, 134 S. Ct. 2618 (2014) (No. 11-681)[5].

III. This case is an excellent vehicle for this Court to clarify *Knight* and the application of the First Amendment.

This Court should take the opportunity to clarify the meaning of *Knight* in the context of the more recent decisions in *Janus*, *Harris*, and *Knox*, because

[5] *Available at*, https://www.supremecourt.gov/oral_arguments/argument_transcripts/2013/11-681_4f14.pdf.

those decisions are simply irreconcilable with the reading of *Knight* embraced by the First Circuit And indeed in the years since *Janus* several other circuits have made the same error. *See, e.g. Thompson v. Marietta Educ. Ass'n,* 972 F.3d 809 (6th Cir. 2020); *Ocol v. Chi. Tchrs. Union*, 982 F.3d 529, 532-33 (7th Cir. 2020) *Mentele v. Inslee*, 916 F.3d 783 (9th Cir. 2019); *Hendrickson v. AFSCME Council 18*, 992 F.3d 950, 954 (10th Cir. 2021). Without this Court's intervention, there will be no opportunity for further development in the Circuits below.

This Petition presents an excellent vehicle to clarify that question. Petitioner's claim here is straightforward—either exclusive representation violates his rights, or it does not. There are no material facts in dispute, and at no point has there been any serious jurisdictional question raised because it is clear that Peltz-Steele has standing to assert his claimed First Amendment right and the union continues to act as his exclusive representative—and will continue to do so indefinitely.

CONCLUSION

Government-imposed mandatory associations violate the First Amendment unless they serve a compelling government interest that cannot be achieved through means significantly less restrictive of associational freedoms. In this case, Professor Peltz-Steele challenges a Massachusetts law that provides for a government union to act as the exclusive representative of all employees in a bargaining unit—including Professor Peltz-Steele who is not members of the union—as a violation of his First Amendment rights to free speech and association. No compelling interest

justifies this intrusion into Professor Peltz-Steele's rights. And even if there was such an interest, it could be achieved through less restriction means on Professor Peltz-Steele's associational freedoms.

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

Respectfully submitted,

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