No. 22-212

IN THE

Supreme Court of the United States

JONATHAN SAVAS, *et al.*,
Petitioners,

v.

CALIFORNIA STATEWIDE LAW ENFORCEMENT AGENCY, *et al.*,
Respondents.

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

BRIEF IN OPPOSITION FOR RESPONDENT CALIFORNIA STATE LAW ENFORCEMENT ASSOCIATION

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QUESTIONS PRESENTED

1. Whether full union members may unilaterally rescind their voluntary contracts for deduction of their union dues?

2. Whether a private union engages in "state action" for purposes of 42 U.S.C. § 1983 where full union members entered into a contract with the union and consented to have the state perform a ministerial function of deducting union dues in exchange for full membership benefits?

CORPORATE DISCLOSURE STATEMENT

Respondent California State Law Enforcement Association ("CSLEA") has no parent corporation and no company owns any stock in CSLEA.

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INTRODUCTION

The Ninth Circuit's unpublished decision does not merit review because it is consistent with this Court's precedents and the decisions of lower courts. Petitioners agreed to pay dues for a set period of time in exchange for receiving the rights and benefits of union membership. *Cohen v. Cowles Media Co.*, 501 U.S. 663, 672 (1991) is clear that parties cannot disregard their contractual promises under the guise that they run afoul of the First Amendment. Nor did this Court change the landscape between unions and employees who affirmatively consented to become full union members in *Janus v. AFSCME, Council 31*, 138 S. Ct. 2448 (2018). Lower courts are unanimous that *Janus* does not extend to full union members. And, this Court has already denied eleven petitions for certiorari raising the same questions Petitioners present. In fact, this Court even denied a petition for certiorari concerning the very same union: CSLEA. No different outcome is warranted here. In the time since the first of those denials — June 2021 to present — no developments worthy of this Court's review have arisen. Petitioners fail to raise any "compelling reason" why this non-precedential case would be worthy of interest. The petition should be denied.

STATEMENT OF THE CASE

A. Background.

Appellants are lifeguards employed by the California Department of Parks and Recreation. Appendices to Petition ("App.") at 7. The California State Law

Enforcement Association[1] ("CSLEA") is a labor union that represents certain California law enforcement personnel, including its lifeguards, in collective bargaining. *Id.* Each Petitioner chose to join CSLEA as a full union member by signing a membership application. *See* App. 2 (observing that "[t]he Lifeguards do not argue that union membership was a requirement of employment and agree that they voluntarily chose to join the union"); *see also* App. 7 (stating that "Plaintiffs signed membership applications and became members of the union"). That application guaranteed Petitioners the full rights and benefits of membership for a set period of time. App. 7. It also expressly authorized the state to perform the ministerial function of deducting union dues from payroll so members do not have to cut a check month after month. *Id.* Petitioners' dues authorizations state:

> I elect to become a member of CSLEA and the applicable affiliate organization for my classification and department. I hereby authorize deduction from my salary of CSLEA/Affiliate dues . . . Per the Unit 7 contract and State law, there are limitations on the time period for withdrawal of membership.

Id.

When the term of the Lifeguards' Collective Bargaining Agreement ("CBA") expired in July 2019, Petitioners had the opportunity to opt out of dues deduction. *See* App. 8 (noting that the 30-day period to opt out between old and newly negotiated CBA was

[1] Petitioners erroneously sued CSLEA as "California State Law Agency" rather than "California State Law Enforcement Association" in the district court Complaint.

in June 2019). Specifically, paragraph 3.1(A)(1) of the operative CBA includes a provision, that states:

> A written authorization for CSLEA dues deductions in effect on the effective date of this Contract or thereafter submitted shall continue in full force and effect during the life of this Contract; provided, however, that any employee may withdraw from CSLEA within thirty (30) calendar days prior to the expiration of this Contract.

App. 9; App. 28.

Petitioners did not timely cancel their dues deduction authorization. *See* App. 3 (noting that "any assertion of compulsion is undermined by the fact that the Lifeguards had the opportunity to resign their membership during the June 2019 opt-out window, after the decision in *Janus* had rendered agency fees unconstitutional"); App. 8. Instead, Petitioners sent a resignation by certified mail in September 2019, after the current MOU was finalized. App. 8. In October of 2019, CSLEA notified the Lifeguards that they failed to timely opt out of the contract. *Id.*

B. Lower Court Proceedings.

Petitioners filed a First Amended Complaint ("FAC") on May 15, 2020, in the United States District Court for the Southern District of California. App. 10. The FAC purported to state claims for First Amendment violations under 42 U.S.C. § 1983 and claims under state law for fraudulent concealment and unconscionability. *Id.* On May 29, 2020, CSLEA filed a Motion to Dismiss pursuant to Rule 12(b)(6). App. 10. In a thoughtful and well-reasoned decision, the Honorable Dana Sabraw granted the motion as to Petitioners' federal claims. App. 6. The district court found, in

part, that the Lifeguards "do not adequately plead valid claims, because by signing CSLEA membership applications, they affirmatively consented to union membership, including limitations on withdrawal and dues deductions. The holding in *Janus* does not apply to such voluntary agreements." App. 12.

Petitioners then appealed to the Ninth Circuit. The Ninth Circuit affirmed, finding that "[t]he district court correctly concluded that the holding in *Janus* applied to nonunion members only and because the Lifeguards are union members, *Janus* is inapplicable here." App. 2. The court also observed that "[t]he Lifeguards do not argue that union membership was a requirement of employment and agree that they voluntarily chose to join the union." *Id.* The court continued, "the Lifeguards . . . made the affirmative choice to become members. Furthermore, any assertion of compulsion is undermined by the fact that the Lifeguards had the opportunity to resign their membership during the [30-day] June-2019 opt out window, after the decision in Janus had rendered agency fees unconstitutional." App 3. The Ninth Circuit also explained — citing to *Belgau v. Inslee*, 975 F.3d 940, 951 (9th Cir. 2020) — that the "maintenance of membership requirement is not invalidated by the First Amendment because the limitation stems from a private agreement."[2] Petitioners then filed the instant writ.

[2] This Court denied the petition for certiorari in *Belgau*, along with petitions for certiorari in eleven other cases raising the same First Amendment claims. *See infra*, n.3.

REASONS THE PETITION SHOULD BE DENIED

Petitioners present no "compelling reason" that this case warrants this Court's attention. *See* Sup. Ct. R. 10 ("A petition for writ of certiorari will be granted only for compelling reasons"). Instead, they rely on an improper premise to reach an improper result. They assert that this Court's holding in *Janus* means full union members may renege on their contractual commitments any time they choose. Petitioners are wrong. *Janus* plainly applied only to non-member fair-share fee payers. Those individuals are distinctly different from Petitioners, who consented in writing to the deduction of dues in exchange for full union membership and benefits. Fair share fee payers did not consent. Petitioners' efforts to expand *Janus* so that it encompasses full union members' efforts to break their contractual commitments flies in the face of the well-established principle that "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. Even if the law changes after the contract is signed, it does not undermine this fundamental concept — not "even when the change is based on constitutional principles," because "[a] party's duty to perform . . . is not excused merely because he decides that he no longer wants the consideration for which he has bargained." *Coltec Indus., Inc. v. Hobgood*, 280 F.3d 262, 277 (3d Cir. 2002); *N.L.R.B. v. U.S. Postal Serv.*, 827 F.2d 548, 554 (9th Cir. 1987).

It is also well-established that there can be no constitutional violation where no state action exists. Petitioners raise only questions that concern "the private agreement between the unions and the employees"

and not "the exercise of any state-created right or privilege." *Hoekman v. Education Minnesota*, 41 F.4th 969, 978-79 (8th Cir. 2022). Petitioners' attempt to conflate "maintenance of membership" with something other than a ministerial payroll deduction is likewise unfounded. *See Marquez v. Screen Actors Guild, Inc.*, 525 U.S. 33, 36 (1998) ("The only 'membership' that a union can require is the payment of fees and dues . . . ."). Thus, they present no legitimate question regarding constitutional rights to this Court. *Id.*

Janus's narrow application to agency fee payers and the lack of state action related to dues deductions has been affirmed across a "swelling chorus of courts" that unanimously agree with the Ninth Circuit's findings in this case. *Belgau*, 975 F.3d at 951. Because the non-precedential decision below fails to present compelling questions, no other developments occurred that justify review, and this Court already rejected eleven petitions presenting the same questions raised here, the petition should be denied.

I. No Split of Authority Exists Regarding the Issues Presented.

The Ninth Circuit's decision was non-controversial. It merely held that employees who voluntarily chose to join the union do not suffer a First Amendment violation when they are required to honor their contractual promises. App. 1-5. In affirming the district court's ruling, the Ninth Circuit found that it "correctly concluded that the holding in *Janus* applied to nonunion members only." App. 2. The Ninth Circuit's unpublished opinion does not differ from any other judicial circuit, or even any district court — each one to consider the issues raised here has reached the same conclusion.

Petitioners contend that review is warranted because *Janus* applies to full union members and private unions are state actors. Not so. Each of the purported "conflicts" that Petitioners urge this Court to "resolve" are based on a fundamental misunderstanding about the difference between fair share fee payers and full union members, rather than any conflict in the law. Indeed, lower courts uniformly reject Petitioners' arguments at every turn.

This Court has already denied at least eleven petitions that challenged the enforceability of agreements to pay union dues for a set period of time in the last eighteen months.[3] One even involved the very same union and membership application at issue here. *See Cooley*, 143 S. Ct. 405; App. 15. And, at least five circuits have rejected the argument that the waiver standard in *Janus* applies to the deduction of union dues pursuant to a membership and dues-deduction authorization.[4]

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[3] *Cooley v. California State Law Enforcement Association*, 143 S. Ct. 405 (2022); *Polk v. Yee*, 143 S. Ct. 405 (2022); *Yates v. Hillsboro Unified School District*, 142 S. Ct. 1230 (2022); *Woods v. Alaska State Employees Association, AFSCME Local 52*, 142 S. Ct. 1110 (2022); *Anderson v. Service Employees International Local Union 503,* 142 S. Ct. 764 (2022); *Few v. United Teachers Los Angeles*, 142 S. Ct. 2780 (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 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).

[4] *Littler v. Ohio Association of Public School Employees*, No. 20-3795, 2022 WL 898767 (6th Cir. Mar. 28, 2022); *Fischer*, 142 S. Ct. 426; *Bennett*, 142 S. Ct. 424; *Belgau*, 141 S. Ct. 2795; *Hendrickson*, 142 S. Ct. 423.

The same unanimity exists with respect to the lack of state action under 42 U.S.C. § 1983 where the union notifies the state to perform its ministerial deduction of union dues pursuant to the employee's private agreement. For example, as Judge Colloton recently explained in response to the very same argument Petitioners advance here, "[i]t is the terms of the employee's union membership, not any state action, that create the employee's obligation to pay and the union's right to collect." *Hoekman,* 41 F.4th at 978; *see Belgau*, 975 F.3d at 946-49 n.3 (rejecting same argument and explaining that "[o]ur conclusion that state action is absent in the deduction and the transfer of union dues does not implicate the Seventh Circuit's analysis [in Janus II] on the collection of agency fees"). This Court also recently explained that a private entity "does not convert . . . into a state actor," just because the government "licenses, [or] contracts with" it. *See Manhattan Community Access Corp. v. Halleck*, 139 S. Ct. 1921, 1931 (2019) (affirming dismissal of 42 U.S.C. § 1983 claim against private operator of public access cable channels, in part, because "the fact the government licenses, contracts with, or grants a monopoly to a private entity does not convert the private entity into a state actor — unless the private entity is performing a traditional, exclusive public function").

In light of the consensus amongst the courts, and the lack of any developments that would justify a grant of review, the petition should be denied.

II. The Ninth Circuit's Unpublished Opinion Correctly Applies *Janus*.

Ignoring the unanimous consensus in the lower courts, Petitioners contend that the Ninth Circuit's unpublished decision "conflicts with *Janus*" and even

(quite incredibly) claim that the impact is "more pernicious."[5] Petition for Review ("Pet.") 8. Petitioners are wrong. The Ninth Circuit's opinion does not conflict with *Janus*. Petitioners' assertions rest on a mistaken premise that *Janus* applies to full union members.[6] In doing so, they attempt to create a new maxim of law by ignoring the holding of *Janus* and the "swelling chorus of courts" below. *Belgau*, 975 F.3d at 951.

This Court held in *Janus* that "[n]either 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." *Janus*, 138 S.Ct. at 2486 (emphasis added). *Janus* itself recognized that "by agreeing to pay" and becoming a full union member, the employee affirmatively consents. *Id.*; *see also Bennett v. AFSCME, Council 31, AFL-CIO*, 991 F.3d 724, 732 (7th Cir. 2021) (*Janus* does not prohibit voluntary dues payments but "made clear that a union may collect dues when an employee affirmatively consents to pay"). Unlike agency fee payers, Petitioners signed membership applications. App. 2; App. 7. They agreed that the CBA is the operative agreement to which those applications apply. *Id.* They agreed to pay union dues in exchange for member benefits, rather than pay a fair share fee.

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[5] Petitioners make passing reference to "associational rights." Petition for Review 8. But, Petitioners did not raise such an argument below. Nor were "associational rights" even discussed by the Ninth Circuit, so the issue is of no import here. *See E.E.O.C. v. Federal Labor Relations Authority*, 476 U.S. 19, 24 (1986) (noting the Court's "normal practice" to refrain from addressing issues not raised in the Court of Appeals.)

[6] Petitioners briefly reference *Abood v. Detroit Bd. of Educ.*, 431 U.S. 209 (1977). But, *Janus* overruled *Abood*, and in any event, *Abood* does not discuss the right to resign.

They were not required to join. *See* App. 2; App. 7 ("I elect to become a member. . ."); *see also* App. 3 (observing that "the Lifeguards made the affirmative choice to become union members"); App. 7. And, in fact, after the *Janus* ruling in 2018, Petitioners had an entire month to opt out of their union membership, but failed to do so. App. 3; App. 8.

That the Lifeguards signed their dues-deduction authorization contract "years before *Janus* was decided" has no bearing on the Lifeguards' claims. Pet. 18. Parties have a right to expect that the contracts they enter into will be enforced. *See Hemstreet v. Spiegel, Inc.*, 851 F.2d 348, 350 (Fed. Cir. 1988) (holding "there is a compelling public interest and policy in upholding and enforcing settlement agreements voluntarily entered into"). It is a fundamental principle of contract law that parties cannot rescind a contract simply because, at the time of formation, they did not foresee the future development of the law. *See, e.g., Coltec Industries, Inc. v. Hogbood*, 280 F.3d 262, 271-73, 277 (3d Cir. 2002) (opining that a coal company that entered into contract as a result of statute later held to be unconstitutional could not rescind that contract because "a change in law does not, alone, justify such relief, even when the change is based on constitutional principles"); *see also Brady v. United States*, 397 U.S. 742, 757 (1970) (holding that "a voluntary plea of guilty intelligently made in the light of the then applicable law does not become vulnerable because later judicial decisions indicate that the plea rested on a faulty premise"); *Puckett v. United States*, 556 U.S. 129, 137 (2009). Petitioners failed to opt out in a timely manner and now seek to renege on their contractual obligations but, "the First Amendment does not support [their] right to renege on their promise to join and support the union." *Belgau*, 975 F.3d at 950. Not

unsurprisingly, "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.

The distinction between fair share fee payers and full union members is crucial. Petitioners' efforts to ignore it are erroneous.

Even if Petitioners were correct regarding *Janus*'s application, this Court does not usually grant certiorari to correct "the misapplication of a properly stated rule of law" in an unpublished decision. This is especially true where every court passing on these same merits-based arguments has found them to be insufficient.

A. Petitioners' Use of the Term "Maintenance of Membership" is a Semantical Choice that Creates No Novel Questions Worthy of Review.

The term "membership" under 29 U.S.C. § 158(a)(3) — the union-security section of the National Labor Relations Act (from which California's labor relations statutes are modeled) — has long been interpreted as synonymous with paying dues. *See NLRB v. General Motors Corp.* 373 U.S. 734, 742 (1963) (stating that "membership, insofar as it has significance to employment rights, may in turn be conditioned only upon payment of fees and dues"); *Pattern Makers v. NLRB*, 473 U.S. 95 (1985). While the applicable California statute refers to "organizational security in the form of maintenance of membership," in reality, "the only 'membership' that a union can require is the payment of fees and dues." Cal. Gov't Code § 3515.7(a); *Marquez*, 525 U.S. at 36.

Despite this long-standing interpretation, Petitioners claim that they were held to "maintenance of

membership" as if it is a distinct concept from their agreement to pay their dues. Pet. 11-14. This parsing of words is unpersuasive and does not make this case worthy of review. The only obligation CSLEA enforced was the obligation to pay dues. Indeed, the applicable MOU, incorporated into each Petitioner's individual contract, addresses only financial support, not "membership." *See* App. 28 ("A written authorization for CSLEA dues deductions in effect on the effective date of this Contract or thereafter submitted shall continue in full force and effect during the life of this Contract . . . ."). There is no reason to believe the California Public Employment Relations Board ("PERB") — the state administrative agency charged with administering the collective bargaining statutes covering employees — or any state court would interpret "membership" in this context as divorced from "payment of fees and dues." This purported "issue" is not one this Court needs to review because the actual and practical application of "maintenance of membership" is no more than the deduction of dues.

Even if there were some reasonable doubt (there is not) that the term "membership" in California Government Code section 3515.7(a) meant something else, that only underscores that this question is not proper for review. To the extent that a union did attempt to require a member to adhere to some obligation of membership *other than* dues deductions (which did not happen here), that member could file an unfair practice charge with PERB. If PERB (or a reviewing state court) unexpectedly interpreted "membership" as something other than the deduction of dues, the issue would become ripe for this Court to consider the constitutionality of the State's interpretation. But, as this case currently stands, no ripe question is presented. Because the Court does not

typically grant review to consider the constitutionality of a hypothetical interpretation of a state statute, it should not do so here.

Additionally, the Petition urges, as the primary basis for review, that "[t]his case differs from other post-Janus cases in which the Court denied review because [this case] concerns a maintenance of membership requirement." Pet. 26. For the reasons explained above, this proposed distinction is just semantic because "membership" in this context refers only to the obligation to pay dues. In any event, this case is not an appropriate vehicle for exploring the purported distinction between "maintenance of membership" and the obligation to pay dues because the purported distinction turns on a disputed issue of state law and was not addressed by the decisions below.

B. The Ninth Circuit and Lower Courts Unanimously Agree that *Janus* Does Not Impose a Heightened Waiver Analysis on Full Union Members.

Petitioners next contend that *Janus* imposed a heightened waiver requirement with respect to full union members. Pet. 15. They ignore the holding of *Janus*. No circuit court or district court agrees with that position. As all have uniformly recognized, *Janus* did not invalidate the law governing the formation and enforcement of voluntary contracts between unions and full members. Each "waiver" case Petitioners cite concerns a waiver arising from *inaction*, not a waiver by private agreement like their contracts here. *See Knox v. SEIU Local 1000*, 567 U.S. 298, 312, 315, 322 (2012) (stating that union could collect non-chargeable special political assessment from agency fee payers only if the nonmember agency fee payer opted into paying them, not only if they failed to object); *Curtis*

Publ'g Co. v. Butts, 388 U.S. 130, 142-44 (1967) (finding that libel defendant's silence did not constitute waiver of a defense recognized in subsequent case law). In fact, *Janus*'s waiver analysis even cited to a previous Supreme Court case that expressed the waiver of Eleventh Amendment immunity would be different if the State had made a "contractual commitment" where it "expressly consented to being sued in federal court." *See Coll. Sav. Bank v. Fla. Prepaid Postsecondary Educ. Expense Bd.*, 527 U.S. 666, 676 (1999). This plainly undermines Petitioners' contentions. Indeed, whether the court conducts a waiver analysis turns entirely on whether the employee chose to become a full union member or not. *Janus,* 138 S. Ct. at 2486 (holding that a fair share fee payer needs affirmative consent because that individual was forced to be a fair share fee payer if they chose *not* to a be union member). That distinction matters because it demonstrates that the employee affirmatively consented to dues deductions in exchange for full membership and benefits.

Petitioners here are not agency fee payers. They are full members. Upon employment they were guaranteed the "free choice of joining" CSLEA or "refraining from participation in any union." *See Cumero v. Pub. Employment Relations Bd.*, 49 Cal. 3d 575, 601 (1989). Such binary choices exist every day in life. When Petitioners contractually agreed to one choice over another they made a binding promise to honor the terms of their agreement. The fact that a later change in law occurred, making their past promise one they wish to "escape," does not make it any less binding. Nor does their past promise undermine their contractual commitments or present any "compelling reasons" to grant review.

C. Petitioners' Subsidiary Question Regarding State Action Does Not Independently Merit Review.

The Ninth Circuit's reference to "state action" in a footnote of its unpublished decision does not create a conflict and is not otherwise worthy of review.[7] Pet. 20. It does not change the outcome of the case. The Ninth Circuit did not rely upon it to reach its ultimate conclusion: that *Janus* does not apply to full union members that voluntarily entered into a private agreement with CSLEA. The assertion that a single footnote from an unpublished opinion will be heavily relied upon in future cases is inherently improbable. App 4 n.2.

Nor is there any conflict with the Seventh Circuit. Pet. 10, 20. Neither *Janus v. AFSCME, Council 31*, 942 F.3d 352 (7th Cir. 2019) ("*Janus II*") nor *Hudson v. Chi. Teachers Union Loc. No.* 1, 743 F.2d 1187 (7th Cir. 1984) involved full union members — only agency fee payers. In those cases, the attributable "state action" was a requirement in the CBA that non-member public employees had to pay agency fees *as a condition of employment*. *See Janus II*, 138 S. Ct. at 2479 n.24 (noting the "very different First Amendment question that arises when a State *requires* its employees to pay agency fees") (emphasis added). Here, the state implements the union member's instructions pursuant to his or her private contract with the union, not due to any state policy or law. *See Tulsa Prof'l Collection Servs. v. Pope*, 485 U.S. 478, 485 (1988) ("Private use of state-sanctioned private remedies or procedures does not rise to the level of state action");

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[7] Petitioners raise an argument regarding state action that is not actually included in their "questions presented."

see also Naoko Ohno v. Yuko Yasuma, 723 F.3d 984, 996 (9th Cir. 2013) (recognizing that state action does not exist under the "joint action" test between a private party and the government unless "the government affirms, authorizes, encourages, or facilitates unconstitutional conduct through its involvement with a private party"). Agency fee payers who chose not to join the union and still had to pay a fee are not the same as Petitioners here who affirmatively chose to join the union and agreed to pay fees. Because Petitioners fail to recognize the Seventh Circuit's distinctions as applied to agency fee payers, Petitioners' improper premise continues to be the tail that wags the dog and is unpersuasive.

There simply is no conflict between *Belgau* and *Janus*. Indeed, this Court already denied the *Belgau* petition. Even if it had not, there is no "compelling reason" for this Court to use an unpublished, non-precedential case to address *Belgau*.

Nor does *Belgau* "conflict with *Lugar*." Pet. 21. *Lugar v. Edmonson Oil Co.*, 457 U.S. 922 (1982) does not concern the state's perfunctory ministerial action pursuant to private agreement. Instead, *Lugar* concerned a writ of attachment. *Id*. Specifically, the debtor challenged a state statute that "required only that Edmondson allege, in an *ex parte* petition, a belief that petitioner was disposing of or might dispose of his property in order to defeat his creditors." *Id.* at 924. The debtor alleged that such a permissive statute violated his due process rights, and this Court agreed. Unlike *Lugar*, CSLEA does not, as Petitioners assert, "work hand-in-glove with the State to seize disputed property from the Lifeguards." Pet. 22. The "property" at issue is not "disputed" as it was promised in an agreement. No "County Sheriff" showed up at

Petitioners' door and handed them a writ tying up their property until a formal hearing. *Lugar*, 457 U.S. at 922. Instead, only *after* Petitioners voluntarily entered a private contract with CSLEA did the state perform the ministerial task of deducting union dues. Thus, Petitioners raise only questions that concern "the private agreement between the unions and the employees" and not "the exercise of any state-created right or privilege." *Hoekman,* 41 F.4th at 978-79; *see also Blum v. Yaretsky*, 457 U.S. 991, 1004-05 (1982) ("That the State responds to [private parties'] actions . . . does not render it *responsible* for those actions") (alteration in original).

This type of public employee payroll deduction is not uncommon. Employees routinely authorize deductions regarding their health and retirement plans. If this Court adopted the state action analysis Petitioners advance, any private party that received money related to those health and pension plans would be a "state actor" and subject to 42 U.S.C. § 1983 claims. Such a result would impermissibly foist the responsibilities of state public employee relations board — vested with the power to resolve labor-relations disputes involving public employees and their unions — onto federal courts. That cannot be the proper application. Petitioners' contentions regarding state action do not merit independent review in this unpublished, non-conflicting case.

D. The Validity of the Contract is Not Worthy of Review as It is a Fact-Based Inquiry Under State Law.

Petitioners also insist this case is unique because "the Lifeguards never agreed to abide by the State and CSLEA's 2019-2023 maintenance of membership requirement." Pet. 15. However, the Ninth Circuit

proceeded from the (correct) premise that valid individual contracts existed between Petitioners and CSLEA. App. 2 n.1. So, even if this case had binding precedential effect, it would not be authority for the proposition that members with invalid contracts may nevertheless be required to pay dues after tendering their resignations. Whether Petitioners here entered into valid contracts is a fact-bound question concerning state law that neither court below reached. *See Polk v. Yee*, 481 F.Supp.3d 1060, 1072 (2020) ("To the extent plaintiffs alleged that the Union defendants misinformed them about their legal obligations to join the union or pay membership dues, their claims would be against the Union defendants under state law") (quoting *Mendez. v. California Teachers Ass'n, et al.,* 419 F.Supp.3d 1182, 1186 (N.D. Cal. 2020)). Thus, Petitioners present questions of the type this Court does not typically grant certiorari to review.

Petitioners' attack on the validity of the contracts rests on the dubious assertion that a signed agreement that incorporates another document by reference is unenforceable unless the signatory was given a copy of the incorporated document at the same time he or she signed — apparently even when the signatory did not ask for a copy. Were this the law, many routinely enforced agreements that themselves refer to other documents would be subject to invalidation. For example, commercial sales agreements, amendments to estate documents, or arbitration agreements referencing the American Arbitration Association rules (thereby waiving the Seventh Amendment right to a jury trial) routinely reference other documents that may or may not be present at the time of signing. *See, e.g.*, *Exchange Mut. Ins. Co. v. Haskell Co.*, 742 F.2d 274 (6th Cir. 1984) ("Although Exchange Mutual was not a signatory to the primary construction contract,

the performance bond incorporated by reference the terms of the underlying subcontract. The subcontract, in turn, incorporated by reference the terms of the primary construction contract which imposed an obligation to submit all unresolved disputes to arbitration"); *Hawkins v. Aid Ass'n for Lutherans*, 338 F.3d 801 (7th Cir. 2003) (finding that plaintiffs had to submit to mandatory arbitration even if that term had not been included at the time of signing because they had agreed via contract to abide by the insurance organization's constitution and bylaws which were subject to change).

Because this Court does not generally review fact-based issues of state law, the lower courts' rulings did not touch on or determine this question, and Petitioners' legal contentions are without merit, no independent question worthy of review exists on this basis either.

III. Petitioners Overstate the Importance of this Case and Dismiss the Importance of Holding Individuals to their Contractual Commitments.

The protection of the First Amendment is often trumpeted the loudest where it does not apply. Akin to its time, place, and manner restrictions, there are instances where the First Amendment controls, and those where it does not. Here, it does not. Petitioners entered a contract with CSLEA to become full union members. App. 3. They enjoyed the benefits of full union membership. They allowed their membership to continue despite *Janus*, and they waited until CSLEA finished negotiating their contracts to attempt to resign. *Id.* *Janus* does not permit them to unilaterally revoke their contractual promises under the guise of a constitutional claim. Nor does that

disguise make this case one deserving of review. The purported distinguishing characteristics Petitioners rely on with respect to this case are differences with no meaningful distinctions.

As explained above, *Cohen* instructs that "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. CSLEA does not violate its members' First Amendment rights by holding them to the terms of their private agreement because "[t]he First Amendment does not support [e]mployees' right to renege on their promise to join and support the union." *Belgau*, 975 F.3d at 950 (citing *Cohen* and *Erie Telecomms., Inc. v. City of Erie, Pa.,* 853 F.2d 1084, 1089-90 (3rd Cir. 1988) (distinguishing a First Amendment challenge from a claim to enforce "contractual obligations under the franchise and access agreements")). Nor does an intervening change in law "taint that consent or invalidate [Petitioners'] contractual agreement." *Cooley,* 385 F.Supp.3d 1077 (E.D. Cal. 2019) (citing *Brady v. United States,* 397 U.S. 742, 757 (1970)). And, because full union members voluntarily and affirmatively consented to the deduction of dues, they are not subject to the waiver analysis this Court applied to agency fee payers in *Janus*. In sum, the Lifeguards' obligations to pay union dues cannot be invalidated under the First Amendment on the basis that they want to renege on their voluntary promises. *See Crockett v. NEA-Alaska,* 367 F. Supp. 3d 996, 1008 (D. Alaska 2019) (explaining that union members "make a decision to pay union membership dues in exchange for certain benefits," and this "voluntary choice precludes an argument that they were compelled to subsidize the Union Defendants' private speech," even where they did not have the option to avoid fees

altogether) (affirmed on appeal); *see also Kidwell v. Transp. Commc'ns Int'l Union*, 946 F.2d 283, 292-93 (4th Cir. 1991) ("Where the employee has a choice of union membership and the employee chooses to join, the union membership money is not coerced. The employee is a union member voluntarily"); *Farrel v. IAFF*, 781 F. Supp. 647, 649 (N.D. Cal. 1992) (same).

Petitioners are likewise incorrect that "[t]his case differs from other post-*Janus* cases" because they continue to conflate their term "maintenance of membership" as something other than synonymous with dues deductions. Pet. 11. In doing so, they make a mountain out of a mole hill. "[T]he only 'membership' that a union can require is the payment of fees and dues." *Marquez*, 525 U.S. at 36.

Petitioners also overstate the practical importance of this case. Union members in Petitioners' bargaining unit already had the choice, after *Janus*, to resign membership and end their dues deductions. They chose to wait until after CSLEA negotiated their contract before attempting to do so. Their current CBA expires in about six months and lifeguards may end their deductions during the upcoming window.

Finally, good policy reasons exist to uphold contractual commitments and require that dues authorizations are irrevocable for a certain amount of time. *Leonard v. Clark*, 12 F.3d 885, 891 (9th Cir. 1993) (the "public interest in the stability and finality of collective bargaining agreements . . . is stronger than that in enforcing ordinary private settlements"). Such advance commitments by union members allow the union to engage in long-term financial planning. *Id.* They prevent employees from opportunistically joining the union to take advantage of a certain benefit and then dropping membership immediately thereafter. It

also alleviates the burden of administrating an ever-changing payroll process that would occur if employees could opt in and out of deductions at every whim. And, of course, there is a strong contract interest in holding people to their promises. Individuals contract away their First Amendment protections frequently. *National Abortion Federation v. Center for Medical Progress*, No. 15-cv-03522-WHO, 2016 WL 454082 (N.D. Cal. Feb. 5, 2016) (collecting cases for proposition that speech rights can be knowingly waived by contract). Non-disclosure agreements, settlement agreements, arbitration agreements, and any other contract voluntarily limiting speech would lose all significance if the reverse were true.

CONCLUSION

This unpublished case, concordant with each case addressing the same issues, does not present a "compelling reason" worthy of this Court's review. Therefore, CSLEA respectfully asks the Court to deny the Petition for Certiorari.

Respectfully submitted,

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