NO. 22-219

In The

Supreme Court of the United States

CARA O'CALLAGHAN and JENEE MISRAJE,
Petitioners,

v.

MICHAEL V. DRAKE, M.D., in his official capacity as President of the University of California; TEAMSTERS LOCAL 2010; and ROB BONTA, in his Official Capacity as Attorney General of California,
Respondents.

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

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RESPONDENT UNIVERSITY PRESIDENT MICHAEL V. DRAKE M.D.'S BRIEF IN OPPOSITION

CHARLES F. ROBINSON
RHONDA S. GOLDSTEIN
THE REGENTS OF THE UNIVERSITY OF CALIFORNIA
OFFICE OF THE GENERAL COUNSEL
1111 Franklin Street, 8th Floor
Oakland, CA 94607-5200
Telephone: 510-987-9800
Facsimile: 510-987-9757
rhonda.goldstein@ucop.edu

HANSON BRIDGETT LLP
ADAM W. HOFMANN
COUNSEL OF RECORD
DOROTHY S. LIU
GILBERT J. TSAI
DAVID C. CASARRUBIAS
425 Market Street, 26th Floor
San Francisco, CA 94105
Telephone: (415) 777-3200
Facsimile: (415) 541-9366
ahofmann@hansonbridgett.com

Counsel for Michael V. Drake, M.D., in his official capacity as President of the University of California

RESTATEMENT OF QUESTION PRESENTED

The First Amendment prohibits governments from forcing public employees to pay agency fees to unions the employees have chosen not to join. The First Amendment does not, however, limit a public employee's contractual agreement to pay dues for a contractually specified period to a union they chose to join. Did the Ninth Circuit correctly hold that, after choosing to join Teamsters Local 2010, Petitioners Cara O'Callaghan and Jenee Misraje had no First Amendment right to avoid their agreement to pay union dues for the contractually specified period?

CORPORATE DISCLOSURE STATEMENT

Defendant Michael V. Drake, M.D., is an individual, sued in his official capacity as the President of the University of California, a governmental entity existing under the laws of the State of California. Accordingly, there are no disclosures required under Sup. Ct. R. 29.6.

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RESPONDENT UNIVERSITY PRESIDENT MICHAEL V. DRAKE M.D.'S BRIEF IN OPPOSITION

INTRODUCTION

Petitioners Cara O'Callaghan and Jenee Misraje seek to extend this Court's decision in *Janus* v. *American Federation of State, County & Municipal Employees, Council 31*, 138 S. Ct. 2448 (2018) to grant them a constitutional right to escape their contractual agreements to pay union dues to Teamsters Local 2010. The courts below properly rejected Petitioners' theories, and there is no basis for this Court to consider those theories on certiorari.

First, this Court should deny certiorari because Petitioners' case is moot. Teamsters Local 2010 has unconditionally and irrevocably released both Petitioners from any further obligations under the membership agreements they challenged in the case below. Consistent with that release and with the mandates of California law, the University is not now deducting—and will not in the future deduct—union dues from either Petitioner's paychecks unless and until either chooses to rejoin a union and expressly authorizes future deductions. Because Petitioners have no personal stake in the outcome of this lawsuit and cannot benefit from a favorable judgment, the case is moot, and certiorari review should be denied.

Second, even if their claim were justiciable, Petitioners still fail to identify any basis for the Court to grant certiorari. They have not identified any relevant split in authority that warrants this Court's resolution. Nor does any appear. The Ninth

Circuit's unpublished decision below merely applies existing precedent to the facts of this case, reaffirming the holding in *Belgau* v. *Inslee*, 975 F.3d 940, 950-951 (9th Cir. 2020), that public employees do not have a constitutional right to avoid voluntarily incurred, contractual obligations to pay union dues. By following its own decision in *Belgau*, the Ninth Circuit reached the same conclusion in the present case that every circuit court to consider the question has reached. Nothing presented here merits this Court's consideration.

Moreover, Petitioners' claims present no important constitutional issue for the Court to resolve. Lower courts have correctly refused to constitutionalize the terms of public employees' union-membership agreements, regardless of length. Frustrations over those terms are better resolved under state laws, which guard public employees against both unconscionable terms and any improper or coercive conduct by unions.

This case accordingly presents neither a question warranting the Court's consideration nor an appropriate vehicle for resolving that question. The Court should deny certiorari.

STATEMENT OF THE CASE

A. Michael V. Drake, M.D.

Respondent Michael V. Drake, M.D., has been the President of the University of California since his appointment in August 2020. 9th Cir. Dkt. No. 63 4 n.1. He substituted into this case for the University of California's last President, Janet Napolitano. *See* Fed. R. App. P. 43(c)(2). As Dr. Drake is a party to

this case only in his official capacity, this opposition will refer to him as "the University."

B. Factual Background

1. Petitioners are University of California employees who joined Teamsters Local 2010 and authorized deduction of union dues from their paychecks.

Ms. O'Callaghan alleges that she is a finance manager employed in the Department of Recreation at the University of California, Santa Barbara. SER 3.[1] After several years working at the University, she joined Teamsters Local 2010 on May 31, 2018, signing an application and authorizing the deduction of union dues from her paycheck. SER 4.

Ms. Misraje alleges that she is employed as an administrative assistant in the Geography Department at the University of California, Los Angeles. SER 3. Early in her career at the University, on July 27, 2015, she joined Teamsters Local 2010 by signing an application and authorizing the deduction of union dues from her paycheck. SER 5.

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[1] References to the Excerpts of Record and Supplemental Excerpts of Record filed in the Ninth Circuit are noted as "ER" and "SER" respectively.

2. Petitioners later resigned from Teamsters Local 2010 and requested to stop paying dues, but were advised by the union that they were contractually obligated to continue contributing dues for a contractually specified period of time.

Petitioners allege that they requested that their union membership be terminated, but Teamsters Local 2010 responded that, although they were free to resign their membership at any time, payroll deductions would continue until and unless they gave notice pursuant to the terms of their union applications. SER 4-6. As a result, consistent with the union's direction, the University continued to deduct dues from Petitioners' paychecks. SER 4, 6.

C. District Court Proceedings

Petitioners filed suit challenging, among other things, the ongoing deduction of union dues from their paychecks and seeking a refund of dues paid to the union. SER 2, 7-13. All three Respondents filed motions to dismiss. ER 68-69. The University argued that the district court lacked jurisdiction over Petitioners' claims, which constituted claims of "unfair practices" subject to California's Public Employment Relations Board's exclusive jurisdiction. ER 12. The University further argued that Petitioners' obligation to pay union dues in the manner they had authorized—and consistent with the terms of that authorization—did not violate their First Amendment rights. ER 13.

The district court rejected the University's jurisdictional objection, finding that Petitioners had asserted claims under the First Amendment, not unfair labor claims, and those claims accordingly fell within the court's jurisdiction. ER 12. But the district court agreed with the University that Petitioners failed to plead any violation of their First Amendment rights and granted its motion to dismiss on that ground. ER 13-14.

The district court also granted the motions to dismiss filed by Teamsters Local 2010 and the Attorney General. ER 14-21. Having resolved all the claims in the case, the district court entered judgment on October 4, 2019. ER 4-5. Petitioners timely appealed the district court's judgment to the Ninth Circuit Court of Appeals. ER 1-2.

D. Teamsters Local 2010's Motion to Remand or Dismiss

Following the appeal of the district court's judgment, Teamsters Local 2010 released Petitioners from all further obligations under their union-membership agreements, and it refunded all dues paid to the union during the period of the statute of limitations applicable to their claims. *See* 9th Cir. Dkt. No. 44-1. The union directed the location where Ms. Misraje worked, the University of California, Los Angeles, to discontinue all further dues deductions for her. 9th Cir. Dkt. No. 44-4. And it did the same for Ms. O'Callaghan at the University of California, Santa Barbara. *Id*. Simultaneously, the union immediately, unconditionally, and irrevocably released both Petitioners from any further obligations under any dues-deduction agreements

they had with the union. *Id*. In light of those developments, the union filed a motion to remand or dismiss the appeal because its actions to redress Petitioner's dues complaints had mooted their claims. 9th Cir. Dkt. No. 44-1.

E. The Ninth Circuit's Decision

In an unpublished memorandum disposition, the Ninth Circuit affirmed. App. 2-3. Importantly, the court held that the district court correctly determined that Respondents did not violate Petitioners' First Amendment Rights. *Id.* 2. Relying on *Belgau*, the court acknowledged that the First Amendment prohibits compelled association, but it does not excuse obligations arising from voluntary agreements. *Id.* Because Petitioners chose to join Teamsters Local 2010 and authorized the University to deduct dues from their wages pursuant to the terms of their membership agreements—including terms limiting when they could withdraw that authorization—the court concluded that Petitioners' First Amendment rights had not been violated. *Id.* The court also summarily denied the union's motion to remand or dismiss. *Id.* 2 n.1.

Petitioners timely filed petitions for panel rehearing and rehearing en banc. *See* App. 28. Those petitions were summarily denied without any votes in support of rehearing. *Id.* 28-29.

REASONS FOR DENYING THE PETITION

I. The case is moot.

Teamsters Local 2010 has unconditionally and irrevocably released both Petitioners from any further obligations under their membership agreements. 9th Cir. Dkt. No. 44-4. Under California law, and consistent with the union's related instructions, the University is not now deducting and will not in the future deduct union dues from either Petitioner's paychecks, unless and until either *chooses* to re-join the union and expressly authorizes future deductions. As a result, their claims are moot, and this Court should deny certiorari.

The authority of federal courts is limited to resolving actual and concrete disputes. *Genesis Healthcare Corp.* v. *Symczyk*, 569 U.S. 66, 71 (2013). Thus, to invoke federal-court jurisdiction, a plaintiff must demonstrate a legally cognizable interest in the outcome of the action. *Id.* Relatedly, this Court has held that "an actual controversy must be extant at all stages of review, not merely at the time the complaint is filed." *Id.* (cleaned up). "If an intervening circumstance deprives the plaintiff of a personal stake in the outcome of the lawsuit, at any point during litigation, the action can no longer proceed and must be dismissed as moot." *Id.* at 72 (cleaned up).

As against the University, Petitioners seek only prospective relief to end their dues deductions and to declare that certain aspects of their collective-bargaining agreement cannot be constitutionally applied to them. But all dues deductions by the

University ended when the Teamsters Local 2010 released Petitioners from any further obligations under their union-membership agreements. Their claims are accordingly moot and fall outside this Court's jurisdiction.

As discussed below, the University does not believe that Petitioners have presented claims that merit this Court's attention. But even if the Court disagrees, it can consider the issues in the context of another case where the plaintiff's claims are live. It should deny certiorari here.

II. This case presents no issue meriting this Court's consideration.

The Petition in this case rests entirely on Petitioners' assertion that the case presents a question of first impression regarding the enforceability of union agreements following this Court's decision in *Janus* v. *American Federation of State, County & Municipal Employees, Council 31*, 138 S. Ct. 2448 (2018). Petitioners overstate their case, and there are no "compelling reasons" under this Court's Rule 10 to grant certiorari here.

A. The decision below presents neither a split of decision nor significant new authority.

1. The Ninth Circuit's decision does not conflict with any other decision by any circuit court in the nation, or with the decision of any state court of last resort. Sup. Ct. R. 10(a). To the contrary, the unpublished memorandum decision below merely follows and applies controlling circuit precedent, *Belgau*, 975 F.3d at 951.

Belgau was the Ninth Circuit's first post-*Janus* decision to consider whether the First Amendment granted government employees a right to escape their contractual agreements to pay union dues. As *Belgau* explained, "*Janus* did not alter the[] basic tenets of the First Amendment." 975 F.3d at 950. "The First Amendment does not support Employees' right to renege on their promise to join and support the union." *Id.* "This promise was made in the context of a *contractual* relationship between the union and its employees." *Id.* (emphasis added). Put differently, *Belgau* recognized that public employees do not have a right to avoid voluntarily incurred contractual obligations to pay union dues.

Neither any panel of the Ninth Circuit nor any other circuit court has disagreed with or even materially distinguished *Belgau* to date. To the contrary, *Belgau* has been relied upon as binding circuit precedent since the day it was decided. *E.g. Wagner* v. *University of Washington*, No. 20-35808, 2022 WL 1658245, at *1 (9th Cir. 2022) (Mem.) (relying on *Belgau*'s holding that the First Amendment does not support a union member's right to renege on a contractual promise); *Savas* v. *California State Law Enforcement Agency*, No. 20-56045, 2022 WL 1262014, at *1 (9th Cir. 2022) (Mem.) (same); *Mendez v. California Teachers Ass'n*, 854 Fed. App'x 920, 921 (9th Cir. 2021) (Mem.) (same); *Kurk* v. *Los Rios Classified Emps. Ass'n*, No. 21-16257, 2022 WL 3645061, at *1 (9th Cir. 2022) (Mem.) (same); *DePierro* v. *Las Vegas Police Protective Ass'n Metro, Inc.*, No. 21-16541, 2022 WL 3645198, at *1 (9th Cir. 2022) (Mem.) (same); *Polk* v. *Yee*, 36 F.4th 939, 943 (9th Cir. 2022) (same); *Few* v.

United Teachers Los Angeles, No. 20-55338, 2022 WL 260023, at *1 (9th Cir. 2022) (Mem.) (same); *Labarrere* v. *University Pro. and Technical Emps. (UPTE) CWA 9119*, No. 20-56173, 2022 WL 260868, at *1 (9th Cir. 2022) (Mem.) (same); *Grossman* v. *Hawaii Gov't Emps. Ass'n*, 854 Fed. App'x 911, 912 (9th Cir. 2021) (Mem.) (same); *Durst* v. *Oregon Education Ass'n*, 854 Fed. App'x 916, 917 (9th Cir. 2021) (Mem.) (same). And other circuits have followed *Belgau's* lead. *E.g. Bennett* v. *Council 31 of the Am. Fed'n of State, Cnty. and Mun. Emps., AFL-CIO*, 991 F.3d 724, 730-731 (7th Cir. 2021) (following *Belgau*); *Fischer* v. *Governor of New Jersey*, Nos. 19-3914 and 19-3995, 842 Fed. App'x 741, 753 (3rd Cir. 2021) (same); *Hendrickson* v. *AFSCME Council 18*, 992 F.3d 950, 962 (10th Cir. 2021) (same).

Petitioners can only point to inapposite statutes, an unpublished district court order, a concurring opinion from a member on the Federal Labor Relations Authority, and the opinions of three State Attorneys General to suggest any disagreement with *Belgau*. None of those authorities are of precedential value and so none reveal a present decisional conflict warranting this Court's resolution.

2. Further counseling against certiorari in this case, the Ninth Circuit's decision below is an unpublished memorandum disposition that merely and summarily applies *Belgau* to Petitioners' allegations. App. 1-3. Unpublished decisions in the Ninth Circuit are not precedential and do not bind future parties. *Olivas-Motta* v. *Whitaker*, 910 F.3d 1271, 1278 (9th Cir. 2018). Because the Ninth Circuit's decision below is of no precedential value, it

is of no interest to anyone other than the parties in this litigation.

Nonetheless, unsatisfied with the result in *Belgau*, Petitioners use their present Petition to attack that decision collaterally. However, this Court previously considered a petition in *Belgau* and denied certiorari. *Belgau* v. *Inslee*, 141 S. Ct. 2795 (2021). There is no reason for the Court to take the Ninth Circuit's memorandum disposition in this case as an opportunity to reconsider its refusal to hear *Belgau*.

B. The Ninth Circuit correctly rejected Petitioners' invitation to constitutionalize their contractual obligations.

1. Petitioners' writ petition asserts that this Court's decision in *Janus* prohibits the dues deductions challenged in this case. Not so. *Janus* did not hold that the First Amendment is implicated by employees' contractual agreements to contribute to the unions they choose to join. And there is no reason for this Court to constitutionalize contractual disputes otherwise governed by state law.

As the Ninth Circuit held, an employer's deduction of union dues pursuant to state law does not implicate an employee's constitutional rights, so long as the employee authorized the deductions as part of their union membership agreement. *Belgau*, 975 F.3d at 944-945. By contrast, in *Janus*, statutory "agency fees" were being deducted from employees who had refused to join their union; the fees were required by statute for all such non-member employees, rather than authorized by the employees themselves. *Janus*, 138 S. Ct. at 2464.

Here, Petitioners acknowledge that they joined Teamsters Local 2010 and signed an agreement authorizing deduction of dues. SER 4-5. Because Petitioners joined the union and contractually authorized the deductions they now challenge, there was no compelled speech. *See Belgau*, 975 F.3d at 950-952. The fact that Petitioners' membership agreements required them to continue paying dues for a specific period of time does not render their contributions compelled speech. *Id.* at 950 ("The First Amendment does not support Employees' right to renege on their promise to join and support the union."); *see also Cohen* v. *Cowles Media Co.*, 501 U.S. 663, 672 (1991) (holding that the First Amendment does not "confer . . . a constitutional right to disregard promises that would otherwise be enforced under state law").

2. Attempting to constitutionalize their contractual obligations, Petitioners contend that their union-membership agreements do not establish a sufficient waiver of their constitutional rights under *Janus*. But a constitutionally sufficient waiver is only required where government action implicates a constitutional right in the first instance, as in *Janus* where the Court found the unauthorized deduction of statutorily imposed agency fees violated employees' First Amendment rights. *Belgau*, 975 F.3d at 951-952. *Janus*, however, "in no way created a new First Amendment waiver requirement for union members before dues are deducted pursuant to a voluntary agreement." *Id.* at 952.

Petitioners, like the plaintiffs in *Belgau*, joined the union and agreed to pay dues. As a result, the

withdrawal of dues in the manner Petitioners authorized neither compelled speech by them nor implicated their rights under the First Amendment. *Belgau*, 975 F.3d at 950. Without compelled speech, there is no need for a constitutional waiver of the kind discussed in *Janus*. *Id.* at 950-952. Petitioners' arguments accordingly fail to suggest a constitutional issue for this Court to resolve.

Petitioners' reliance on cases articulating the constitutional-waiver standard is likewise misplaced for the same reason. Like *Janus*, those cases considered the sufficiency of an asserted waiver of an established constitutional right, not a waiver requirement tied to a contractual obligation existing *outside* of a constitutional restriction, like the financial commitments at issue in this case. *See*, *e.g.*, *College Savs. Bank* v. *Florida Prepaid Postsecondary Educ. Expense Bd.*, 527 U.S. 666, 680-682 (1999) (finding state did not waive its Eleventh Amendment immunity by consenting to suit in state court). As *Belgau* established, the critical distinction is that the *contractually authorized* deduction of union dues from Petitioners' paycheck did not implicate Petitioners' constitutional rights in the first place, and thus did not require a waiver like the one contemplated in *Janus*. *Belgau*, 975 F.3d at 951-952.

3. Petitioners' frustration with the length of their obligation to continue paying union dues is better evaluated under state law; it does not create a constitutional right to limit contract terms. For example, California's Higher Education Employer-Employee Relations Act ("HEERA") governs the collective bargaining rights of University employees.

Cal. Gov't Code § 3560 *et seq*. That law also protects represented employees from misconduct by employee organizations like Teamsters Local 2010. For example, it is unlawful for a union to "[i]mpose or threaten to impose reprisals on employees, to discriminate or threaten to discriminate against employees, or otherwise to interfere with, restrain, or coerce employees because of their exercise of rights," including "the right to refuse to join employee organizations or to participate in the activities of these organizations . . . ." Cal. Gov't Code §§ 3571.1(b), 3565. It also prohibits misconduct by union representatives, such as telling an employee that union membership is mandatory. *See*, *Mendez* v. *California Teachers Ass'n*, 419 F. Supp. 3d 1182, 1187 (N.D. Cal. 2020); *Laura Fowles* v. *Office & Pro. Emps. Int'l Union, Local 29, AFL-CIO & CLC*, PERB Dec. No. 2236-M, 2012 WL 898617 (Cal. Public Employment Relations Bd. Feb. 7, 2012). Thus, to the extent Petitioners have complaints about their union-membership agreements or the circumstances under which they signed them, those complaints would have been properly directed at Teamsters Local 2010 under state law. They do not give rise to First Amendment concerns.

4. Petitioners also offer no sound reason for constitutionalizing an opt-out period based on its comparative length. Just like the plaintiffs in *Belgau*, Petitioners here voluntarily joined their union and signed dues-deduction authorizations. *Compare Belgau*, 975 F.3d 940 at 944-945, *with* SER 4-5. Also like those in *Belgau*, Petitioners' authorizations obligated them to pay dues to their union for a certain period of time. *Compare Belgau*, 975 F.3d 940

at 944-945 with SER 4-6. Despite Petitioners' assertions, the period specified in their agreements was not indefinite; it was plainly defined and corresponded with the period of the collective bargaining agreement between Teamsters Local 2010 and the University, *i.e.* four years. SER 4-5.

Petitioners seem to suggest that this four-year term somehow implicates the First Amendment, even if the one-year period in *Belgau* does not. But they offer neither a textual nor historical basis for the constitutional distinction they would draw. The First Amendment is no more implicated by a four-year period than it is by a one-year period.

By contrast, a decision constitutionalizing a one-year period would collide with one of the most basic rules of contract law, namely, the freedom of contract. *Morta* v. *Korea Ins. Corp.*, 840 F.2d 1452, 1460 (9th Cir. 1988) ("[T]he general rule of freedom of contract includes the freedom to make a bad bargain. If we take autonomy seriously as a principle for ordering human affairs, . . . people must abide by the consequences of their choices." (cleaned up)).

Here too, state law also provides more apt protections for Petitioners' concerns. For example, if Petitioners are correct that the length of their dues authorization is unfair, they can seek relief under state laws prohibiting unconscionable contract terms. *See*, *e.g.*, Cal. Civ. Code § 1670.5. If their agreement to pay union dues resulted from undue influence or duress, state law again relieves them of the obligation. *See*, *e.g.*, Cal. Civ. Code §§ 1569, 1575. There is no reason to create constitutional rights where state laws provide well-established

protections. *See Minnick* v. *California Dep't of Corrections*, 452 U.S. 105, 122-123 (1981) (discussing this Court's policy of strict necessity in disposing of constitutional issues).

Petitioners' complaints about their agreement to pay dues to Teamsters Local 2010 raise no constitutional issues for this Court to evaluate, and certiorari is not justified.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

DATED: January 3, 2023

CHARLES F. ROBINSON
RHONDA S. GOLDSTEIN
THE REGENTS OF THE
UNIVERSITY OF CALIFORNIA
OFFICE OF THE GENERAL
COUNSEL
1111 Franklin Street, 8th Floor
Oakland, CA 94607-5200
Telephone: 510-987-9800
Facsimile: 510-987-9757
rhonda.goldstein@ucop.edu

HANSON BRIDGETT LLP
ADAM W. HOFMANN
COUNSEL OF RECORD
DOROTHY S. LIU
GILBERT J. TSAI
DAVID C. CASARRUBIAS
425 Market Street, 26th Floor
San Francisco, CA 94105
Telephone: (415) 777-3200
Facsimile: (415) 541-9366
ahofmann@hansonbridgett.com