No. 22-498

In The
Supreme Court of the United States

KRISTINE KURK, *an individual*,

Petitioner,

v.

LOS RIOS CLASSIFIED EMPLOYEES ASSOCIATION, *et al.*,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

BRIEF IN OPPOSITION FOR RESPONDENT LOS RIOS CLASSIFIED EMPLOYEES ASSOCIATION

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QUESTION PRESENTED

Whether the First Amendment allows a union member to breach her membership obligations and resign from her union at any time.

CORPORATE DISCLOSURE STATEMENT

Respondent Los Rios Classified Employees Association ("LRCEA") has no parent corporation and no company owns any stock in LRCEA.

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INTRODUCTION

The Petition should be denied because it is not an appropriate vehicle to address the union membership question presented. Kurk's 42 U.S.C. § 1983 claim is barred by the threshold issues of mootness and lack of state action, and Kurk waived any argument to the contrary by failing to address the issues in her Petition. Likewise, Kurk's attempt to make this case about more than the collection of dues directly contradicts arguments she made below and presents complex questions of state law that the courts below did not address.

Even if this case were an appropriate vehicle, however, the Ninth Circuit's unpublished decision does not merit review because it is consistent with this Court's precedents and the decisions of every single lower court to address the issue. As Kurk acknowledges, no court has found that the First Amendment permits a union member to breach her membership obligations and resign from her union at will. On the contrary, this Court's precedent is clear that parties cannot disregard their contractual promises under the guise that they run afoul of the First Amendment.

In recognition of the Petition's lack of merit, this Court has already denied eleven similar post-*Janus* petitions for certiorari brought by union members. No different outcome is warranted here.

STATEMENT OF THE CASE

A. Background.

Appellant Kristine Kurk is an employee benefits technician employed by the Los Rios Community College District (the "District"). Excerpts of Record ("ER"), 9th Cir. ECF 13 at 188. On June 24, 1997, she joined the Los Rios Classified Employees Association (the "Union") by completing a "Dues Check-Off Form." ER-188. The form provided two "Payroll Deduction Options:" (a) "Union membership deduction" and "Non-membership, agency service fee deduction." Pet. App. 25a. Kurk selected "Union membership deduction," Pet. App. 25a, authorizing the deduction from her paycheck for Union membership, ER-193. For over twenty years, Kurk remained an active member in the Union and exercised many benefits available only to Union members, including attending meetings, ER-203, voting in elections, ER-206–07, and participating in internal Union discussions, ER-208–09; Excerpts of Record ("SER"), 9th Cir. ECF 21 at 20–21.

The Union negotiates successive collective bargaining agreements with the District. Each collective bargaining agreement governed Kurk's benefits, rights, and obligations during the period in which the agreement was in effect. The Union informed Kurk each time she was eligible to vote on a collective bargaining agreement, ER-196–97; ER-199; ER-206–07, Kurk knew that she could read the applicable collective bargaining agreement on the Union's website, ER-204, and Kurk had, in fact, read collective bargaining

agreements, ER-200. During her time as a Union member, Kurk had the opportunity to review and vote on five proposed collective bargaining agreements, but she never voted against a single agreement, including the agreement in effect between 2014–17 and 2017–20. ER-199; SER-8–9; SER-22–24.

Between July 1 and July 31, 2017, Kurk had an opportunity to resign from the Union under the applicable collective bargaining agreement and stop paying dues. Pet. App. 23a–24a; ER-143. Kurk chose not to resign her membership during that period, causing her membership to be renewed through June 30, 2020. SER-4; SER-7; Pet. App. 23a–24a; ER-143. Despite renewing her membership through June 30, 2020, Kurk sent a letter to the Union on September 13, 2018, purporting to resign her membership that same day. ER-188; SER-16. In response, the Union reminded her of her obligations in the collective bargaining agreement and confirmed that her membership would terminate after June 30, 2020. ER-27; ER-143; ER-188; SER-5.

B. Lower Court Proceedings.

Kurk filed suit against the Union, among others, seeking damages for dues deductions from her paycheck between September 13, 2018 and June 30, 2020, as well as declaratory and injunctive relief. ER-264; ER-268–269. Kurk asserted a single cause of action under 42 U.S.C. § 1983, claiming that the Union violated her First Amendment rights by enforcing its constitution and collective bargaining agreement,

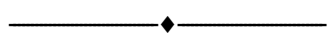
which prevented her from resigning her membership until June 30, 2020. ER-266–67. Kurk and the Union moved for summary judgment. Pet. App. 4a–19a. On May 19, 2021, the district court granted the Union's motion and denied Kurk's motion, holding that Kurk could not establish her Section 1983 claim against the Union because the Union was not "acting under color of state law." ER-13. The district court found that Kurk voluntarily joined the Union and must "bear the financial burden of membership," ER-16–17, explaining that the State did not " 'exercise[ ] coercive power' over [the Union] or engage[ ] in 'overt or covert encouragement' to enforce[ ] plaintiff's voluntary agreement," ER-15 (quoting *Belgau v. Inslee*, 359 F. Supp. 3d 1000, 1014 (W.D. Wash. 2019)), and that "the 'source of the alleged constitutional harm' was the 'particular private agreement' between the union and the employees, not a state statute or policy," ER-14 (quoting *Belgau v. Inslee*, 975 F.3d 940, 947 (9th Cir. 2020), *cert. denied*, 141 S. Ct. 2795 (2021)).

Kurk appealed to the Ninth Circuit. The Ninth Circuit affirmed in an unpublished opinion. The court first addressed Kurk's claim for damages against the Union, holding that this claim failed as a matter of law. As the court explained, "Kurk's continued union membership and the deduction of union membership dues arose from the private membership agreement between the union and Kurk, and 'private dues agreements do not trigger state action and independent constitutional scrutiny.' " Pet. App. 2a (quoting *Belgau*, 975 F.3d at 946–49). The Ninth Circuit observed that

"the Supreme Court's decision in *Janus v. American Federation of State, County & Municipal Employees, Council 31*, 138 S. Ct. 2448 (2018), did not extend a First Amendment right to avoid supporting the union and paying union dues that were agreed upon under voluntarily entered membership agreements." Pet. App. 2a.

The court next addressed Kurk's claims for prospective relief against the Union and the governmental defendants. It dismissed those claims as moot given that Kurk was no longer a member of the Union, and her dues deductions had stopped. Pet. App. 18a.

Kurk then filed the instant Petition.



REASONS THE PETITION SHOULD BE DENIED

This Petition is not an appropriate vehicle to decide whether a public employee has a "right to resign union membership at will." Pet. (i).

First, Kurk's single claim for violation of 42 U.S.C. § 1983 is not viable for threshold reasons. Kurk's requests for declaratory and injunctive relief are moot, and she lacks a Section 1983 claim for damages against the Union, the only defendant from which she sought damages, because the Union did not engage in state action.

Second, Kurk's Petition raises issues of fact and state law that are not properly before this Court. Kurk argues that her Union membership obligation meant

more than paying dues, but this argument is waived, and the courts below did not address it. Kurk also baldly asserts that California law may require a public employee to remain a union member in perpetuity, but it is undisputed that Kurk *could* and *did* resign from the Union, and she cannot point to a single example of such a perpetual Union member. And Kurk's claim that she never joined the Union under California law is belied by her admitted attempt to resign and her decades of active participation in Union affairs.

But even if this Petition were an appropriate vehicle, the Ninth Circuit's unpublished decision is a simple application of *Cohen v. Cowles Media Co.*, 501 U.S. 663, 672 (1991), where this Court found that parties cannot disregard their contractual promises under the guise that they run afoul of the First Amendment. The lower courts are unanimous in their agreement with the Ninth Circuit. Kurk fails to present a compelling reason why the Court should revisit *Cohen* or review the decision below.

The Petition should accordingly be denied.

I. This Case Is an Unsuitable Vehicle to Resolve the Question Presented.

The Petition asks this Court to decide whether "the First Amendment protect[s] a public employee's right to resign union membership at will," Pet. (i), but Kurk's 42 U.S.C. § 1983 claim failed on threshold grounds that the Petition does not address. Kurk

waives any argument to the contrary by omitting these threshold issues from her Petition.

Additionally, the Petition presents issues of fact and state law that are not properly before this Court.

A. Kurk Waived any Argument that Her Requests for Declaratory and Injunctive Relief Are Not Moot.

The Ninth Circuit found that Kurk's requests for declaratory and injunctive relief are moot, Pet. App. 2a–3a, but Kurk fails to address mootness in her Petition. Thus, Kurk waives any argument to the contrary.

As the Ninth Circuit observed, Kurk is no longer a Union member, and neither the Union, nor the State, is still deducting Union dues from her paycheck or enforcing the challenged statutes against her. Pet. App. 2a–3a. Kurk also cannot argue that her claims are capable of repetition but likely to evade review because she has stated no intention of rejoining the Union and sued in her individual capacity only. *See Turner v. Rogers*, 564 U.S. 431, 440 (2011). Kurk accordingly waived any argument that her requests for declaratory and injunctive relief are not moot.

B. Kurk Waived any Argument that She Retains a Viable Claim for Damages under Section 1983.

Kurk only sought damages against the Union, ER-269, and both the Ninth Circuit and the district court

found that Kurk lacks a claim for damages against the Union under Section 1983 for lack of state action. ER-17; Pet. App. 2a. Once again, Kurk fails to address state action in her Petition and thereby waives any argument to the contrary.

Here, the Ninth Circuit concluded that "[t]he district court properly granted summary judgment on Kurk's First Amendment claim for damages because Kurk's continued union membership and the deduction of union membership dues arose from the private membership agreement between the union and Kurk, and 'private dues agreements do not trigger state action and independent constitutional scrutiny.'" Pet. App. 2a (citing *Belgau*, 975 F.3d at 946–49). In the cited portion of *Belgau*, the Ninth Circuit held that a Section 1983 claim against a union failed for lack of state action under the two-prong state-action test set forth by this Court in *Lugar v. Edmondson Oil Co.*, 457 U.S. 922 (1982). *Belgau*, 975 F.3d at 946–49. But Kurk's Petition does not even contain the words "state action," much less explain why the Ninth Circuit erred in applying the *Lugar* test. Kurk accordingly waived any argument that the Union engaged in state action.

C. Kurk Waived Her Argument that Membership Means More than Paying Dues, and the Issue Was Not Addressed Below.

Kurk argues that this case is about public sector employees' "right to dissociate" from a union, Pet. 6, but Kurk waived the argument that union membership

means anything more than paying dues by failing to raise the argument in her Ninth Circuit opening brief. *See Miller v. Fairchild Indus., Inc.*, 797 F.2d 727, 738 (9th Cir. 1986) (Ninth Circuit does not ordinarily consider matters "not specifically and distinctly argued in appellant's opening brief").

In her Petition, Kurk observes that under the National Labor Relations Act, "the only aspect of union membership that can be required pursuant to a union shop agreement is the payment of dues." Pet. 7 (citing cases). Kurk urges that her situation is different because she was required to maintain membership in its full sense—not just to pay dues—and was "subject to union discipline." Pet. 4, 8, 11, 13.

Kurk's opening brief in the Ninth Circuit, however, did not address the issue of dissociation from the Union. Indeed, Kurk asserted that she had already resigned her membership and now sought to avoid the deduction of dues. Kurk's opening brief presented the following issues: "[d]id the District violate Kurk's First Amendment rights by *continuing to deduct dues from her paycheck after she resigned membership* in the Union?" and "[d]id the Union violate Kurk's First Amendment rights by acting in concert with the District to *deduct dues from Kurk's paycheck after she resigned membership* in the Union?" 9th Cir. ECF 12 at 10 (emphasis added). Presumably for this reason, the Ninth Circuit understood Kurk's constitutional claim to "aris[e] out of union membership dues paid to Los Rios Classified Employees Association," which it rejected based on its prior decision in *Belgau*. Pet. App. 2a. The

Ninth Circuit did not address whether Kurk had a constitutional right to dissociate from the Union.

And, even if Kurk had not waived the issue, deciding whether Kurk's "membership" obligation required more than the payment of dues would require resolution of state law and factual issues not addressed below. Kurk does not point to any membership obligations that the Union required of her other than the payment of dues. And California's Public Employment Relations Board (PERB) has not decided that California labor statutes should be interpreted similarly to the Taft-Hartley Act, which allows private sector workers to resign their union "membership" and avoid being subject to union discipline, while still being required to pay agreed-upon membership dues. *See Int'l Bhd. of Elec. Workers, Local No. 2008* (Lockheed Space Ops. Co.), 302 N.L.R.B. 322 at 328 (1991). BIO App. 27–28.

D. No Issue of Perpetual Union Membership Is Properly Before this Court.

Although the Petition presents the issue in this case as whether a public sector employee may resign union membership "at will," Pet. (i), the argument section addresses whether a public employee may ever resign union membership. Pet. 5–10. This case presents no such issue. Indeed, Kurk has not been a Union member since June 30, 2020. Rather, the legal issue presented by the facts here is whether Kurk should have been permitted to stop paying membership dues

on September 13, 2018, despite renewing her membership through June 30, 2020.

Kurk speculates that "absent this Court's intervention, states may force [other, unnamed] public employees to remain union members indefinitely." Pet. 1. But Kurk cannot point to a single example of another employee ever being forced to remain a union member indefinitely. There is none.

Nor do any of the so-called "maintenance of membership" statutes referenced in the Petition require an employee to remain a union member indefinitely. Pet. 8–9. Under California's Educational Employment Relations Act (EERA), unions and public employers may negotiate organizational security agreements, Cal. Gov. Code § 3543.2(a)(1), defined as an arrangement that requires a *voluntary* union member "to maintain his or her membership in good standing for the duration of the written [collective bargaining] agreement," *id.* § 3540.1(i)(1).[1] EERA, however, specifies that an organizational security "arrangement shall not deprive the employee of the right to terminate his or her obligation to the employee organization within a period of 30 days following the expiration of a written agreement." *Id.* The remaining "maintenance of membership" provisions cited in the Petition also do not require perpetual union membership.

The Union's collective bargaining agreement here was not effective in perpetuity, and Kurk cannot

[1] Note that the State of California no longer enforces Cal. Gov. Code § 3540.1(i)(2) after this Court's decision in *Janus*.

provide a single example of such a collective bargaining agreement in this or any other case. No employer or union would ever agree to an employment arrangement that they could never modify in the future. Indeed, recognizing that Kurk's position is meritless, California law plainly assumes the existence of normal collective bargaining agreements of reasonable length under which members can decide periodically whether to continue their membership. *Cf.* Cal. Gov. Code § 3540.1(i)(1). There is no reason why California law would support binding members any longer.

Kurk argues that some collective bargaining agreements "remain in effect for years, and often rollover from year to year by mutual agreement of the employer and the union." Pet. 9. Once again, Kurk ignores that the Union's collective bargaining agreement did no such thing, and she points to no examples of a collective bargaining agreement remaining in effect for more than a few years, let alone indefinitely. Moreover, even where a collective bargaining agreement is extended by mutual agreement of the parties, PERB is clear that it "cannot permit . . . contracting parties to use contract extensions to deprive members of their right to withdraw from union membership." *See Cal. Union of Safety Emps. (Trevisanut)*, PERB Decision 1029-S (1993), at 8. BIO App. 46. Instead, under California law, the extension merely creates an additional 30-day window period for resignation, and "the 30-day window period established by the terms of [the original] contract cannot be changed." *Id.* at 45. Thus Kurk is incorrect that Kurk was only permitted to resign her

membership on June 30, 2020 because she filed suit. Pet. 9.

Kurk fails to explain why Congress's implementation of a one-year limitation on the revocability of a dues-deduction authorization in the private sector has anything to do with this case. Pet. 9–10. Congress has implemented no such limitation on membership in unions of state employees.

E. To the Extent Kurk Now Claims that She Never Joined the Union, this Issue Requires a Fact-Based Inquiry Under California Law.

In 1997, Kurk completed the Dues Check-Off Form, selecting "Union membership deduction," and permitting the District to deduce Union dues from her paycheck. For the next twenty years, Kurk actively participated in Union affairs, engaging in activities only available to members. Now, Kurk implies that she never really agreed to join the Union at all, claiming the Dues Check-Off Form was "at most, her authorization *to the District* for the method of dues deductions." Pet. 5.

Not so. Kurk's admitted "attempt[] to *resign* her union membership" belies that she never became a member. Pet. (i) (emphasis added). Moreover, even if she had never signed a Dues Check-Off Form, her active participation in Union affairs for twenty years and repeated membership renewals under the applicable collective bargaining agreements made her a Union

member at least by 2018 when she attempted to resign early in breach of her obligations. Thus, the district court, in another case filed by Kurk's counsel against the Union, rejected Kurk's counsel's attempts to "decouple[ ]" an employee's union membership application from the collective bargaining agreement. SER-29–30 (related case order); *Woltkamp v. Los Rios Classified Employees Ass'n*, 539 F. Supp. 3d 1058, 1067 (E.D. Cal. 2021). Other courts to have addressed the issue are in agreement. *See, e.g.*, *Hendrickson v. AFSCME Council 18*, 992 F.3d 950, 959 (10th Cir. 2021), *cert. denied*, 142 S. Ct. 423 (2021); *DePierro v. Las Vegas Police Protective Ass'n Metro, Inc.*, No. 2:20-cv-01481-GMN-VCF, 2021 WL 4096538, at *4 (D. Nev. Sept. 8, 2021), *aff'd*, 2022 WL 3645198 (9th Cir. Aug. 24, 2022) (finding that "[b]y joining the Union, Plaintiff agreed that her relationship with [the Union] would be governed by the CBA," including the CBA's maintenance of membership provision).

Kurk appears to forget that her employment was subject to a collective bargaining agreement and that she had the opportunity to resign her Union membership before the new collective bargaining agreement became effective. As the California Supreme Court recognized in *San Lorenzo Education Ass'n v. Wilson*, "a member of a bargaining unit is bound by the terms of a valid collective bargaining agreement." 32 Cal. 3d 841, 846 (1982) (en banc). And a union's "constitution and bylaws govern membership in the union and create a contract between [a union and its members]." *CDF Firefighters v. Maldonado*, 200 Cal. App. 4th 158,

161 (2011); *see also Sevey v. AFSCME*, 48 Cal. App. 3d 64, 69 (1975) (holding that "articles of agreement and constitutions of both local and international unions constitute a contract with union members that is binding on them"); *cf. Casady v. Modern Metal Spinning & Mfg. Co.*, 188 Cal. App. 2d 728, 732–33 (1961) ("The by-laws of a corporation constitute a contract between the shareholders and the corporation; the by-laws are also a contract among the shareholders" (internal citation omitted)). For example, in *Mendez v. Mid-Wilshire Health Care Center*, the court found that the "absence of [a union member's] signature on the second collective bargaining agreement [wa]s inconsequential" when "[the member] d[id] not deny that she was a member of the union." 220 Cal. App. 4th 534, 542 (2013).

But, even if it were unclear whether Kurk's actions in signing the Dues Check-Off Form, enjoying the benefits of Union membership for twenty years, and repeatedly renewing her membership under the applicable collective bargaining agreement were sufficient to make her a Union member, this is a fact-based issue of state law that this Court does not generally review. *Cf. Mendez v. Cal. Teachers Ass'n*, 419 F. Supp. 3d 1182, 1186 (N.D. Cal. 2020) ("To the extent plaintiffs allege 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.").

II. In any Event, the Court's Precedent Demonstrates that the Petition Is Meritless.

In *Cohen*, this Court held that "the First Amendment does not confer . . . a constitutional right to disregard promises that would otherwise be enforced under state law." 501 U.S. at 672. The Ninth Circuit's unpublished opinion is a simple application of that precedent.

Kurk voluntarily joined the Union in 1997 and remained an active member for over twenty years before she notified the Union of her intent to resign. Kurk knew how to and did review the collective bargaining agreements, had the opportunity to vote on five proposed collective bargaining agreements (including the agreements in effect between 2014–17 and 2017–20), and chose never to vote against a single agreement. If Kurk disagreed with the membership resignation procedures in the 2017 collective bargaining agreement, she could have exercised her right to resign in July 2017. Instead, however, Kurk chose not to resign, so her membership renewed until June 30, 2020. *Cohen* does not permit Kurk to rescind her membership renewal and resign her membership on a date of her choosing.

Nor did the Court's subsequent opinion in *Janus* change the legal landscape with respect to union members like Kurk. In *Janus*, this Court held 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). But this Court has always treated union members differently from nonmember agency fee payers. When an employee elects to become a union member, the employee affirmatively consents to the deduction of dues. Thus, this Court's reasoning in *Janus* with respect to nonmember agency fee payers does not permit Kurk to resign her membership and cease paying dues in breach of her obligations.

Since *Janus*, this Court has denied at least eleven similar petitions for certiorari filed by union members seeking to avoid paying their dues.[2] The Court should deny the instant Petition as well.

III. The Ninth Circuit's Unpublished Opinion Is Consistent with Every Lower Court to Address the Issue Presented.

In its unpublished memorandum, the Ninth Circuit correctly rejected Kurk's legal theories, applied its

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[2] *Cooley v. Cal. State Law Enforcement Ass'n*, 143 S. Ct. 405 (2022); *Polk v. Yee*, 143 S. Ct. 405 (2022); *Yates v. Hillsboro Unified Sch. Dist.*, 142 S. Ct. 1230 (2022); *Woods v. Alaska State Emps. Ass'n, AFSCME Local 52*, 142 S. Ct. 1110 (2022); *Anderson v. SEIU Local 503*, 142 S. Ct. 764 (2022); *Few v. United Teachers L.A.*, 142 S. Ct. 2780 (2022); *Grossman v. Haw. 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*, 142 S. Ct. at 423; *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*, 141 S. Ct. at 2795.

published opinion in *Belgau*, and found that *Janus* "did not extend a First Amendment right to avoid supporting the union and paying union dues that were agreed upon under voluntarily entered membership agreements." Pet. App. 2a.

The Ninth Circuit's unpublished memorandum is consistent with every other circuit court opinion to address the issue. In *Belgau*, the Ninth Circuit joined the "swelling chorus of courts recognizing that *Janus* does not extend a First Amendment right to avoid paying union dues." 975 F.3d at 950–52. Circuits that have addressed the issue and reached the same conclusion as the Ninth Circuit include the Third, Seventh, and Tenth Circuits. *See Bennett v. Council 31 of the AFL–CIO*, 991 F.3d 724 (7th Cir. 2021), *cert. denied*, 142 S. Ct. 424 (2021); *Hendrickson*, 992 F.3d at 950; *Fischer v. Governor of N.J.*, 842 F. App'x 741 (3d Cir. 2021), *cert. denied*, 142 S. Ct. 426 (2021) (non-precedential). Moreover, district courts across the country have also rejected Kurk's legal theories.[3]

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[3] *See, e.g.*, *Mendez*, 419 F. Supp. 3d at 1186 ("As every court to consider the issue has concluded, Janus does not preclude enforcement of union membership and dues deduction authorization agreements. . . ."); *Allen v. Ohio Civil Serv. Emps. Ass'n AFSCME, Local 11*, 2020 WL 1322051, at *12 (S.D. Ohio Mar. 20, 2020) (noting "the unanimous post-Janus district court decisions holding that employees who voluntarily chose to join a union . . . cannot renege on their promises to pay union dues"); *Troesch v. Chicago Teachers Union, Local Union No. 1*, 522 F. Supp. 3d 425, 429–32 (N.D. Ill. Feb. 25, 2021); *Hoekman v. Educ. Minn.*, 519 F. Supp. 3d 497, 508–10 (D. Minn. Feb. 12, 2021); *Woods v. Alaska State Emps. Ass'n/AFSCME Local 52*, 496 F. Supp. 3d 1365, 1372–73 (D. Alaska 2020); *Yates v. Am. Fed'n of Teachers,*

As Kurk acknowledges, no lower court has found that a public employee has a right to withdraw from her Union at will in violation of her membership obligations. Pet. 5. Neither should this Court.

AFL–CIO, 2020 WL 6146564, at *1 (D. Or. Oct. 19, 2020); *Wagner v. Univ. of Wash.*, 2020 WL 5520947, at *5 (W.D. Wash. Sept. 11, 2020); *Labarrere v. Univ. Prof'l & Tech. Emps., CWA 9119*, 493 F. Supp. 3d 964, 971–72 (S.D. Cal. 2020); *Polk v. Yee*, 481 F. Supp. 3d 1060, 1071 (E.D. Cal. 2020); *Creed v. Alaska State Emps. Ass'n/AFSCME Local 52*, 472 F. Supp. 3d 518, 524–31 (D. Alaska 2020); *Molina v. Pa. Soc. Serv. Union*, ___ F. Supp. 3d ___, 2020 WL 2306650, at *7–8 (M.D. Pa. May 8, 2020); *Durst v. Or. Educ. Ass'n*, 450 F. Supp. 3d 1085, 1090–91 (D. Or. 2020); *Loescher v. Minn. Teamsters Pub. & Law Enforcement Emps.' Union, Local No. 320*, 441 F. Supp. 3d 762, 772–73 (D. Minn. 2020); *Quirarte v. United Domestic Workers AFSCME Local 3930*, 438 F. Supp. 3d 1108, 1118–19 (S.D. Cal. 2020); *Hernandez v. AFSCME Cal.*, 424 F. Supp. 3d 912, 923–24 (E.D. Cal. 2019); *Smith v. Superior Court*, 2018 WL 6072806, at *1 (N.D. Cal. Nov. 16, 2018); *Anderson v. SEIU Local 503*, 400 F. Supp. 3d 1113, 1115–16 (D. Or. 2019); *Seager v. United Teachers L.A.*, 2019 WL 3822001, at *2 (C.D. Cal. Aug. 14, 2019); *O'Callaghan v. Regents of Univ. of Cal.*, 2019 WL 2635585, at *3 (C.D. Cal. June 10, 2019); *Babb v. Cal. Teachers Ass'n*, 378 F. Supp. 3d 857, 876–77 (C.D. Cal. 2019); *Cooley v. Cal. Statewide Law Enforcement Ass'n*, 2019 WL 331170, at *2 (E.D. Cal. Jan. 25, 2019).

CONCLUSION

The Petition should be denied.

Respectfully submitted,

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