No. _____

IN THE

Supreme Court of the United States

RAMON K. JUSINO,

Petitioner,

v.

FEDERATION OF CATHOLIC TEACHERS, INC.,

Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

QUESTION #1

Whether the Second Circuit contravened the Fourteenth Amendment Equal Protection clause by holding that – because of potential First Amendment Religion Clauses entanglements – the federal government cannot certify labor organizations that represent teachers in church-operated schools, but New York State can.

QUESTION #2

Whether the Second Circuit contravened this Court's relevant precedent by holding that – because of potential First Amendment Religion Clauses entanglements – Petitioner is precluded from bringing his duty-of-fair-representation claim against Respondent, thereby granting Respondent the sui-generis status of being a union that gets to operate without any duty of fair representation towards any of its members.

QUESTION #3

Whether this Court's 1979 *Catholic Bishop* decision means that unions for teachers employed by church-operated schools should not exist at all.

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PETITION FOR A WRIT OF CERTIORARI

Ramon K. Jusino, pro se Petitioner before this Honorable Court – and pro se Plaintiff and Appellant in the courts below – respectfully seeks a writ of certiorari to review the judgment of the United States Court of Appeals for the Second Circuit.

OPINIONS BELOW

The opinion and order of the Second Circuit Court of Appeals (Pet.App. 3a) is cited as *Jusino v. Fed'n of Catholic Teachers*, No. 21-2081 (2d Cir. Nov. 23, 2022). The opinion and order of the U.S. District Court for the Eastern District of New York (Pet.App. 29a) is cited as *Jusino v. Fed'n of Catholic Teachers, Inc.*, 19-CV-6387 (AMD) (ST) (E.D.N.Y. Aug. 6, 2021).

At the time of the drafting of this document, the opinions and orders below do not seem to have been published with Westlaw citations. Apologies to this Court if this is incorrect.

JURISDICTION

The Second Circuit entered judgment on November 23, 2022. Pet.App. 1a. This Court has jurisdiction under 28 U.S.C. § 1254(1).

LEGAL AUTHORITIES

The U.S. Constitution

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." U.S. Const. amend. I, cl. 1-2.

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"No state shall ... deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. amend. XIV § 1, cl. 4.

The National Labor Relations Act

> The term "employer" includes any person acting as an agent of an employer, directly or indirectly, but shall not include the United States or any wholly owned Government corporation, or any Federal Reserve Bank, or any State or political subdivision thereof, or any person subject to the Railway Labor Act [45 U.S.C. 151 et seq.], as amended from time to time, or any labor organization (other than when acting as an employer), or anyone acting in the capacity of officer or agent of such labor organization.

29 U.S.C. § 152(2).

***

> The term "employee" shall include any employee, and shall not be limited to the employees of a particular employer, unless this subchapter explicitly states otherwise, and shall include any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment, but shall not include any individual employed as an agricultural laborer, or in the domestic service of any family or person at his home, or any individual employed by his parent or spouse, or any individual having the status of an independent contractor, or any individual employed as a supervisor, or any individual employed by an employer subject to the Railway Labor Act [45 U.S.C. 151 et seq.], as amended from time to time, or by any other person who is not an employer as herein defined.

29 U.S.C. § 152(3).

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> The term "labor organization" means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

29 U.S.C. § 152(5).

STATEMENT OF THE CASE

The Unionization of Teachers in Church-Operated Schools Begins in New York

The story of the unionization of Catholic school teachers begins in New York in the early 1960s. Catholic school teachers found some inspiration and encouragement from the first major public-school teachers strike in New York in November of 1960. Pet.App. 116a. At the time, Catholic school teachers were not represented by any labor organizations. But some of them belonged to an organization called the Teachers Group of the Walter Farrell Guild. Id. By April of 1963, many of the Catholic school teachers in New York grew to be dissatisfied with the Walter Farrell Guild. So, they broke away from that group, and formed a new organization called the Catholic Lay Teachers Group (CLTG), which was founded "to organize all teachers within the New York Archdiocese into a strong, active organization." Id.

In April of 1969, the New York State Labor Law, which, inter alia, governed collective bargaining, was amended to include coverage of teachers employed by church-operated schools. Pet.App. 117a-118a. As a

result of this, the CLTG began to seek legal recognition as the exclusive representative of the Catholic school teachers within the Archdiocese of New York. Id. 118a. The Archdiocese, of course, resisted this using "every legal roadblock it could think of." Id.

In September of 1969, the CLTG won certification as the exclusive bargaining agent for teachers employed by the parish-run elementary and secondary schools within the Archdiocese. Pet.App. 118a-119a. A few days prior to that, another union, called the New York Lay Faculty Association (hereinafter the "LFA"), won certification as the exclusive bargaining agent for teachers employed by the twelve high schools run directly by the Archdiocese. Id.

In December of 1970, the CLTG moved to affiliate with a national labor organization, called the American Federation of Teachers, under the name of the Federation of Catholic Teachers (hereinafter "Respondent"). Id.

Today, Respondent is affiliated with the AFL-CIO. It is Office and Professional Employees International Union (OPEIU) Local 153. Id. 125a. Based on information retrieved by Petitioner from 2017, it is the collective bargaining representative for the lay faculty in 137 elementary schools and 14 high schools in the Archdiocese of New York. Id. 125a-126a.

This Court's 1979 *Catholic Bishop* Decision Bars Certification of Unions for Teachers in Church-Operated Schools Citing First Amendment Religion Clauses Concerns

While all of the aforementioned union certification successes were happening in New York, a similar victory had already been won by teachers working in the schools of the Archdiocese of Chicago. Id. 119a. In 1966, Catholic school teachers in Chicago won

certification as a collective bargaining unit. Id. However, some 13 years later, this Court would hold that the union certification of these Chicago-based teachers ran afoul of the First Amendment Religion Clauses.

In 1979, this Court decided *NLRB v. Catholic Bishop of Chicago*, in which it held that Catholic school teachers are not within the jurisdiction granted by the National Labor Relations Act ("NLRA"). The *Catholic Bishop* court held that certifying a union for Catholic school teachers "could in turn call upon the Court to resolve difficult and sensitive questions arising out of the guarantees of the First Amendment Religion Clauses." 440 U.S. 490, 507. The Court refused to permit the National Labor Relations Board to certify unions looking to represent teachers in Catholic schools. The Court agreed with the reasoning of the U.S. Court of Appeals for the Seventh Circuit that

> from the initial act of certifying a union as the bargaining agent for lay teachers the Board's action would impinge upon the freedom of church authorities to shape and direct teaching in accord with the requirements of their religion.

Catholic Bishop at 496. It is clear that the *Catholic Bishop* court contemplated that, as a result of its Decision, unions for lay teachers in church-operated schools would not be permitted to exist.

The Second Circuit OKs State Certification of Unions for Teachers in Church-Operated Schools Because the State's "Compelling Interest in Collective Bargaining" Trumps First Amendment Religion Clauses Concerns

For some 15 years, the Archdiocese consented to the certification of the LFA. But, after a heated falling out over alleged unfair labor practices in the early 1980s, the Archdiocese of New York decided to sue the LFA and the New York State Labor Relations Board for the decertification of the LFA as a union, using this Court's 1979 *Catholic Bishop* decision as the basis for its lawsuit. However, the LFA, with the help of the New York State Labor Relations Board, was able to get the Second Circuit to provide them with a workaround to the holding of *Catholic Bishop* in its 1985 *Culvert* decision. This workaround triggered the constitutional quandary that this Court is hereby being petitioned to resolve.

The Second Circuit's *Culvert* court reasoned that *Catholic Bishop* addressed only the scope of *federal* statutory law and that it had nothing to say about *state* law.

> The issue in this case is whether the Religion Clauses of the First Amendment made applicable to the states by the Fourteenth Amendment prohibit the New York State Labor Relations Board from exercising jurisdiction over the labor relations between parochial schools and their lay teachers. This "difficult and sensitive" question, expressly left open by the Supreme Court in [*Catholic Bishop*] is one of first impression in this Circuit. Our task is to determine whether there is a principled basis upon which to limit state intrusion to secular aims.

Catholic HS Ass'n of Archdiocese of NY v. Culvert, et al., 753 F.2d 1161, 1163 (2d Cir. 1985) (internal citations omitted). Right here, this Court may find that the Second Circuit made a critical error. This was *not* a question of first impression. This was a question

that had already been resolved by this Court's 1940 *Cantwell v. Connecticut* decision. 310 U.S. 296. If the federal government is incompetent to meddle in disputes between teachers and the church-operated schools that employ them, then does not it stand to reason, under the Fourteenth Amendment, that the state governments are equally incompetent to do so? The Second Circuit incongruously decided that, unlike the *National* Labor Relations Board, the *New York State* Labor Relations Board was indeed empowered to exercise jurisdiction over unions that represent lay teachers in Catholic schools, First Amendment Religion Clauses notwithstanding. As a result, the Second Circuit created a dichotomy in the law which has persisted to this day, i.e., New York State continues to do exactly what *Catholic Bishop* said the National Labor Relations Board could not.[1]

It has been observed that with each passing year, this dichotomy grows harder to defend. Pet.App. 60a.

The *Culvert* court went so far as to give the New York State Labor Relations Board and the New York courts specific instructions on its "balancing test" with which the Board and the courts could exercise jurisdiction over Catholic teachers' unions while still ostensibly respecting the rights of the schools under the First Amendment Religion Clauses.

> A determination of whether state regulation of the way the Association acts in its relations with its lay teachers violates free exercise requires a balancing test. The burden the state imposes on

[1] The New York State Labor Relations Board was abolished in 2010. Its functions, powers, and duties have since been assigned to the Public Employment Relations Board, which was expanded for this purpose. N.Y. Lab. Law § 717.

> the Association's exercise of its religious beliefs must be weighed against the State's interests in enforcing the Act. We must consider whether: (1) the claims presented were religious in nature and not secular; (2) the State action burdened the religious exercise; and (3) the State interest was sufficiently compelling to override the constitutional right of free exercise of religion.

Culvert at 1169. The court went on to hold that

> even if the exercise of [state] jurisdiction has an indirect and incidental effect on employment decisions in parochial schools involving religious issues, this minimal intrusion is justified by the State's compelling interest in collective bargaining.

Culvert at 1171. This begs the question: Does not the federal government have a similar interest in collective bargaining?

The Second Circuit Now Holds That Unionized Teachers in Church-Operated Schools Have No Duty-of-Fair-Representation Rights Under the National Labor Relations Act

Another consequence of the Second Circuit's decision in the matter below is that it held "that *Catholic Bishop* precludes a parochial teacher's duty-of-fair-representation claim against his labor union under the NLRA as amended by the LMRA." Pet.App. 6a. This holding creates a whole new set of problems if it is allowed to stand. *Catholic Bishop* contemplated that Catholic school teachers' unions should not exist at all, not that there should be unions with no legal obligation to provide fair representation to any of its members.

The Second Circuit, in its decision below, has carved out a special new classification for Respondent. It gets to be a labor organization, the exclusive bargaining agent for its members, with no legal duty of fair representation towards them.[2] According to this Court's well-settled precedents, however, there is no such animal. *Janus v. American Federation of State*, 138 S.Ct. 2448, 2469 (2018); *Humphrey v. Moore*, 375 U.S. 335, 342 (1964); *Steele v. Louisville & Nashville R. Co.*, 323 U.S. 192, 204 (1944).

The Second Circuit's Catch-22

In its misapplied attempt to comply with one of this Court's precedents – *Catholic Bishop* – the Second Circuit disregarded several *other* of this Court's precedents, and a constitutional principle as well, i.e., the Fourteenth Amendment's equal application of the First Amendment Religion Clauses to both the federal and state governments. As long as this dichotomy in the law continues to exist, attempts to judicially resolve any issues related to it will always result in a Catch-22 – one Supreme Court precedent or another, or one constitutional principle or another, will have to be sacrificed in order to maintain the status quo.

In reaching its decision in the matter below, the Second Circuit sought to preserve the constitutional rights of the church-operated schools and Respondent but, in the process, completely abandoned Petitioner's

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[2] New York State labor law provides no mechanism for private sector employees to sue their unions for breach of duty-of-fair-representation. This leaves New York Catholic school teachers without recourse against the FCT if they refuse to represent them fairly. Hereinafter, according to the law as interpreted by the Second Circuit, any representation provided by the FCT to any of its members is a benevolent act of kindness on its part.

– and other teachers' – right to the duty of fair representation from his union.

Petitioner respectfully suggests that one of two things must happen in order to eliminate the contravention of the Fourteenth Amendment's equal application of the First Amendment Religion Clauses consistently across the board. One way is to allow the federal courts to implement the balancing test which the Second Circuit mandated for the New York State review of disputes between unionized teachers and their Catholic school employers. *Culvert* at 1169. The other way is to find that, since Catholic school teachers unions are not permitted by the Constitution to be certified by the National Labor Relations Board, they should likewise not be permitted to be certified by any state agency for the same reason. Both of these options would bring constitutional consistency.

This Court should consider the choice of leaving things the way they are to be untenable. This would leave thousands of hard-working educators in Catholic schools in a position where they are forced to pay union dues to a labor organization that owes them no duty of fair representation and, arguably, should not even exist at all. This is not what the *Catholic Bishop* court contemplated.

If the Second Circuit's decision in this matter is allowed to stand, the teachers would all be at the mercy of Respondent to provide representation at its pleasure with no legal penalty for refusing to do so. The status quo impinges on the right of the teachers to receive fair representation from their union. Respondent gets to simultaneously impinge upon the fundamental rights of the church-operated schools *and* its own members.

This situation cries out for this Court to exercise its supervisory judicial power and look into this situation to straighten out this constitutional mess. This situation where the state government can exercise jurisdiction over the Catholic teachers' unions but the federal government cannot, represents a serious division in how the First Amendment Religion Clauses are applied. In regard to this situation, one observer said, paraphrasing Abraham Lincoln and, interestingly enough, Jesus, "[T]he law divided cannot stand." Pet.App. 113a.

Basis for Jurisdiction in the Courts Below

The court of first instance in this matter was the U.S. District Court for the Eastern District of New York. The district court had original subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1343 over Petitioner's claims of its labor organization's breach of its duty of fair representation pursuant to the National Labor Relations Act, as codified, 29 U.S.C. §§ 151-169 and the relevant judicial provisions of *Vaca v. Sipes*, 386 U.S. 171, 177 (1967).

The district court also had supplemental jurisdiction under 28 U.S.C. § 1367 over Petitioner's claims pursuant to the New York State Executive Law § 296 *et seq.* ("New York State Human Rights Law") and the New York City Administrative Code – Title 8 ("New York City Human Rights Law").

The district court was the proper venue for Petitioner under 28 U.S.C. § 1391 as he was a member of Respondent's union, the principal office of which was located within the Eastern District of New York, during all relevant times. Petitioner's employment and union membership records are maintained by Respondent within the Eastern District of New York, and its decisions adverse to me that are the subject of

the civil action below were made by Respondent within the Eastern District of New York.

The Court of Appeals for the Second Circuit had jurisdiction over Petitioner's appeal under 28 U.S.C. § 1291. The district court's August 5, 2021 Memorandum & Order finally disposed of the matter. Pet.App. 29a. Petitioner timely appealed. Pet.App. 11a.

Reasons for Granting the Writ

I. The Second Circuit Has Decided Important Questions of Federal Law That Have Not Been, but Should Be, Settled by This Court

A. The Second Circuit Has Misconstrued *Catholic Bishop*

Respondent's stance from the inception of this case has been that, since it is not certified by the National Labor Relations Board, but was certified by the New York State Labor Relations Board instead, its members are therefore not covered, nor is it bound, by the National Labor Relations Act (hereinafter "the NLRA"). The Second Circuit seems to have adopted Respondent's position. This position is not correct.

The text of the NLRA itself says that it covers *all existing unions* without reference to whether the unions are certified by a federal or state agency. 29 U.S.C. § 152(5). It excludes only those unions with collective bargaining agreements wherein the employer is: the United States or any wholly owned Government corporation, any Federal Reserve Bank, any State or political division thereof, or an employer subject to the Railway Labor Act. 29 U.S.C. § 152(2). The Act also excludes only employees who are agricultural laborers, domestic servants, anyone employed by a parent or spouse, anyone with the status of an independent contractor, or anyone who is a supervisor. 29 U.S.C. § 152(3). The NLRA makes no mention of

certification by the National Labor Relations Board, as opposed to a similar board of any state, as a prerequisite for coverage under the Act. The FCT is therefore bound by the NLRA irrespective of whether it is certified by New York State or the federal government. The *Catholic Bishop* court refused to permit unions for teachers in church-operated schools to be certified precisely because the mere certification of the union, whether by the federal or state government, means that the government empowers that union to force the employer to negotiate with it.

Certification also creates a legal responsibility on the government's part to enforce the responsibilities and obligations of both the employer and the union. As such, it also means that, as a certified union, it becomes subject to all of the provisions of the NLRA, including its judicially crafted duty of fair representation. *Vaca v. Sipes*, 386 U.S. 171, 177 (1967).

Catholic Bishop found that the certification of a union for teachers in church-operated schools itself violates a church's rights under the First Amendment Religion Clauses because the certification forces the church to engage in collective bargaining with the teachers against its will. The Court agreed with the reasoning of the U.S. Court of Appeals for the Seventh Circuit that

> from the initial act of certifying a union as the bargaining agent for lay teachers the Board's action would impinge upon the freedom of church authorities to shape and direct teaching in accord with the requirements of their religion.

Catholic Bishop at 496, citing 559 F.2d 1112, 1123 ("[T]he very threshold act of certification of the union necessarily alters and impinges upon the religious character of all parochial schools. No longer would the

bishop be the sole repository of authority as required by church law.").

Certification itself, whether by the federal government or the state, is already the government stepping in and meddling in the affairs of the church's supervision of teachers at their church-operated schools. *Catholic Bishop* at 502 ("It is not only the conclusions that may be reached by the Board which may impinge on rights guaranteed by the Religion Clauses, but also the very process of inquiry leading to findings and conclusions.")

Catholic Bishop discusses the Quigley schools and the schools of the Diocese of Fort Wayne-South Bend. *Catholic Bishop* at 494. The teachers at these schools were represented by two unions – the Illinois Education Association, and the Community Alliance for Teachers of Catholic High Schools, respectively. Id. After these unions were certified to represent the teachers at these schools, "the schools declined to recognize the unions or to bargain." Id. The position of the churches was that their rights under the First Amendment Religious Clauses were impinged by the mere act of the otherwise legal certification of the unions as representatives of their teachers.

Catholic Bishop ultimately overturned an order from the National Labor Relations Board that the schools stop refusing to recognize the unions and begin bargaining with their teachers. *Catholic Bishop* at 494-495. This resulted in the decertification of the unions as representatives of the teachers at these schools. The Archdiocese of Chicago has since had no unionized teachers in any of its schools to this day.[3]

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[3] https://CatholicLabor.org/catholic-employer-project/catholic-k-12-education/

It is clear that *Catholic Bishop* intended to bar the certification of unions for teachers in church-operated schools altogether. However, given the fact that Respondent *does* exist and *is* certified as the exclusive representative of teachers in church-operated schools: What is Respondent's legal status? Is it certified in contravention to the holding of *Catholic Bishop*? Or, as the Second Circuit has just held, did *Catholic Bishop* grant Respondent the sui-generis status of being a union that gets to *both* impinge on a church's rights under the First Amendment Religion Clauses – by interfering with the church's supervision of their teachers – *and* operate without any duty of fair representation towards any of its members? Petitioner respectfully asks this Court to resolve this issue.

Petitioner suggests that to infer, as the Second Circuit has indeed done, that the *Catholic Bishop* court intended, by its decision, to shield certified unions from duty-of-fair-representation lawsuits from their members, is a stretch to say the least.

B. The Second Circuit's Decision Conflicts with This Court's Precedent Regarding the Consistent Application of the First Amendment Religion Clauses Throughout Federal and State Law

The Second Circuit has decided Petitioner's case in a way that is at odds with a fundamental constitutional principle that this Court has long derived from the Fourteenth Amendment's equal protection clause. The Second Circuit has decided that the federal government is barred by the First Amendment Religion Clauses from even potentially meddling in the internal affairs of the churches' schools, but that the New York State government is not. According to this

Court's precedent, the Fourteenth Amendment of the Constitution speaks to this very situation.

It is well-settled that, under the Fourteenth Amendment, the First Amendment applies equally to state and municipal governments as well as the federal government.

> The First Amendment declares that Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof. The Fourteenth Amendment has rendered the legislatures of the states as incompetent as Congress to enact such laws.

Cantwell v. Connecticut, 310 U.S. 296, 303 (1940). In contravention to this Court's precedent, the Second Circuit actually has an explicit double-standard when applying the First Amendment Religion Clauses to federal and state law with respect to collective bargaining for teachers in church-operated schools.

Under federal law, the Second Circuit maintains on the one hand, as it has done in Petitioner's case, that the federal courts have no power to get involved in any dispute between a teachers' union and their church-operated school employer because the dispute might – quoting *Catholic Bishop* – "call upon the Court to resolve difficult and sensitive questions arising out of the guarantees of the First Amendment Religion Clauses." Pet.App. 46a. But on the other hand, the Second Circuit's 1985 *Culvert* decision, 753 F.2d 1161, which the Second Circuit courts still consider to be good law today,[4] provides a "balancing test" with

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[4] In the proceeding below, Magistrate Judge Steven L. Tiscione's decision discusses *Culvert* as current law. Pet.App. 46a-47a, 50a. District Judge Ann M. Donnelly's decision does as well. Pet.App. 36a.

which the New York State Labor Relations Board[5] could do what the National Labor Relations Board is constitutionally barred from doing, i.e., get involved in disputes between a union representing teachers and the church-operated schools that employ them apparently without running afoul of the Constitution. *Culvert* at 1169.

That's a glaring double-standard right there.

Moreover, the Second Circuit, which asserted that it doesn't have the authority to meddle in union disputes with the church-operated schools itself, somehow seemed to find the authority to dictate to New York State how it could do what this Circuit claims it cannot do itself. This inconsistency is jaw-dropping.

C. The Second Circuit's Decision Conflicts with this Court's Precedent Regarding the Concomitant Link Between Union Certification and the Duty of Fair Representation

The Second Circuit held, "as a matter of first impression, that *Catholic Bishop* does preclude Jusino's duty-of-fair-representation claim." Pet.App. 4a. This decision serves to further complicate and add confusion to an already contradictory and inconsistent legal framework regarding collective bargaining for teachers in church-operated schools.

For the first time, a federal appeals court has used *Catholic Bishop* as a basis for effectively barring all members of a labor organization from bringing duty-of-fair-representation claims against it. This is especially disconcerting because, as argued above, the

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[5] As of 2010, the New York State Labor Relations Board no longer exists. The renamed New York State Employment Relations Act has since been administered by the Public Employment Relations Board (PERB).

gist of *Catholic Bishop* is that unions for teachers in church-operated schools should not exist at all, not that the unions should be immune from duty-of-fair-representation lawsuits from the unions' members. This Court's precedents say, regarding labor organizations with no duty-of-fair-representation obligations, that there is no such animal.

The Second Circuit has gone awry of several of this Court's decisions on the issue of duty of fair representation.

> [T]he duty of fair representation ... is a necessary concomitant of the authority that a union seeks when it chooses to serve as the exclusive representative of all the employees in a unit.

Janus v. American Federation of State, 138 S.Ct. 2448, 2469 (2018).

> The undoubted broad authority of the union as exclusive bargaining agent in the negotiation and administration of a collective bargaining contract is accompanied by a responsibility of equal scope, the responsibility and duty of fair representation.

Humphrey v. Moore, 375 U.S. 335, 342 (1964) (internal citations omitted).

> So long as a labor union assumes to act as the statutory representative of a craft, it cannot rightly refuse to perform the duty, which is inseparable from the power of representation conferred upon it, to represent the entire membership of the craft.

Steele v. Louisville & Nashville R. Co., 323 U.S. 192, 204 (1944).

The *Catholic Bishop* court refused to permit unions for teachers in church-operated schools to be certified precisely because the mere certification of the union means that the government empowers that union to force the employer to negotiate with it, and also forces its members to accept it as their sole representative. By law, the duty of fair representation goes hand in hand with the power of being certified as the sole representative of any bargaining unit. However, the Second Circuit has bestowed upon Respondent the power to exercise all of the privileges that go with certification without the legal responsibility that inseparably accompanies it – the duty of fair representation.

What the Second Circuit has done is take *Catholic Bishop*, this Court's precedent which holds that Respondent should not even exist, and used it as a basis for saying that, not only can Respondent exist, but it can now exist as the first certified union to have no legally enforceable duty-of-fair-representation obligation at all towards any of its members.

II. Second Circuit Judge Guido Calabresi Expressed Misgivings About the Decision in His Concurring Opinion

In his concurring opinion, in which he actually dissented somewhat, Judge Guido Calabresi expressed some significant misgivings about the Second Circuit's decision in Petitioner's case. He wrote, in part:

> The majority opinion treats a series of federal issues that require some new law and some new applications of old law to the appeal in this case. ... I believe that, at this time, any new law touching on the intersection between religious rights and freedom from discrimination – both are fundamental – is best made extremely cautiously.

Pet.App. 26a-27a. Judge Calabresi did not exaggerate when he said that making "new law" in Petitioner's case was "best made extremely cautiously." Id. 27a.

According to his Second Circuit online biography, Judge Calabresi is an exceptionally experienced and knowledgeable attorney and judge.[6] Judge Calabresi's cautionary comments should give cause for this Court to want to take a look at the decision.

III. All Roads Lead to Consistency

Utilizing Rule 14(1)(i)(vi) of the Rules of the United States Supreme Court, Petitioner respectfully provides this Court with Appendix E, which is an article entitled "Religious Schools, Collective Bargaining, & the Constitutional Legacy of *NLRB v. Catholic Bishop*" by Alexander MacDonald, Esq., which was published in The Federalist Society Review, Volume 22, June 17, 2021.

Petitioner believes this article is essential to understanding this petition. Petitioner also believes that, since he is petitioning this Court pro se, this Court will feel more assured relying on his arguments if this petition includes support from a well-qualified attorney with extensive knowledge about all of the issues addressed herein.

MacDonald essentially argues throughout that there is an urgent need to establish consistency in how the holding of *Catholic Bishop* is applied to both state and federal law. Much of Petitioner's line of reasoning stems from MacDonald's work. His arguments are supported by his very thorough discussion of the related facts.

MacDonald's article is extremely on point to all of the substantial questions presented in this petition.

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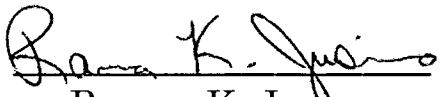
[6] https://www.ca2.uscourts.gov/judges/bios/gc.html

In Petitioner's opinion, this article comes across like an excellent amicus-curiae brief written specifically in support of the granting of his request for the writ of certiorari. It is respectfully offered herein for this Court's review.

Conclusion

For any or all of the reasons cited herein, Petitioner respectfully asks this Honorable Court to grant the writ of certiorari and use its judicial power to review the substantial questions of law presented herein.

Dated:
Staten Island, NY
January 12, 2023



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