

**IN THE
SUPREME COURT OF THE UNITED STATES**

No. ____

TERRY KLEE,

Applicant,

v.

INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 501, an employee
organization; CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION, a
public agency; BETTY T. YEE, in her official capacity as California State Controller;
ROB BONTA, in his official capacity as Attorney General of California,

Respondents.

**APPLICATION TO THE HON. ELENA KAGAN
FOR AN EXTENSION OF TIME WITHIN WHICH TO FILE
A PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT**

Pursuant to Supreme Court Rule 13(5), Terry Klee (Applicant) hereby moves for an extension of time of 30 days, to and including May 21, 2025, for the filing of a petition for a writ of certiorari. Unless an extension is granted, the deadline for filing the petition for certiorari is April 21, 2025.

In support of this request, Applicant states as follows:

1. The U.S. Court of Appeals for the Ninth Circuit rendered its decision on January 21, 2025 (Exhibit 1). This Court has jurisdiction under 28 U.S.C. §1254(1).
2. This case concerns the ability of public employees to vindicate the First Amendment rights recognized in *Janus v. American Federation of State, County, & Municipal Employees Council 31*, 585 U.S. 878 (2018). The First Amendment

provides that the government “shall make no law ... abridging the freedom of speech.” U.S. Const. amend. I. As this Court has explained, “freedom of speech” “necessarily compris[es] the decision of both what to say and what not to say,” *Riley v. Nat’l Fed’n of the Blind of N.C., Inc.*, 487 U.S. 781, 796-97 (1988), as well as an individual’s “right to eschew association for expressive purposes,” *Janus*, 585 U.S. at 892. Applying these principles, this Court in *Janus* made clear that the First Amendment prohibits states and public-sector unions from “extract[ing]” fees “from nonconsenting employees” and that “[n]either an agency fee nor any other payment to [a] union may be deducted from a nonmember’s wages ... unless the employee affirmatively consents to pay.” *Id.* at 929-30.

3. Applicant is an employee of Respondent California Department of Corrections and Rehabilitation (CDCR) who sought to exercise his constitutional right under *Janus* to terminate his membership with the organization authorized to represent CDCR employees: Respondent International Union of Operating Engineers, Local 501 (IUOE). When an employee is a member of IUOE or a similar public-sector union, California makes deductions from the employee’s wages and remits those deductions to the union to cover membership dues. *See* Cal. Gov’t Code §1152. Respondent Betty Yee, the California State Controller, is the state officer who manages employee payroll, but she does not oversee union membership. *See id.* §1153. Instead, California law delegates to IUOE (and other recognized employee organizations representing public-sector employees) the duty to certify to the state whether a particular employee is a union member and therefore subject to dues

deductions. In fact, Respondent Yee is required by statute to “rely on information provided by the employee organization regarding whether deductions for an employee organization were properly canceled or changed,” because all “[e]mployee requests to cancel or change deductions for employee organizations shall be directed to the employee organization, rather than to the Controller.” *Id.* §1153(h).

4. After growing frustrated with IOUE’s representation, Applicant notified the union by letter and email in December 2019 that he wished to terminate his association with the union. IOUE initially greeted that request with silence but ultimately informed Applicant that it would process his revocation request accordingly. Despite that assurance, the state continued to make deductions from Applicant’s paychecks, as IOUE never communicated Applicant’s decision to the state. Applicant repeatedly asked IOUE to terminate his membership thereafter, but the union ignored those requests too. Only in November 2021—nearly two years after submitting his initial opt-out request—did Applicant successfully manage to extricate himself from the union and receive full paychecks.

5. Applicant brought this action under 42 U.S.C. §1983 against IOUE and the relevant state officials to vindicate his First Amendment rights. *See* Ex.1 at 2. The district court dismissed Applicant’s complaint, *see* Ex.1 at 1-2 & n.1, and the Ninth Circuit affirmed in the decision below. The court of appeals explained that Applicant could prevail on his §1983 claim against IOUE only if the union acted “under color of state law.” Ex.1 at 2. The court held, however, that IOUE did not engage in state action, finding Applicant’s arguments “foreclosed” by circuit

precedent. Ex.1 at 3. In reaching that conclusion, the court labeled IUOE’s refusal to honor Applicant’s revocation request a mere private “dispute over the terms of Union membership.” Ex.1 at 3-4. The court also determined that IUOE and the state did not engage in “joint action” that could give rise to §1983 liability, even though state law requires the union and the state to work together to effectuate an employee’s right to disassociate from the union. Ex.1 at 4. And the court also found no “governmental nexus to the Union’s alleged constitutional violations.” Ex.1 at 4-5.

6. The Ninth Circuit’s decision is deeply flawed, as it provides a blueprint to eviscerate this Court’s decision in *Janus*. *Janus* established that a public-sector employee has a First Amendment right to opt out of a union and that states may not extract dues payments over the employee’s objection. But the decision below holds that states may establish regimes in which they continue to extract union dues unless objecting employees first communicate their opt-out requests to unions, while unions can simply ignore those requests without implicating §1983. Unsurprisingly, that paradoxical decision conflicts with decisions from other courts—including the Seventh Circuit’s post-remand decision in *Janus* itself, which held that a union that relies on state officials to withhold union dues from a nonconsenting state employee’s paychecks readily qualifies as a “joint participant” in state action. *Janus v. Am. Fed’n of State, Cnty., & Mun. Emps., Council 31*, 942 F.3d 352, 361 (7th Cir. 2019) (quoting *Tulsa Pro. Collection Servs., Inc. v. Pope*, 485 U.S. 478, 486 (1988)). And the stakes here are higher still, as this case is part of a broader trend in which states and unions

have sought to undermine the rights recognized in *Janus*. See, e.g., *Freedom Found. v. Int’l Bhd. of Teamsters Loc. 117*, 2024 WL 5252228 (9th Cir. Dec. 31, 2024) (involving unions that refused delivery of dues-revocation forms).

7. Applicant’s counsel, Erin E. Murphy, did not participate in the proceedings below and requires additional time to examine the record, prior proceedings, and the governing precedent relevant to this case. Ms. Murphy also has substantial briefing obligations between now and the current due date of the petition, including a reply in support of a petition for a writ of certiorari in *La Dell Grizzell v. San Elijo Elementary School*, No. 24-812 (U.S.) (due Apr. 15); a response brief in opposition to a motion for summary judgment in *Outsourcing Facilities Ass’n v. FDA*, No. 4:24-cv-953 (N.D. Tex.) (due Apr. 16); a brief in opposition to a motion to dismiss in *Wilmer Cutler Pickering Hale & Dorr LLP v. Executive Office of the President*, No. 1:25-cv-917 (D.D.C.) (due Apr. 17); and preparation for an oral argument regarding the cross-motions for summary judgment in *Outsourcing Facilities Ass’n v. FDA*, No. 4:24-cv-953 (N.D. Tex.) (Apr. 24).

8. Applicant’s counsel thus requests a modest extension of time to prepare and file a petition that fully addresses the important and far-reaching issues raised by the decision below.

WHEREFORE, for the foregoing reasons, Applicant requests that an extension of time to and including May 21, 2025, be granted within which Applicant may file a petition for a writ of certiorari.

Respectfully submitted,



ERIN E. MURPHY

Counsel of Record

CLEMENT & MURPHY, PLLC

706 Duke Street

Alexandria, VA 22314

(202) 742-8900

erin.murphy@clementmurphy.com

Counsel for Applicants

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