

No. 20-1019

In the Supreme Court of the United States

JADE THOMPSON,

Petitioner,

v.

MARIETTA EDUCATION ASSOCIATION, *et al.*,

Respondents.

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

**BRIEF OF PUBLIC POLICY RESEARCH
ORGANIZATIONS AND ADVOCACY GROUPS
AS *AMICI CURIAE* IN SUPPORT OF
PETITIONER**

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QUESTION PRESENTED

Three times in recent years, this Court has recognized that schemes compelling public-sector employees to associate with labor unions impose a “significant impingement” on those employees’ First Amendment rights. *Knox v. Serv. Employees Int’l Union, Local 1000*, 567 U.S. 298, 310-311 (2012); *Harris v. Quinn*, 134 S. Ct. 2618, 2639 (2014); *Janus v. American Fed’n of State, Cty., & Mun. Employees, Council 31*, 138 S. Ct. 2448, 2483 (2018). The most recent of those decisions, *Janus*, likewise recognized that a state’s appointment of a labor union to speak for its employees as their exclusive representative is “itself a significant impingement on associational freedoms that would not be tolerated in other contexts.” 138 S. Ct. at 2478. The court of appeals in this case concluded that compelled association regimes are “in direct conflict with the principles enunciated in *Janus*,” Pet. App. 3, but up-held Ohio’s regime anyway because it considered it-self bound to do so by *Minnesota State Board for Community Colleges v. Knight*, 465 U.S. 271 (1984). The questions presented are:

1. Whether it violates the First Amendment to designate a labor union to represent and speak for public-sector employees who object to its advocacy on their behalf.
2. Whether *Knight* should be overruled.

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- Daniel DiSalvo,
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INTEREST OF *AMICI CURIAE* AND RULE 29.6 STATEMENT¹

Amici curiae are public policy research organizations and advocacy groups that seek to promote limited and effective government and individual freedom. *Amici* have extensive experience with issues involving public unions and education reform and believe that unions should be supported through employees' free choice rather than government coercion. *Amici* have appeared in courts across the country—including this Court—in important cases involving public unions. See, e.g., *Friedrichs v. California Teachers Assoc.*, No. 14-915.

Amici have a strong interest in this case, which implicates matters of substantial public concern, including public-sector wages and the governance of public institutions.

None of the *amici* is publicly traded or has any parent corporations, and no publicly traded corporation owns 10% or more of any of the *amici*. The following organizations join as amici on this brief:

Alaska Policy Forum believes in the fundamental right of workers to pursue economic success with-

¹ No counsel for a party authored this brief in whole or in part, nor did any person or entity, other than *amici*, their members, or their counsel, make a monetary contribution intended to fund the preparation or submission of this brief. Counsel for the parties were notified of *amici's* intent to file this brief 9 days prior to the filing deadline and have consented to the filing of this brief. Because Respondents had already waived their right to reply, they were not prejudiced by the 9-day notice and will have ample time to respond to this brief should the Court call for a response.

out compulsion. APF is a nonpartisan nonprofit organization which works to empower and educate Alaskans and policymakers by promoting policies that grow freedom for all. Under Section 501(c)(3) of the Internal Revenue Code, APF is a tax-exempt educational organization.

Americans for Fair Treatment (AFFT) is a national nonprofit membership and legal services organization helping public employees understand and exercise their First Amendment rights in the context of a unionized workplace. Most AFFT members have declared independence from their public-sector unions by resigning their union memberships and ending payment of dues. But under prevailing interpretations of *Minnesota State Board for Community Colleges v. Knight*, 465 U.S. 271 (1984), public employees have no choice but to be represented by the very public-sector union with which they disagreed and from which they are actively withholding membership and dues. This untenable arrangement is no less unconstitutional than the agency shop arrangement addressed in *Janus v. AFSCME*, 138 S. Ct. 2448 (2018).

The **Association of American Educators** (“AAE”) is the largest national nonunion, professional educator organization, advancing the profession by offering a modern approach to educator empowerment and advocacy—promoting professionalism, collaboration, and excellence without a partisan agenda. AAE serves thousands of members in all fifty states. Its members generally prefer to negotiate their own contracts rather than be compelled to bargain through an exclusive representative.

The **Center of the American Experiment** is a 501(c)(3) organization with a strong interest in donor privacy. It also has been a consistent voice on behalf of public employees who do not want to support financially, or be represented by, public sector unions that do not reflect their values or support their interests.

Citizen Action Defense Fund is a “watchdog” for all Washingtonians, helping to ensure that state and local governments play by the rules and that the public's constitutional rights are protected. It opposes exclusive representation schemes, which it believes are incompatible with the First Amendment rights of public employees.

The **Commonwealth Foundation** transforms free-market ideas into public policies so all Pennsylvanians can flourish. Its vision is that Pennsylvania once again writes a new chapter in America's story by ensuring all people have equal opportunity to pursue their dreams and earn success. Since the Commonwealth Foundation began fighting for freedom in Pennsylvania in 1988, it has saved taxpayers billions of dollars, brought greater knowledge of free-market principles at happenings in Harrisburg to millions of fellow citizens, and helped enable hundreds of thousands of families to choose a school for themselves.

The Commonwealth Foundation has analyzed and ranked public sector labor laws in all 50 states. Its expertise has been utilized to educate public sector workers about their rights and form the basis of proposed state legislation to establish “independent bargaining” directly between an individual employee and employer without the intervention of a union.

The **Empire Center for Public Policy, Inc.**, is an independent, nonpartisan, nonprofit think tank based in Albany, New York. The Center's mission is to make New York a better place to live and work by promoting public policy reforms grounded in free-market principles, personal responsibility, and the ideals of effective and accountable government.

The **Georgia Center for Opportunity** is a 501(c)(3) nonprofit, nonpartisan organization that seeks to remove barriers to ensure that every person, no matter their race, past mistakes, or the circumstances of their birth, has access to a quality education, fulfilling work, and a healthy family life. It believes that requiring union participation to simply work and provide for one's family is unconscionable, and it sees exclusive representation arrangements like the one at issue in this case as yet one more barrier to opportunity, one that forces many public employees to choose between their job and their First Amendment rights.

The **Illinois Policy Institute** is a nonpartisan, nonprofit public policy research and education organization that promotes personal and economic freedom in Illinois. The Institute's policy work includes budget and tax policy, good government, jobs and economic growth, and labor policy. During the past several years, the Institute has assisted thousands of public-sector employees in exercising their freedom to opt out of union membership. The Institute opposes exclusive-representation schemes that further restrict the freedom of these public employees by forcing them to continue associating with a union. Such laws

wrongfully make a union the mandated mouthpiece for those employees.

Independence Institute is a nonpartisan public policy research organization founded on the eternal principles of the Declaration of Independence. The Institute's scholarship, including articles by Research Director David Kopel and Senior Fellow Robert Natelson, was cited last term in *New York State Rifle & Pistol Association v. City of New York* (Alito, J., dissenting); *Espinoza v. Montana Dept. of Revenue* (Alito, J., concurring); and *Rogers v. Grewel* (Thomas, J., dissenting from denial of certiorari).

Additionally, Senior Fellow Natelson was previously cited in *Upstate Citizens for Equality, Inc v. United States* (2017) (Thomas, J., dissenting); *Arizona State Legislature v. Arizona Independent Redistricting Com'n* (2015) (Roberts, C.J., dissenting); *N.L.R.B. v. Noel Canning* (2014) (Scalia, J., concurring); *Town of Greece, N.Y. v. Galloway* (2014) (Thomas, J., concurring in part); *Adoptive Couple v. Baby Girl* (2013) (Thomas, J. concurring); and *Arizona v. Inter Tribal Council of Arizona, Inc.* (2013) (Thomas, J., dissenting). The Institute's amicus briefs in *District of Columbia v. Heller* (2008) and *McDonald v. City of Chicago* (2010), under the name of lead *amicus* Int'l Law Enforcement Educators & Trainers Association (ILEETA), were cited in the opinions of Justices Breyer (*Heller*), Alito (*McDonald*), and Stevens (*McDonald*).

The **James Madison Institute** is a Florida-based research and educational organization that advocates for policies consistent with the framework set forth in the U.S. Constitution and such timeless ideals as lim-

ited government, economic freedom, federalism, and individual liberty coupled with individual responsibility. The Institute is a nonprofit, tax exempt organization under Section 501(c)(3) of the IRC based in Tallahassee, Florida. It supports the First Amendment rights of all Americans, including public employees.

The **John K. MacIver Institute for Public Policy** is a Wisconsin-based 501(c)(3) nonprofit organization that promotes free markets, individual freedom, personal responsibility, and limited government. It opposes exclusive-representation arrangements that force public employees to associate with unions with whom they may disagree on important public policy issues.

The **John Locke Foundation** was founded in 1990 as an independent, nonprofit think tank. It employs research, journalism, and outreach to promote its vision for North Carolina—of responsible citizens, strong families, and successful communities. JLF is committed to individual liberty and limited, constitutional government. It has extensive experience with issues involving public-sector unions and education reform. JLF opposes collective bargaining for all public sector employees including teachers, and it believes that, if public-sector unions are permitted to exist at all, they should be supported through employees' free choice rather than government coercion.

The **Josiah Bartlett Center for Public Policy** is a nonprofit educational organization whose mission is to develop and advance practical, free market policies that promote prosperity and opportunity for all. In its state, it is common for public employees to have very different political views than the ones espoused

by public employee union leadership. It has seen public employee unions campaign against and fund the political opponents of organizations run by other public employees. The Josiah Bartlett Center for Public Policy opposes exclusive representation schemes like the one challenged here, which force many public employees to choose between their First Amendment rights and their jobs.

Landmark Legal Foundation is a national public interest law firm with offices in Kansas City, Missouri, and Leesburg, Virginia. Landmark defends the Constitution's separation of powers; promotes free, fair, and secure elections; supports the enforcement of immigration laws; and represents families who have lost loved ones at the hands of individuals illegally present in the United States. The Foundation has a long history of supporting the rights of public sector employees to work independently of labor unions that use coerced dues or nonmember fees to promote a political agenda they do not support.

The **Mackinac Center for Public Policy** is a Michigan-based, nonpartisan research and educational institute advancing policies fostering free markets, limited government, personal responsibility, and respect for private property. The Center is a 501(c)(3) organization founded in 1987. The Mackinac Center has played a prominent role in studying and litigating issues related to mandatory collective bargaining laws.

The **Maine Policy Institute** is a 501(c)(3) non-profit, tax-exempt educational organization that works to advance individual liberty and economic freedom in Maine. Maine Policy conducts detailed

and timely research, develops public policy solutions, educates the public, and engages with lawmakers to foster a greater sense of liberty in Maine. It supports the First Amendment right of public employees to choose whether to associate with public sector labor unions.

The **Maryland Public Policy Institute**, a 501(c)(3) tax-exempt entity, is a research and educational organization that focuses on public finances, education, governmental transparency, public pensions, and tax reform. MPPI opposes laws that unconstitutionally burden the First Amendment rights of any Americans, including public employees.

The **Nevada Policy Research Institute** is a nonpartisan education and research organization dedicated to advancing the principles of economic and individual freedom. The Institute's primary areas of focus are education, labor, government transparency and fiscal policy. Exclusive representation schemes like the one at issue in this case discourage talented, prospective educators from entering and effectively participating in the teaching profession, thus reducing the quality of education provided to Nevada children. NPRI is a nonprofit, tax exempt organization under Section 501(c)(3) of the IRC based in Las Vegas, Nevada.

The **Pacific Research Institute** (PRI) is a nonprofit nonpartisan 501(c)(3) organization that champions freedom, opportunity, and personal responsibility by advancing free market policy solutions to the issues that impact the daily lives of all Americans. It demonstrates how free interaction among consumers, businesses, and voluntary associations is more effec-

tive than government action at providing the important results we all seek—good schools, quality health care, a clean environment, and economic growth. Founded in 1979 and based in California, PRI is supported by private contributions. Its activities include publications, public events, media commentary, invited legislative testimony, and community outreach.

The **Pelican Institute for Public Policy** is a nonprofit and nonpartisan research and educational organization, and the leading voice for free markets in Louisiana. The Institute's mission is to conduct scholarly research and analysis that advances sound policies based on free enterprise, individual liberty, and constitutionally limited government. The Institute has an interest in protecting Louisiana citizens' First Amendment rights.

Protect the First, Inc. (PT1) is a nonprofit nonpartisan 501(c)(4) organization that advocates for protecting First Amendment rights in all applicable arenas. PT1 is concerned about all facets of the First Amendment and advocates on behalf of people from across the ideological spectrum, people of all religions and no religion, and people who may not even agree with the organization's views. Because of its commitment to the robust realization of the First Amendment for all government workers—those who exercise their freedom to associate with unions and have them speak for them and those who wish the same First Amendment freedom to reject association with and compelled representation by the union—PT1 is concerned with the proper resolution of the question presented in this case.

The **Rio Grande Foundation** is New Mexico's free market think tank. It has long supported equality under the law for both people and organizations. In the past it has supported efforts to give individuals the ability to opt out of “forced dues” payments on the part of workers in industries represented by labor unions. If unions do not wish to shoulder the burden of representing any worker or group of workers, they should be freed of that obligation.

The **Roughrider Policy Center** is North Dakota's leading advocate for free markets and educational choice. The center believes that public employees should never have to choose between their jobs and their First Amendment rights, and it therefore opposes exclusive representation arrangements like the one challenged here.

The **Show-Me Institute** is a 501(c)(3) research and educational organization dedicated to improving the quality of life for all citizens of Missouri by advancing sensible, well-researched solutions to state and local policy issues. The work of the Institute is rooted in the American tradition of free markets and individual liberty. The Institute's scholars offer private-sector solutions to the state's social and economic challenges, presenting policies that respect the rights of the individual, encourage creativity and hard work, and nurture independence and social cooperation. The Institute believes that participation in government unions should be voluntary, and it has published extensive research regarding public-sector unions and educational reform.

Southeastern Legal Foundation is a national nonprofit public interest law firm and policy center

that advocates for constitutional individual liberties, limited government, and free speech. For over 44 years, SLF has stood for the First Amendment rights of all Americans, including public employees.

The **Thomas Jefferson Institute for Public Policy** (“TJPP”) is a Virginia-based nonprofit whose mission is to craft and promote public policy solutions that advance prosperity and opportunity for all Virginians. TJPP has written articles about the diverse political opinions held by public sector employees, and it believes that such employees should never have to choose between adhering to an exclusive representation scheme or finding another job.

The **Virginia Institute for Public Policy** seeks to lay the groundwork for a society dedicated to individual liberty, entrepreneurial capitalism, and a constitutionally-limited government. It believes that exclusive representation arrangements, like the one at issue in this case, are incompatible with the First Amendment.

The **Washington Policy Center** is an independent, nonprofit 501(c)(3) research and educational organization dedicated to improving the lives of the people of Washington state through accurate, high-quality research and the advancement of policy ideas that promote the public interest.

Wisconsin Institute for Law & Liberty is a public interest law firm dedicated to advancing the public interest in limited government, free markets, individual liberty, and a robust civil society. It opposes exclusive representation arrangements, which it believes are both bad policy and a violation of public employees’ First Amendment rights.

INTRODUCTION AND SUMMARY OF ARGUMENT

Petitioner, a public school teacher in Ohio, is forced by state law to accept the Respondent union as her exclusive bargaining representative, even though she is not a member. Pet. 1. The many ways in which such coerced representation infringes on her free speech rights are amply described in the petition, at 6-8. Such fundamental First Amendment infringement is contrary to this Court’s decision in *Janus v. American Fed’n of State, Cty., & Mun. Employees, Council 31*, 138 S. Ct. 2448, 2460 (2018), and not disputed by the court of appeals below. Pet. at 9. That court nonetheless ruled against Petitioner because it felt it lacked the power to overrule this Court’s pre-*Janus* decision in *Minnesota State Board for Community Colleges v. Knight*, 465 U.S. 271 (1984). While that view seems an overreading of *Knight*, one can certainly understand the court’s reluctance to refuse to comply with a decision it deemed controlling and not expressly overruled by this Court, notwithstanding the overwhelming contrary import of *Janus*.

Only this Court can break the impasse here and in other circuits that has led to courts upholding unconstitutional infringements on the rights of public employees. *Amici* thus agree with Petitioner that “this case ‘presents a First Amendment question of considerable importance.’” Pet. at 9 (quoting Pet. App. 10). They will not belabor such points, however, as Petitioner has amply described the relevant principles and cases, and this Court is fully aware of the import of its *Janus* decision.

Amici further agree that, while *Knight* need not be read as requiring the result in this case, to the extent it is so read it is wrong and in conflict with *Janus* and the First Amendment and should be overruled to the extent necessary to cure that conflict. The Petition thus presents “an important question of federal law that has not been, but should be, settled by this Court.” S. Ct. R. 10(c).

Amici write separately simply to emphasize the broad concern throughout the nation with such unconstitutional compelled speech and association, and the many government employees subject to such regimes. Both points reinforce the importance of the question presented and the appropriateness of this Court’s review.

ARGUMENT

The Petition Presents an Important Question that Should Be Resolved by this Court.

The importance of this case, both constitutionally and practically, is set forth by the Petitioner and others. *Amici* here note simply that the case affects numerous employees throughout the country and imposes burdens that cannot be squared with the First Amendment. The wide array of state and national policy organizations joining this brief reflects such importance. *Amici* each devote considerable time and effort to the cause of liberty and frequently must struggle to protect the First Amendment rights of public employees. They thus write to add their voices to the many others who correctly believe this Court should act sooner rather than later in curing this ongoing and widespread constitutional affront.

Amici further note that this Court's time and effort would be well-spent in addressing this issue, as it affects hundreds of thousands of employees around the country who are covered by collective bargaining agreements but are not members of the union that negotiated them.

In Alaska, for example, 14,011 State employees are covered under collective bargaining agreements yet only 11,271 were having dues deducted. That leaves thousands of nonmembers being "represented" by a union that does not in fact represent them or their views. And those numbers are only for employees of the state itself, with many more employees covered at the municipal, burrough, and school district levels.

Similarly, in Illinois, public sector union membership declined by more than 24,000 workers between 2017 and 2019, not counting workers who were already not members of the union. Frank Manzo IV, Virginia Parks, Robert Bruno & Jill Gigstad, *The State of the Unions: A profile of Unionization in Chicago, in Illinois, and in the United States* 9 (Sept. 7, 2020), <http://publish.illinois.edu/projectformiddleclassrenewal/files/2020/09/ILEPI-PMCR-UCI-The-State-of-the-Unions-Illinois-2020-FINAL.pdf> ("Between 2017 and 2019, which is one year prior to the [*Janus*] decision and one year after the decision, total employed union members in Illinois' public sector fell from more than 358,000 members to fewer than 334,000 members, a decrease of 6.8 percent."). And, based on an analysis of Bureau of Labor Statistics Data by amicus the Commonwealth Foundation, 344,655 public sector employees were covered by Union contracts but only 319,222 were union members,

leaving 25,433 nonmembers in the same position as petitioner here. See also Brief of *Amici Curiae* State of Michigan and Eighteen Other States in Support of Petitioner, *Janus v. American Fed'n of State, County, and Municipal Employees, Council 31*, No 16-1466 (July 10, 2017) (cert. stage), at 10-22 (discussing impacts of public employee unions in Detroit, MI, Stockton, CA, San Bernadino, CA, Chicago, IL and the State of Illinois generally, and the State of Wisconsin).

The many other cases that have addressed the tension between *Janus* and *Knight* also reflect and confirm the large number of employees affected. See *Reisman v. Assoc. Facs. of the Univ. of Me.*, 939 F.3d 409 (1st Cir. 2019) (state university employees in Maine); *Bierman v. Dayton*, 900 F.3d 570 (8th Cir. 2018) (homecare service providers in Minnesota). Cases decided immediately before *Janus* similarly bear out this tension. *Hill v. SEIU*, 850 F.3d 861 (7th Cir. 2017) (home healthcare and childcare providers in Illinois); *D'Agostino v. Baker*, 812 F.3d 240 (1st Cir. 2016) (childcare providers in Massachusetts); *Jarvis v. Cuomo*, 660 F. App'x 72 (2d Cir. 2016) (unpublished) (home childcare providers in New York); *Uradnik v. Inter Faculty Org.*, 2018 WL 4654751, at *2 (D. Minn. Sept. 27, 2018) (unpublished) (state university employees in Minnesota).

On a macro level, the Manhattan Institute has noted that 22 states have public unions that are affected by the *Janus* decision and whose non-union-member workers would be affected by the refusal to apply *Janus* to other aspects of forced association with, and representation by, unions of which they are

not members. Daniel DiSalvo, *Public-Sector Unions After Janus: An Update 4* (Manhattan Inst., Feb. 14, 2019), <https://media4.manhattan-institute.org/sites/default/files/IB-DaD-0219.pdf>. In those states the “*Janus* decision applies to 5.9 million state and local public employees covered by union contracts.” *Ibid.*

Amicus Mackinac Center did a previous analysis of union coverage based on Bureau of Labor Statistics data from 2000 through 2014 and found rates of non-members bound by union CBAs varying from 5-20% depending on the year and the state, with covered non-members increasing over time. See Patrick Wright, *Finding Quality Evidence of Union Survivability in the Absence of Agency Fees: Is the Current Population Survey’s Public Sector Unionism Data Sufficiently Reliable?*, 2017 U. Chi. Legal F. 563, 573-590 (2017) (describing methodology and results). Updated, though as yet unpublished, analysis by *amicus* Mackinac Center of more recent BLS data showed significantly higher numbers than the Manhattan Institute data. In 2018, there were 6,723,955 state and local government workers covered by union contracts, and 549,740 people who were covered nonmembers — people who opted out of the union or fee requirements. In 2020, there were slightly more state and local government employees covered by union contracts, 6,741,164 workers and 593,469 people opted out. The opt-out rate increased from 8.1% to 8.8% over the period.

These and other examples reflect that hundreds of thousands of employees around the country are harmed by the error of courts following *Knight* rather than *Janus*. This Court’s time will be well spent ad-

addressing the issue and, in so doing, protecting the constitutional rights of so many that have endured this improper regime for so long.

CONCLUSION

For the foregoing reasons, this Court should grant the Petition for a writ of certiorari.

Respectfully submitted,

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Dated: February 27, 2021

