No. _____

In The
Supreme Court of the United States

LINDA RIZZO-RUPON; SUSAN MARSHALL;
and NOEMIO OLIVEIRA,

Petitioners,

v.

INTERNATIONAL ASSOCIATION OF
MACHINISTS AND AEROSPACE WORKERS,
AFL-CIO DISTRICT 141, LOCAL 914, et al.,

Respondents.

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

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

1. Does this Court's recent First Amendment agency-fee ban announced in *Janus v. AFSCME*, ___ U.S. ___, 138 S.Ct. 2448 (2018), apply to matters involving private-sector employees governed by the auspices of the Railway Labor Act?

2. Is there state action present when private-sector employees challenge agency fees under the RLA?

PARTIES TO THE PROCEEDING AND RULE 29.6 STATEMENT

Petitioners are Linda Rizzo-Rupon, Susan Marshall, and Noemio Oliveira. Petitioners were the plaintiffs-appellants at the court of appeals.

Respondents are International Association of Machinists and Aerospace Workers, AFL-CIO District 141, Local 914, International Association of Machinists and Aerospace Workers District Lodge 141, and International Association of Machinists and Aerospace Workers AFL-CIO. Respondents were the defendants-appellees at the court of appeals.

A corporate disclosure statement is not required under Supreme Court Rule 29.6 as no Petitioner is a corporation.

LISTS OF PROCEEDINGS

There are no other court proceedings "directly related" to this case within the meaning of Rule 14(1)(b)(iii).

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The opinion of the U.S. District Court for the District of New Jersey is unreported and reproduced at Pet. App. 6-14.

JURISDICTIONAL STATEMENT

The Third Circuit entered judgment on September 23, 2020. It denied a petition for rehearing en banc on October 30, 2020.

On March 19, 2020, in light of public-health concerns related to COVID-19, this Court extended the deadline to file petitions for writs of certiorari to 150 days from the date of an order denying a timely petition for rehearing.

This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The constitutional provisions and statutes involved are set forth in the appendix to this petition –

the First Amendment to the U.S. Constitution and 45 U.S.C. § 152, Eleventh.

STATEMENT OF THE CASE

Petitioners make a First Amendment challenge to the agency-fee provision of the Railway Labor Act (RLA). 45 U.S.C. § 152, Eleventh. Facially, that provision discusses "membership" in a union, however this Court has indicated it and the National Labor Relations Act's (NLRA) 29 U.S.C. § 158(a)(3) are "in all material respects identical." *Commc'n Workers of Am. v. Beck*, 487 U.S. 735, 742 (1988). This Court has held that membership as a condition of employment under section 8(a)(3) of the NLRA is "whittled down to its financial core." *NLRB v. Gen. Motors Corp.*, 373 U.S. 734, 742 (1963). This means that under Section 2, Eleventh, one that pays agency fees meets the membership requirement of that provision and cannot be fired for not being in the union. Petitioners contend that agency fees under this provision violate the First Amendment.

In a case concerning public employees, this Court recently held that compelled subsidization of speech through an agency-fee provision was unconstitutional. *Janus v. AFSCME, Council 31*, ___ U.S. ___; 138 S.Ct. 2448 (2018); *see also Harris v. Quinn*, 573 U.S. 616 (2014) (holding agency fees charged to personal-care providers unconstitutional).

Janus overturned *Abood v. Detroit Board of Education*, 431 U.S. 209 (1977), wherein it was held that

agency fees were permissible under the First Amendment. *Janus*, 138 S.Ct. at 2460. In part, the *Janus* Court criticized *Abood* for misinterpreting two of this Court's RLA decisions – *Railway Employees v. Hanson*, 351 U.S. 225 (1956), and *Machinists v. Street*, 367 U.S. 740 (1961), which in conjunction have been interpreted to allow agency fees under Section 2, Eleventh. The *Janus* Court indicated that "neither *Hanson* nor *Street* gave careful consideration to the First Amendment." *Janus*, 138 S.Ct. at 2479. In *Harris*, the *Hanson* First Amendment analysis was derisively described as a situation where the "critical question" was "disposed of" in "a single, unsupported sentence that its author essentially abandoned a few years later." *Harris*, 573 U.S. at 635-636. The *Harris* Court opined: "Surely a First Amendment issue of this importance deserved better treatment." *Id*. at 636. The *Janus* Court echoed the *Harris* statement. *Janus*, 138 S.Ct. at 2479. In part, *Abood* was held to be wrongly decided because that case had construed *Hanson* and *Street* to require use of a deferential standard of review to analyze the nonmembers' First Amendment claim instead of using "exacting scrutiny." *Janus*, 138 S.Ct. at 2465, 2479-2480. The holdings of *Hanson* and *Street* allowing agency fees under the RLA should be overruled in light of *Harris* and *Janus*.

This Court has a long line of cases explicitly or implicitly indicating that state action is present in agency-fee challenges by private-sector employees under the RLA. *Hanson*, 351 U.S. at 231-232 (private-sector-employee RLA case); *Street*, 367 U.S. 744-750

(private-sector-employee RLA case); *Ellis v. Ry. Clerks*, 466 U.S. 435, 444-445, 455-457 (1984) (private-sector-employee RLA case); *Beck*, 487 U.S. at 761-762 (1988) (NLRA case discussing state action under RLA); *Abood*, 431 U.S. at 217-223, 226-233 (public-sector-employee case discussing state action under RLA); *Keller v. State Bar of California*, 496 U.S. 1, 10, 13 (1990) (challenge to mandatory state bar and indicating First Amendment applies to private-sector employees under RLA); *Lehnert v. Ferris Faculty Ass'n*, 500 U.S. 507, 514-519, 521-523 (1991) (public-sector-employee case discussing state action under RLA); and *Harris*, 573 U.S. at 629 n.4. ("The employees' First Amendment claim necessarily raised the question of governmental action, since the First Amendment does not restrict private conduct, and the *Hanson* Court, in a brief passage, concluded that governmental action was present.").

While for 65 years it has been clear that there is state action even where there are private employees making First Amendment agency-fee challenges under the RLA, this Court has not decided whether there is state action for agency-fee challenges under the NLRA, and explicitly reserved that question in 1988. *Beck*, 487 U.S. at 761-762. In *Janus*, this Court questioned whether the RLA cases' state-action holding was solid, but did so by citing three Circuit Court NLRA cases and *Beck*. *Janus*, 138 S.Ct. at 2479 n.24. *Stare decisis* supports holding there is state action under the RLA where private-sector employees challenge the use of agency fees. Alternatively, the very creation of an

exclusive-representation scheme triggers state action allowing agency-fee challenges by private-sector employees.

If this Court is looking to examine the holdings of *Hanson* and *Street* in order to decide whether to bring them in line with *Janus*, this case is an excellent vehicle. To do that, it is highly likely that the issue of state action under the RLA would also have to be revisited.

A. The Facts

On March 8, 2012, Respondents International Association of Machinists (IAM)[1] was certified to "represent for the purposes of the Railway Labor Act ("RLA"), as amended, the craft or class of Passenger Service Employees, employees of United Airlines/ Continental Airlines, its successors and assigns." *In re Representation of Employees of United Airlines Passenger Service Employees*, 39 NMB 294 (Mar. 8, 2012) (NMB Case No. R-7313). Pet. App. 42-44.

Petitioners Linda Rizzo-Rupon, Susan Marshall, and Noemio Oliveira are all (or were) customer-service representatives for United Airlines (which is not a party) and members of the passenger-service-employee bargaining unit. None are members of the union. The three Petitioners work (or worked) out of Newark

[1] Petitioners named what they believed were three separate legal entities, but Respondents inform that they are "three semi-autonomous levels of the IAM." (District Court Dkt. No. 9-4 at pp. 2-3). Petitioners generally will refer to the three levels collectively as IAM and will identify individual levels as necessary.

International Airport in Newark, New Jersey. Pet. App. 31. New Jersey does not have a right-to-work provision in its constitution or its statutes.

United Airlines' current collective-bargaining agreement (CBA) with Respondent IAM runs from 2016 to 2021. Pet. App. 45-64. Non-members, like the three Petitioners, are required to pay agency fees (called "Service Fees" in the CBA):

> As a condition of employment, all employees of the Company covered by this Agreement will . . . become and remain members in good standing of the Union or, in the alternative, render the Union a monthly sum equivalent to the standard monthly dues required of the Union members ("Service Fees.")

Pet. App. 46.

Petitioners filed suit on January 8, 2019, alleging the imposition of agency fees violates their First Amendment rights. They seek an order declaring that RLA's authorization of compulsory agency fees, 45 U.S.C. § 152, Eleventh is unconstitutional and that provides related relief.

B. Proceedings Below

As Petitioners' claim involves the constitutionality of a federal statute, the United States Attorney General was granted an opportunity to intervene at its discretion. District Court Dkt. No. 17. The United States Attorney General did not intervene.

On December 16, 2019, the District Court dismissed this action. First, it held that state action can only be found if the suit originates in a state with a right-to-work law: "The parties agree that New Jersey has no right-to-work law. Consequently, because no New Jersey Law is preempted by Section 2 Eleventh of the RLA, Plaintiffs possess no private rights implicated by the RLA." Pet. App. 10-11. Alternatively, on the merits, the District Court held that *Janus* only applied to public employees:

> *Janus* stands for the limited proposition that when a government entity and labor organization agree to require government employees to pay agency fees, the First Amendment is implicated in ways dramatically distinct from when agency fees are agreed to in the private sector. Because Plaintiffs here all work for a private company – United Airlines – *Janus* has no application.

Pet. App. 12-13.

Petitioners appealed. On September 23, 2020, the Third Circuit affirmed in a short, unpublished opinion. On the merits, it held that *Hanson* remains good law and has "not yet" been overruled despite *Knox v. Service Employees*, 567 U.S. 298 (2012), *Harris*, and *Janus*. Pet. App. 3. It did not analyze state action. Pet. App. 5 n.2. ("Having determined that *Hanson* resolves this appeal, we see no need to reach the state actor issue."). On October 30, 2020, the Third Circuit denied a

request for rehearing and rehearing en banc without dissent. Pet. App. 15-16.

REASONS FOR GRANTING THE PETITION

I. The Railway Labor Act governs hundreds of thousands of unionized airline and railway employees

The RLA applies to railroad "carrier[s]" under 45 U.S.C. § 151. It further applies to "common carrier[s] by air." 45 U.S.C. § 181. Class I railways[2] file quarterly employment reports with the Surface Transportation Board. Aggregating all the class I employers' 4th quarter 2020 reports, there were about 88,205 employees.[3] According to the Bureau of Transportation Statistics, in January 2021, there were 713,949 airline employees.[4] District Lodge 141[5] of Respondent IAM has a 2019 LM-2, which indicates District Lodge 141 has 38,265 members with 1,076 fee payers.[6]

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[2] Class I railroads have annual operating revenue of $250 million or more. 49 C.F.R. § 1201.1-1.

[3] These reports can be found at https://prod.stb.gov/reports-data/economic-data/quarterly-wage-ab-data/.

[4] The data can be found at https://www.transtats.bts.gov/Employment/.

[5] Essentially, this is the airline arm of IAM. See https://iam141.org/contracts-index-page-2/.

[6] An LM-2 is an annual financial report some labor organizations must file with the Office of Labor Standards Respondent. IAM's affiliate District 141 LM-2 can be found by entering "020-074" into the file-number box on this webpage – https://olmsapps.

Thus, while this case is not a class action, a ruling in Petitioners' favor holding 45 U.S.C. § 152, Eleventh unconstitutional by overturning *Hanson* and extending *Janus*' agency-fee ban would affect what are likely hundreds of thousands of private-sector employees unionized under the RLA.[7]

II. This Court has already indicated that *Hanson* was poorly reasoned and that the First Amendment prohibits agency fees

In *Janus*, this Court held that "public-sector agency-shop arrangements violate the First Amendment, and

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dol.gov/query/getOrgQry.do. After submitting that file number click on the "2019 report" and go to schedule 13, which has the membership and agency-fee-payer information.

Further, according to its 2019 LM-2 report (file number 000-107), Respondent IAM's national affiliate has 343,207 members and 8,534 fee payers, which fee payers would include Petitioners. But, undoubtedly, many of these employees are under the auspices of the NLRA and not the RLA.

[7] State and local collective-bargaining acts are limited to state and local government employees. The NLRA explicitly excludes public-sector employees. 29 U.S.C. § 152(2). The RLA, meanwhile has both public-sector and private-sector employees. See generally *California v. Taylor*, 353 U.S. 553 (1957); *United Transportation Union v. Long Island R.R. Co.*, 455 U.S. 687 (1982); 45 U.S.C. § 159a. But from the above governmental employment numbers and reports, it is readily apparent that most of the RLA employees are private-sector and work for the airlines, like the Petitioners here either do or did.

It is difficult to imagine a result where private-sector employees like Petitioners prevail and it later is held that public-sector employees under the RLA would not. But the public-sector employee question is not before this Court in this Petition.

Abood erred in concluding otherwise." *Janus*, 138 S.Ct. at 2478. It then examined whether "*stare decisis* nonetheless counsels against overruling *Abood*" and held that it "does not." *Janus*, 138 S.Ct. at 2478. This *stare decisis* model should guide whether *Hanson* should be overturned.

First, it was noted that the "doctrine is at its weakest" when interpreting the Constitution, and that it "applies with perhaps least force of all to decisions that wrongly denied First Amendment rights." *Id*. This Court noted five relevant factors: (1) quality of the underlying reasoning; (2) workability of the rule established; (3) consistency with other decisions; (4) later developments; and (5) reliance.

This Court made it clear that *Hanson*'s single-sentence First Amendment analysis should not carry much weight. Further, that decision seemed to rely on a deferential standard of review when at least exacting scrutiny (if not strict scrutiny) is required. *Janus*, 138 S.Ct. at 2479-2480.

When *Abood* relied on *Hanson* and *Street*, it "failed to see that the designation of a union as exclusive representative and the imposition of agency fees are not inextricably linked." *Janus*, 138 S.Ct. at 2480. Under the RLA, the disconnect is even more clear. Before 1951 agency fees were not permitted and yet exclusive representation was able to exist from the statute's initial passage until that date.

Respondents may point to a section where this Court stated:

> Assuming for the sake of argument that the First Amendment applies at all to private-sector agency-shop arrangements, the individual interests at stake still differ. "In the public sector, core issues such as wages, pensions, and benefits are important political issues, but that is generally not so in the private sector."

Id. (citation omitted). This Court is correct that public-sector bargaining more obviously concerns political matters, but this Court also made clear in *Knox* that even "mundane commercial . . . speech" triggers exacting scrutiny and can be held to violate the First Amendment. *Knox*, 567 U.S. at 310. Thus, it is not how political the speech is, but rather if the state can offer a sufficient interest for infringing on First Amendment rights and *Janus* and *Harris* make clear that a link between agency fees and exclusive representation is not a sufficient interest.

The second *stare decisis* factor discussed in *Janus* was workability. In examining this factor, this Court looked at the difficulty of determining chargeability and in making legal challenges to those determinations. The RLA suffers the same problems. *Ellis* is an example where this Court wrestled with six separate expense items. *Ellis*, 466 U.S. at 440 ("the quadrennial Grand Lodge convention, litigation not involving the negotiation of agreements or settlement of grievances, union publications, social activities, death benefits for

employees, and general organizing efforts"). Challenges to improper chargeability determinations under an RLA scheme are no less of "a daunting and expensive task" than with a public-sector scheme. *Janus*, 138 S.Ct. at 2482.

The third factor was consistency with later decisions. *Knox* and *Harris* indicate that acceptance of a free-rider justification to support agency fees was "an anomaly" in First Amendment jurisprudence. *Knox*, 567 U.S. at 311; *Harris*, 573 U.S. at 627. *Janus* ended this anomalous treatment in the public sector.

The fourth factor related to evidence of unions surviving in a right-to-work environment (the functional equivalent of a constitutional ban on agency fees). *Abood*, a 1977 decision, discussed a constitutional basis for agency fees at far greater length than *Hanson*, a 1956 case. Between those two cases, there was the rise of state public-sector bargaining laws. When *Abood* was decided, it may have been that it was still unclear whether there was a link between exclusive bargaining and agency fees. By the time *Janus* was decided, there was decades' worth of evidence that unions could survive in a right-to-work environment. *Janus*, 138 S.Ct. at 2466 ("Whatever may have been the case 41 years ago when *Abood* was handed down, it is now undeniable that 'labor peace' can readily be achieved 'through means significantly less restrictive of associational freedoms' than the assessment of agency fees.").

The last *stare decisis* factor discussed in *Janus* was reliance. This Court rejected an argument that existing contracts with agency-fee provisions "that will expire on their own in a few years' time" should "permit free speech rights to be abridged in perpetuity." *Id*. at 2484. This Court also noted that it had been reexamining the justification for agency fees in a number of cases since 2012. *Id*. at 2484-2485. While those were all public-sector cases, it cannot have escaped RLA unions' notice, particularly given this Court's long-standing holding that there is state action where private-sector employees make agency-fee challenges.

III. The current state-action holding protects important First Amendment interests

Regarding state action, it should be noted that this Court has indicated "our cases deciding when private action might be deemed that of the state have not been a model of consistency" and described the jurisprudence as "difficult terrain." *Lebron v. National R.R. Passenger Corp.*, 513 U.S. 374, 378 (1995). If this Court is to reexamine state action under the RLA, Petitioners will be making at least two arguments. The first is that the lack of a right-to-work option under the RLA creates state action (thus, under the RLA there would be state action, but under the NLRA there might not be). The second argument would draw upon the compelled-commercial-speech line of cases, and it would contend that the state action is created via the government choice to allow exclusive bargaining (be it either in the public or private spheres). While there may be a

sufficient state interest to allow exclusive bargaining, that interest does not justify allowing agency fees in either the public or private sectors, and this would likely mean agency fees would be unconstitutional under both the RLA and the NLRA.

Janus states:

> No First Amendment issue could have properly arisen in [*Hanson* and *Street*] unless Congress's enactment of a provision allowing, but not requiring, private parties to enter into union-shop arrangements was sufficient to establish governmental action. That proposition was debatable when *Abood* was decided, and is even more questionable today. See [*American Mfrs. Mut. Ins. Co. v. Sullivan*, 526 U.S. 40, 53 (1999)]; [*Jackson v. Metropolitan Edison Co.*, 419 U.S. 345, 357 (1974)]. Compare, e.g., *White v. Communications Workers of Am., AFL–CIO, Local 1300*, 370 F.3d 346, 350 (C.A.3 2004) (no state action), and *Kolinske v. Lubbers*, [712 F.2d 471, 477–478] (C.A.D.C.1983) (same), with *Beck v. Communications Workers of Am.*, 776 F.2d 1187, 1207 (C.A.4 1985) (state action), and *Linscott v. Millers Falls Co.*, 440 F.2d 14, 16, and n. 2 (C.A.1 1971) (same). We reserved decision on this question in *Communications Workers v. Beck*, [487 U.S. 735, 761 (1988)], and do not resolve it here.

Janus, 138 S.Ct. at 2479 n.24. There have been five opinions of this Court since *Abood* that note there is state action when a private employee makes an

agency-fee challenge under the RLA: *Ellis* (1984), *Beck* (1988), *Keller* (1990), *Lehnert* (1991), and *Harris* (2014). All the Circuit Court cases listed in that footnote discuss the NLRA, not the RLA. *Beck* is also a NLRA case. It may be that this Court will now decide that the state-action result under the RLA and NLRA need to be same, but it has not done so over the past 65 years despite it hearing multiple agency-fee cases. Further, just 2-3 terms after specifically reserving the NLRA state-action question in *Beck*, this Court decided both *Keller* and *Lehnert* and indicated that there is state-action under the RLA.

These cases relate back to the RLA's lack of a right-to-work provision as a trigger for state action, a concept which was discussed in *White v. Communications Workers of Am., AFL–CIO, Local 1300*, 370 F.3d 346 (3d Cir. 2004):

> In *Hanson*, the plaintiffs' employer, a railroad, and the defendant railway employees' union entered into a collective bargaining agreement providing that union membership was a condition of continued employment by the railroad. The plaintiffs sued the union, claiming that the "union-shop" provision of the collective bargaining agreement violated the plaintiffs' First Amendment rights. The Supreme Court found that the union's implementation of the union-shop provision amounted to state action. The Court based this conclusion on the fact that the RLA, which governs collective bargaining by railway employees, permits the use of union-shop

clauses "notwithstanding any law 'of any state.'" [*Hanson*, 351 U.S. at 232]. Since state law could not supersede union-shop clauses governed by the RLA, the Court concluded, such clauses bore "the imprimatur of federal law," and their implementation constituted state action. *Id*.

The *Hanson* Court further observed that the NLRA, unlike the RLA, does not make similar provisions in collective bargaining agreements supersede conflicting state law. See [*Hanson*, 351 U.S. at 232] ("The parallel provision in § 14(b) of the Taft–Hartley Act . . . makes [a] union shop agreement give way before a state law prohibiting it."); see also 29 U.S.C. § 164(b) ("Nothing in this Act . . . shall be construed as authorizing the execution or application of agreements requiring membership in a labor organization as a condition of employment in any State or Territory in which such execution or application is prohibited by State or Territorial law."). Thus, the rationale for finding that an act done pursuant to a collective bargaining agreement governed by the RLA is state action is not applicable to an act authorized by an agreement controlled by the NLRA. See [*Price v. UAW*, 795 F.2d 1128, 1131] ("As [the RLA] offered a means to override the law of 17 states at the time, . . . the *Hanson* Court found government action."); Kolinske, 712 F.2d at 476 ("In *Hanson* it was the preemption of a contrary state law by federal law that was central to the Court's finding of state action.").

White, 370 F.3d at 352-353. Were certiorari to be granted, Petitioners would argue for this result on its individual merits and under *stare decisis*.

The second argument would concern the governmental interest sufficient to allow exclusive representation and whether that interest justifies compelled speech. The triggering event that leads to a holding of state action would be the forced association – i.e., the exclusive representation. As this Court stated in *United States v. United Foods, Inc.*, 533 U.S. 405 (2001): "a threshold inquiry must be whether there is some state imposed obligation which makes group membership less than voluntary; for it is only the overriding associational purpose which allows any compelled subsidy for speech in the first place." *Id.* at 413. Further, "mandated support is contrary to the First Amendment principles set forth in cases involving expression by groups which include persons who object to the speech, but who, nevertheless, must remain members of the group by law or necessity." *Id*. If adopted, this second rationale would be quite significant, for it is difficult to see how it would not apply to the millions of private-sector employees covered by the NLRA.

The action that initially places an individual in a situation where his or her First Amendment rights are being subjugated to a state interest is the forced association. This is so if there is a state bargaining law (*Janus*) or a federal law like the RLA:

> Free speech serves many ends. It is essential to our democratic form of government and

> it furthers the search for truth. *Whenever the Federal Government or a State prevents individuals from saying what they think* on important matters *or compels them* to voice ideas with which they disagree, it undermines these ends.
>
> When speech is compelled, however, additional damage is done. In that situation, individuals are coerced into betraying their convictions. Forcing free and independent individuals to endorse ideas they find objectionable is always demeaning, and for this reason, one of our landmark free speech cases said that a law commanding "involuntary affirmation" of objected-to beliefs would require "even more immediate and urgent grounds" than a law demanding silence.

Janus, 138 S.Ct. at 2464 (citations omitted and emphasis added). This Court indicated that "labor peace" is a compelling governmental interest to the extent it supports exclusive representation:

> In *Abood*, the main defense of the agency-fee arrangement was that it served the State's interest in "labor peace," By "labor peace," the *Abood* Court meant avoidance of the conflict and disruption that it envisioned would occur if the employees in a unit were represented by more than one union. In such a situation, the Court predicted, "inter-union rivalries" would foster "dissension within the work force," and the employer could face "conflicting demands from different unions." Confusion would ensue if the employer entered into and

> attempted to "enforce two or more agreements specifying different terms and conditions of employment." And a settlement with one union would be "subject to attack from [a] rival labor organizatio[n]."
>
> We assume that "labor peace," in this sense of the term, is a compelling state interest.

Janus, 138 S.Ct. at 2465.

But, once that forced association is implemented through an exclusive-representation regime, the question turns to compelled financial support. Regarding such support, this Court explained: "In simple terms, the First Amendment does not permit the government to compel a person to pay for another party's speech just because the government thinks that the speech furthers the interests of the person who does not want to pay." *Id*. at 2467.

Almost certainly, if the forced-association-triggers-state-action argument is considered, questions would arise on whether such a holding would constitutionalize all collective-bargaining matters. Similar questions were raised and overcome in *Janus* regarding what might occur if this Court did not accept *Pickering* as controlling. Petitioners believe that a future holding could be cabined to the issue of compelled financial support and would not lead to constitutionalizing all labor disputes. Just as the 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," so to should a duty not to compel financial support from nonmembers be another concomitant, even where a private employer is involved.

CONCLUSION

For the foregoing reasons, Petitioners urge the Court to grant their petition, issue a writ of certiorari to the United States Court of Appeals for the Third Circuit, and set the case for plenary briefing and argument on the important questions presented.

Respectfully submitted,

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