No. 20-1574

In the Supreme Court of the United States

JOSEPH OCOL,

Petitioner,

v.

CHICAGO TEACHERS UNION, ET AL.,

Respondents.

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

BRIEF IN OPPOSITION FOR STATE RESPONDENTS

KWAME RAOUL
Attorney General
State of Illinois
JANE ELINOR NOTZ*
Solicitor General
ALEX HEMMER
Deputy Solicitor General
FRANK H. BIESZCZAT
Assistant Attorney General
100 West Randolph Street
Chicago, Illinois 60601
(312) 814-5376
jane.notz@ilag.gov

* *Counsel of Record*

QUESTIONS PRESENTED

1. Whether to overrule *Minnesota State Board for Community Colleges v. Knight*, 465 U.S. 271 (1984), in which this Court upheld the constitutionality of public-sector exclusive representation, the core principle on which labor-relations statutes across the country are based.

2. Whether, contrary to the unanimous holdings of the lower courts, a union can be held liable to repay fair-share fees that were authorized by state law and then-controlling precedent prior to *Janus v. American Federation of State, County & Municipal Employees, Council 31*, 138 S. Ct. 2448 (2018).

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

Cases

Rules, Statutes, and Regulations

Other Authorities

BRIEF IN OPPOSITION

In *Minnesota State Board for Community Colleges v. Knight*, 465 U.S. 271 (1984), this Court upheld the constitutionality of an exclusive representation system—that is, a system under which a government employer negotiated with a single labor union that represented the interests of an entire bargaining unit. Consistent with *Knight*, Illinois, like many States, has chosen to manage labor relations between its public employers and employees through a system whereby a majority of employees in an appropriate bargaining unit may elect a union to serve as the unit's exclusive representative for purposes of negotiating a collective bargaining agreement ("CBA") and administering that contract.

Petitioner asks this Court to overrule *Knight* and hold that public-sector exclusive representation violates the First Amendment. Specifically, he argues that *Knight* is in tension with *Janus v. American Federation of State, County & Municipal Employees, Council 31*, 138 S. Ct. 2448 (2018), and ripe for reconsideration.

But this Court has already denied several petitions for certiorari that challenged the constitutionality of state systems of exclusive representation. In fact, the Court denied a petition asking it to overrule *Knight* as inconsistent with *Janus* just a few months ago, and nothing has changed since then to warrant a different result here. In any event, *Knight*'s holding accords with this Court's First Amendment jurisprudence, including *Janus*, and has formed the backbone of public-sector labor relations across the nation for decades.

There is thus no reason to upset that well-settled precedent, and petitioner's request that the Court grant certiorari to do so should be denied.

STATEMENT

1. The Illinois Educational Labor Relations Act ("Act") regulates relations between public educational employers and employees through a comprehensive system of exclusive representation. See 115 ILCS 5/1 *et seq*.[1] In enacting that statute over 35 years ago, the Illinois General Assembly explained that unresolved labor disputes in public education harm the public interest and declared that the Act was designed to establish a framework for minimizing and resolving such disputes. *Id.* 5/1.

The principle of exclusive representation forms the foundation of that framework. Under the Act, a majority of employees in a bargaining unit may select a union to serve as the unit's exclusive representative. *Id.* 5/7-8. The exclusive representative shares a duty with the employer to bargain in good faith over the unit's terms and conditions of employment. *Id.* 5/10(a). The parties must then memorialize their agreement in a signed CBA that provides for binding arbitration of disputes over the administration of that contract. *Id.* 5/10(c-d).

A union that accepts the designation of exclusive representative must represent the entire bargaining unit, exclusive of anyone else, when negotiating and administering the CBA. *Id.* 5/3(b). And, when doing so, the union must fairly represent the interests of all

---

[1] The Illinois Public Labor Relations Act establishes a similar system of exclusive representation that applies to other public employers and employees. See 5 ILCS 315/1 *et seq*.

employees in the bargaining unit, including those who are not dues-paying members of the organization. *Id.* 5/14(b)(1).

Prior to June 2018, a union designated as an exclusive representative could require employees in the bargaining unit who did not pay union dues to instead pay a "fair-share fee" for services rendered. *Id.* 5/11. This Court ended that practice in *Janus*, holding that requiring public-sector employees to financially support union activities violated the First Amendment. See 138 S. Ct. at 2486.

2. Petitioner is a Chicago public school teacher in a collective bargaining unit that is represented by the Chicago Teachers Union, an affiliate of the American Federation of Teachers (together, "union respondents"). Dist. Ct. Doc. 35 at 1-2. He brought this action in December 2018, alleging various claims against union respondents, as well as Illinois Attorney General Kwame Raoul and the members of the Illinois Educational Labor Relations Board ("state respondents"). Dist. Ct. Doc. 1.

In Count I, petitioner sought a refund of fair-share fees he had paid prior to *Janus* from union respondents under multiple federal and state-law theories. *Id.* at 12-14. He also sought a declaration that the provision in the Act that had permitted the collection of fair-share fees was unconstitutional, and an injunction prohibiting the future collection of such fees. *Id.* at 13-14. In Count II, petitioner challenged the constitutionality of exclusive representation, arguing that it violated his purported right to negotiate directly with his employer. *Id.* at 14-16.

State respondents moved to dismiss the claims that petitioner brought against them, arguing that exclusive representation was permissible under *Knight* and that petitioner lacked standing to request prospective relief as to fair-share fees because he was no longer required to pay them after *Janus*. Dist. Ct. Docs. 27-28. In response, petitioner acknowledged that the claims against state defendants should be dismissed, Dist. Ct. Doc. 31, and the district court agreed, Dist. Ct. Doc. 36.

Union respondents later filed a motion for summary judgment, arguing that petitioner could not obtain a refund of pre-*Janus* fair-share fees under either state or federal law and that exclusive representation was constitutional under established precedent, while noting petitioner's acknowledgement that his claim for prospective relief as to fair-share fees should be dismissed. Dist. Ct. Docs. 47-48. They also filed a supporting statement of material facts. Dist. Ct. Doc. 35. Petitioner filed a response, conceding that union respondents were entitled to summary judgment on his constitutional challenges to fair-share fees and exclusive representation (and those claims brought under 42 U.S.C. § 1983), but arguing that judgment was improper as to the state-law and federal antitrust claims for a refund of pre-*Janus* fees. Dist. Ct. Doc 49. Petitioner, however, did not file a response to union respondents' statement of material facts or a statement of additional facts under Local Rules 56.1(b)(2-3). The district court granted summary judgment for union respondents as to all claims against them. Pet. App. 7a-12a.

The Seventh Circuit affirmed the district court's rulings, holding that petitioner's challenge to the Act's

system of exclusive representation was foreclosed by *Knight* and his section 1983 claim for a refund of fair-share fees was defeated by *Janus v. American Federation of State, County & Municipal Employees, Council 31*, 942 F.3d 352 (7th Cir. 2019), *cert denied*, 141 S. Ct. 1282 (2021). Pet. App. 1a-6a. The court also noted that petitioner had abandoned his other claims on appeal. *Id.* at 4a n.2.

REASONS FOR DENYING THE PETITION

This Court has repeatedly denied petitions for certiorari seeking reconsideration of *Knight* or otherwise challenging the constitutionality of exclusive representation, and the same result is appropriate here. In fact, this Court denied a petition asking it to overrule *Knight* less than four months ago in *Thompson v. Marietta Education Association*, 972 F.3d 809 (6th Cir. 2020), *cert denied*, 2021 U.S. Lexis 2949 (U.S. June 7, 2021) (No. 20-1019). There is no reason for the Court to reach a different result in this case.

Indeed, certiorari is not warranted on this question because there is no conflict between *Knight* and *Janus*, and because overruling *Knight* would severely injure the many States that operate systems of public-sector exclusive representation in reliance on the settled constitutionality of the framework approved in *Knight*. And to the extent petitioner argues that this case provides an attractive vehicle for revisiting *Knight*, that argument rests on allegations that are unsupported by the record and overlook the duty of

fair representation that governs an exclusive representative's conduct. The petition should be denied.[2]

I. This Court Has Repeatedly Denied Petitions Challenging The Constitutionality Of Exclusive Representation, And The Same Result Is Appropriate Here.

Following this Court's decisions in *Harris v. Quinn*, 573 U.S. 616 (2014), and *Janus*, which held unconstitutional the imposition of fair-share fees on partial public employees and full-fledged public employees, respectively, litigants have repeatedly contended that exclusive representation itself violates the First Amendment. But lower courts have uniformly upheld the constitutionality of state systems of exclusive representation against those challenges, relying on *Knight*, and this Court has consistently denied certiorari.[3]

---

[2] State respondents do not address the second question presented because it concerns the claim for a refund of fair-share fees, which was alleged against union respondents only. See Dist. Ct. Doc. 1 at 12-14. Petitioner correctly concedes, however, that certiorari is unwarranted as to that question absent a circuit split, see Pet. 14, and no such split has developed, see Union Br. in Opp. 19-20.

[3] See *Thompson*, 972 F.3d 809, *cert. denied*, 2021 U.S. Lexis 2949 (U.S. June 7, 2021) (No. 20-1019); *Reisman v. Associated Facs. of Univ. of Me.*, 939 F.3d 409 (1st Cir. 2019), *cert denied*, 141 S. Ct. 445 (2020) (No. 19-847); *Mentele v. Inslee*, 916 F.3d 783 (9th Cir.), *cert denied sub nom*, *Miller v. Inslee*, 140 S. Ct. 114 (2019) (No. 18-1492); *Bierman v. Dayton*, 900 F.3d 570 (8th Cir. 2018), *cert denied sub nom. Bierman v. Walz*, 139 S. Ct. 2043 (2019) (No. 18-766); *Hill v. Serv. Emps. Int'l Union*, 850 F.3d 861 (7th Cir.), *cert denied*, 138 S. Ct. 446 (2017) (No. 16-1480); *Jarvis v. Cuomo*, 660 F. App'x 72 (2d Cir. 2016), *cert denied*, 137 S. Ct. 1204 (2017) (No.

Most recently, in *Thompson*, this Court denied a petition that sought review of the same question presented here: whether to overrule *Knight*. Compare Pet. for Writ of Cert. i, *Thompson*, No. 20-1019 (Jan. 22, 2021) (asking "[w]hether *Knight* should be overruled"), *with* Pet. i (asking "[s]hould the Court overrule *Knight*"). And the *Thompson* petition made the same argument in favor of overruling *Knight* that petitioner now advances: that it conflicts with *Janus*. Compare Pet. for Writ of Cert. 22-28, *Thompson*, No. 20-1019, *with* Pet. 9-11. This Court thus denied certiorari less than four months ago in a case that is indistinguishable from this one.

Indeed, the Court has repeatedly denied petitions for certiorari arguing that exclusive representation violates the First Amendment on the basis of perceived tension between *Knight* and either *Janus* or *Harris*. Petitioners in virtually all of the petitions made substantively identical arguments.[4] This Court has thus already turned down multiple requests to assess the constitutionality of exclusive representation over the

---

16-753); *D'Agostino v. Baker*, 812 F.3d 240 (1st Cir.), *cert denied*, 136 S. Ct. 2473 (2016) (No. 15-9182).

[4] See Pet. for Writ of Cert. 9-18, *Reisman v. Associated Facs. of Univ. of Me.*, 141 S. Ct. 445 (2020) (No. 19-847), and Pet. for Writ of Cert. 8-17, *Bierman v. Waltz*, 139 S. Ct. 2043 (2019) (No. 18-766) (both relying on *Janus*); Pet. for Writ of Cert. 8-19, *Miller v. Inslee*, 140 S. Ct. 114 (2019) (No. 18-1492) (relying on *Janus* and *Harris*); Pet. for Writ of Cert. 9-28, *Hill v. Serv. Emps. Int'l Union*, 138 S. Ct. 446 (2017) (No. 16-1480), Pet. for Writ of Cert. 10-25, *Jarvis v. Cuomo*, 137 S. Ct. 1204 (2017) (No. 16-753), and Pet. for Writ of Cert. 7-20, *D'Agostino v. Baker*, 136 S. Ct. 2473 (2016) (No. 15-1347) (all relying on *Harris*).

past five years that were premised on the same arguments petitioner presses. The same treatment is appropriate here.

For his part, petitioner argues that this case "presents an ideal vehicle" for revisiting *Knight* because he was expelled from his union, and he believes he could obtain a higher salary if he negotiated directly with his employer. Pet. 8, 11-13. To that end, he maintains that "collective bargaining requires teachers to be paid the same across subject matter," which is contrary to the interests of teachers in STEM subjects, like himself, who would otherwise command higher pay. *Id.* at 11-12. Petitioner is incorrect.

To begin, as union respondents explain more fully in their brief, petitioner's vehicle arguments are based on factual allegations that are unsupported by the summary judgment record. See Union Br. in Opp. 9-12. Because petitioner did not file a response to union respondents' statement of material facts or a statement of additional facts under the district court's local rules, the facts in union respondents' statement were deemed admitted, see *Friend v. Valley View Cmty. Unit Sch. Dist. 365U*, 789 F.3d 707, 710 (7th Cir. 2015), and thus controlled over any contrary allegations in the complaint, see *Estate of Perry v. Wenzel*, 872 F.3d 439, 461 (7th Cir. 2017). Petitioner's suggestion that employers are barred from negotiating a CBA that provides higher pay for STEM teachers likewise lacks any legal support, see Union Br. in Opp. 11, and his speculation that he would make more money if he bargained directly with his employer reflects his disagreement with state policy rather than any constitutional flaw with the Act.

Further, while petitioner is no longer a member of the union that represents his bargaining unit, the Act imposes a duty of fair representation. See 115 ILCS 5/14(b)(1). Consequently, the union has a statutory obligation to serve the interests of all bargaining unit members, including petitioner, in good faith without hostility or discrimination. *Metro. All. of Police v. State Lab. Rels. Bd.*, 803 N.E.2d 119, 130 (Ill. App. Ct. 2003). Petitioner is thus incorrect that this case is an attractive vehicle for reconsidering *Knight*; to the contrary, there is no salient difference between it and those cases in which the Court has rejected similar requests.

II. Because There Is No Conflict Between *Knight* And *Janus*, The Court Should Not Grant Certiorari To Reconsider *Knight*.

Petitioner nevertheless argues that certiorari is warranted because *Knight* conflicts with language in *Janus*—an argument, as noted, that this Court has considered and rejected before as a basis for certiorari. *Supra* pp. 6-8. Petitioner is incorrect, in any event, because there is no conflict between the two cases. Rather, *Knight* and *Janus* considered different regulatory regimes governing different conduct and, indeed, this Court expressly stated in *Janus* that it was not casting doubt on the validity of exclusive representation in invalidating fair-share fees.

In *Knight*, this Court upheld the constitutionality of a state law that provided for the exclusive representation of public employees, concluding that States had the constitutional discretion to choose the entities they consult with when making employment decisions. 465 U.S. at 282-288. States could decide to

meet with only the union or, as in *Smith v. Arkansas State Highway Employees*, 441 U.S. 463, 464-465 (1979), consult with individual employees. *Knight*, 465 U.S. at 286-287. A State's decision to designate an exclusive representative was permissible under the First Amendment, this Court explained, so long as the State did not require employees to join the union or restrict their ability to speak or associate with whom they pleased. *Id.* at 288-290.

In *Janus*, this Court held that requiring employees who were not union members to financially support a union by paying a fee violated the First Amendment. 138 S. Ct. at 2465-2478. The Court reasoned that the subsidization of union speech was not justified by the State's compelling interest in promoting labor peace because States could obtain the benefits of exclusive representation without allowing unions to collect a fee. *Id.* at 2465-2469. To that end, the Court stated that the federal government and various States had successfully operated systems of exclusive representation without fees, *id.* at 2465-2466, and explained that States could follow that model and "keep their labor-relations systems exactly as they are," except as to fees, *id.* at 2485 n.27.

Together, *Knight* and *Janus* hold that exclusive representation is constitutional on its own because it does not require employees to join or support a union, while fair-share fees violate the First Amendment because they force employees to financially contribute to the union's activities. When, as here, an employee is not required to do anything to support the union, exclusive representation is a permissible exercise of the State's discretion.

Petitioner's assertion that "it is not apparent why" exclusive representation is constitutional when fair-share fees are not thus overlooks the clear line that this Court drew in *Knight* and *Janus* between laws that require employees to support the union (i.e., by requiring payment of fair-share fees) and those that do not (i.e., by authorizing exclusive representation). See Pet. 10. While petitioner seizes upon two sentences in *Janus* implying that the recognition of an exclusive representative impinges on an employee's associational freedoms, see *id.* at 10-11 (citing *Janus*, 138 S. Ct. at 2460, 2478), this Court at the same time reconfirmed the constitutionality of exclusive representation, explaining that "the State may require that a union serve as exclusive bargaining agent for its employees" and that it was merely "draw[ing] the line at allowing the government to go further still and require all employees to support the union," *Janus*, 138 S. Ct. at 2478. And the Court squelched any doubt about the continued validity of systems of exclusive representation when it advised States that they "can keep their labor-relations systems exactly as they are," except as to fees, and join the other jurisdictions that had already taken that approach. *Id.* at 2485 n.27. Consequently, there is no conflict between *Knight* and *Janus*.

Petitioner does not suggest that *Knight* conflicts with any other precedent of this Court, and it does not. Indeed, *Knight* and *Smith* both rest on the bedrock principle that citizens "have no constitutional right to force the government to listen to their views." *Knight*, 465 U.S. at 283; see *id.* at 287 ("The applicable constitutional principles are identical to those that controlled in *Smith*."); *Smith*, 441 U.S. at 465 ("the First

Amendment does not impose any affirmative obligation on the government to listen, to respond or, in this context, to recognize the [union] and bargain with it"). Petitioner's assertion that he has a constitutional right to negotiate directly with his employer, see Dist. Ct. Doc. 1 at 15, is at odds with that foundational principle.

Knight is also consistent with this Court's jurisprudence on associational freedoms more generally. The First Amendment guarantees individuals the freedom to associate with others to collectively exercise their right to free speech, *Roberts v. U.S. Jaycees*, 468 U.S. 609, 618 (1984), as well as the freedom not to associate, *Boy Scouts of Am. v. Dale*, 530 U.S. 640, 648 (2000). The government infringes on the freedom not to associate when it forces someone to subsidize the speech of another, see *Knox v. Serv. Emps. Int'l Union*, 567 U.S. 298, 309-310 (2012), or accommodate another speaker's message such that their own message is affected by the speech they must accommodate, *Rumsfeld v. Forum for Acad. & Institutional Rights, Inc.*, 547 U.S. 47, 63 (2006). *Knight* comports with those principles because exclusive representation does not require employees to subsidize the union's speech or accommodate the union's speech in a way that affects their own. Here, for example, petitioner is not obligated to support or accommodate the union's speech in any way.

Finally, even if language in *Janus* could be viewed to have undermined *Knight*, stare decisis would strongly counsel against disturbing that precedent given the magnitude of the reliance interests it has engendered. This Court requires a "special justification" to overrule precedent, even in constitutional

cases. *Dickerson v. United States*, 530 U.S. 428, 443 (2000). Among the factors the Court considers when deciding whether to overrule precedent are the quality of the decision's reasoning, the workability of the rule it established, its consistency with related decisions, subsequent developments in the law, and the extent to which public and private actors have relied on that decision. *Janus*, 138 S. Ct. at 2478-2479.

As explained, *Knight* is well reasoned and comports with other related decisions, including those issued after it was decided, see *supra* pp. 9-12, and petitioner makes no complaint about its workability. Moreover, the reliance interests that have grown around *Knight* are immense, as nearly every labor-relations statute in the country depends on the principle of exclusive representation. See Dist. Ct. Doc. 35-2 at 4; Sarah W. Cudahy, William A. Herbert, & John F. Wirenius, *Total Eclipse of the Court? Janus v. AFSCME, Council 31 in Historical, Legal, & Public Policy Contexts*, 36 Hofstra Lab. & Emp. L.J. 55, 97 (2018) ("virtually all state collective bargaining statutes have imposed the exclusive representation model"). If this Court were to overrule *Knight* and hold exclusive representation unconstitutional, then, the Illinois legislature, like that of numerous other States, would have to radically revise its statutory framework for managing public-sector labor relations. See 115 ILCS 5/1 (declaring statutory purpose to regulate labor relations through system of exclusive representation); see also *Hilton v. S.C. Pub. Rys. Comm'n*, 502 U.S. 197, 202 (1991) ("*Stare decisis* has added force when the legislature, in the public sphere, and its citizens, in the private realm, have acted in reliance on a previous decision,

for in this instance overruling the decision would dislodge settled rights and expectations or require an extensive legislative response."). *Knight* thus carries reliance interests that this Court found lacking in *Janus*. *See Janus*, 138 S. Ct. at 2485 n.27 (stating decision would not require an extensive legislative response). Petitioner's request that this Court grant certiorari and overrule *Knight* should therefore be denied.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

KWAME RAOUL
Illinois Attorney General
JANE ELINOR NOTZ*
Solicitor General
ALEX HEMMER
Deputy Solicitor General
FRANK H. BIESZCZAT
Assistant Attorney General
100 West Randolph Street
Chicago, Illinois 60601
(312) 814-5376

* *Counsel of Record*

SEPTEMBER 2021