No. 20-1786

IN THE
Supreme Court of the United States

JOANNE TROESCH and IFEOMA NKEMDI,
PETITIONERS,
V.
CHICAGO TEACHERS UNION, LOCAL UNION NO. 1, AMERICAN FEDERATION OF TEACHERS, and THE BOARD OF EDUCATION OF THE CITY OF CHICAGO,
RESPONDENTS.

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

BRIEF OF THE LIBERTY JUSTICE CENTER AS *AMICUS CURIAE* IN SUPPORT OF PETITIONERS

Jeffrey M. Schwab
Counsel of Record
Stefanie Tripoli
LIBERTY JUSTICE CENTER
141 W. Jackson St. #1065
Chicago, IL 60604
(312) 637-2280
jschwab@libertyjustice-center.org

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INTEREST OF THE AMICUS CURIAE[1]

The Liberty Justice Center is a nonprofit, nonpartisan, public-interest litigation firm that seeks to protect economic liberty, private property rights, free speech, and other fundamental rights. The Liberty Justice Center pursues its goals through strategic, precedent-setting litigation to revitalize constitutional restraints on government power and protections for individual rights.

As part of its mission to defend fundamental rights, the Liberty Justice Center works to protect public sector workers' right to freedom from forced union association, support, or speech. *See Janus v. AFSCME, Council 31*, 138 S. Ct. 2448 (2018). The Liberty Justice Center has pending petitions for writs of certiorari in two cases that raise similar issues: *Bennett v. AFSCME Council 31*, 991 F.3d 724 (7th Cir. 2021), *petition for cert. filed* No. 20-1603 (May 14, 2021), and *Hendrickson v. AFSCME Council 18*, 992 F.3d 950 (10th Cir. 2021), *petition for cert. filed* No. 20-1606 (May 14, 2021). Both petitioners, like the Troesch petition here, request this Court to clarify that the First Amendment rights recognized in *Janus* apply to all nonmembers, including those who previously signed a dues deduction authorization.

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[1] Rule 37 statement: No counsel for any party authored any part of this brief, and no person or entity other than *amici* funded its preparation or submission. Counsel for both Petitioners and Respondents received notice more than 10 days before its filing that Amicus intended to file this brief, and all parties consented to its filing.

SUMMARY OF ARGUMENT

Janus makes clear that the First Amendment guarantees public employees a right not to subsidize a union and its speech. 138 S. Ct. at 2486. To protect this right, this Court held that public employers cannot deduct, and unions cannot collect, money from employees absent clear and compelling evidence those employees waived their First Amendment right to eschew funding union speech. *Id*. Even so, narrow escape windows dictated by the terms of union authorization cards or collective bargaining agreements—often leaving employees as little as ten or fifteen specified days per calendar year to opt out of such funding—restrict employees' ability to effectively leave the union and stop paying union dues.

In this case, and others like it, employees who joined the union before *Janus*, but sought to leave the union and cease dues deductions after this Court's decision, are constrained by such escape windows, and, therefore, must continue to pay union dues. But employees who joined a union prior to *Janus* have not affirmatively consented to waiving their *Janus* rights. Rather, at the time they signed a union card and dues deduction agreement they were required to pay the union either in the form of membership dues or nonmember agency fees. Because these employees could not have freely, voluntarily, or knowingly waived their right not to pay the union when they signed dues deduction authorization cards, as *Janus* requires, they cannot be forced to continue to pay union dues.

This end-around *Janus* and its underlying principles has been endorsed by the Third, Seventh, Ninth and Tenth Circuits, which have gutted this Court's

Janus holding by permitting onerous restrictions on former union member employees' ability to exercise their constitutional rights. *Fischer v. Gov. New Jersey,* 842 Fed. Appx. 741, 753 (3rd Cir. 2021) (non-precedential opinion), *petition for cert. filed* No. 20-1751 (June 14, 2021); *Troesch v. Chi. Teachers Union, Local Union No. 1*, No. 21-1525, 2021 WL 2587783 (7th Cir. 2021), *petition for cert. filed* No. 20-1786 (June 23, 2021); *Bennett v. AFSCME Council 31*, 991 F.3d 724, 731-33 (7th Cir. 2021), *petition for cert. filed* No. 20-1603 (May 14, 2021); *Belgau v. Inslee*, 975 F.3d 940, 950-52 (9th Cir. 2020), *petition for cert. filed* No. 20-1120 (Feb. 11, 2021), *cert. denied sub nom*. *Belgau, Melissa, et. al. v. Inslee, Gov. of WA, et al.*, No. 20-1120, 2021 WL 2519114 (U.S. June 21, 2021); *Hendrickson v. AFSCME Council 18*, 992 F.3d 950, 961-62, 964 (10th Cir. 2021), *petition for cert. filed* No. 20-1606 (May 14, 2021). Specifically, these decisions hold that state actors do not need evidence of a constitutional waiver to seize union dues from employees who, prior to the *Janus* decision, signed a dues deduction authorization or union membership agreement subject to an opt-out window. *Id.*

This Court should grant the petition to correct the lower courts' misapplication of *Janus* and make clear that nonmembers who consent to pay a public sector union, including nonmembers seeking to join the union, may only have dues withheld by their government employer if there is clear and compelling evidence that they have voluntarily, knowingly, and intelligently waived their First Amendment right to not pay money to the union.

ARGUMENT

I. Pre-*Janus* dues deduction authorizations cannot meet the *Janus* waiver requirements.

The First Amendment guarantees public employees a right not to subsidize a union and its speech. *Janus*, 138 S. Ct. at 2486. To protect those sacrosanct rights, public employers cannot deduct, and unions cannot collect, "an agency fee nor any other payment" for union speech absent "clear and compelling evidence" the employees waived their First Amendment right not to pay for union speech. *Id.* Employees, therefore, must "clearly and affirmatively consent" to waiving their rights for unions to lawfully collect payments. *Id.* (citations omitted).

Notwithstanding this Court's directive for government employers to refrain from deducting union payments from employees absent waiver of their right not to do so, the lower courts have allowed states and public-sector unions to cap workers' constitutional rights for as many as 355 days a year by (1) excluding former union members from the *Janus* holding and (2) substituting a lesser contract standard in place of the constitutional waiver *Janus* demands. These holdings have resulted in involuntary union payments by numerous plaintiffs (and future plaintiffs) who could not have properly waived their right to not fund union speech—a right recognized by this Court in *Janus*.

A. The lower courts have improperly limited the application of *Janus* to agency fee payers.

Prior to *Janus*, public-sector workers were subject to what *Janus* deemed an unconstitutional choice: paying money to the union as a member in the form of dues or paying money to the union as a nonmember in the form of agency or fair-share fees. Given these "options," some chose to join the union. Naturally, following *Janus*, many of these workers, including Troesch and plaintiffs in the post-*Janus* cases noted above, sought to leave the union and cease all union payments in light of their newly recognized rights. However, the union cards and dues deduction agreements they signed contained narrow opt-out windows. These escape periods limit workers' ability to cease payments to as small as a 10-day annual window. Consequently, plaintiffs like Troesch have been forced to pay union dues after revoking their membership and seeking to stop payments to the union (in Troesch's case, full dues for 10 months). *Troesch v. Chi. Teachers Union, Local Union No. 1*, No. 20-C-2682, 2021 WL 736233 (N.D. Ill. February 25, 2021).

In addition to Troesch, the plaintiff in *Bennett* was forced to fund union speech for three-quarters of a year after she gave notice of her wish to cease payments, until her two-week revocation window approached. *Bennett*, 991 F.3d at 728, 731–33. Hendrickson was bound to continue payments at 87% of union membership dues for four months until his two-week escape period that occurs once a year in December. 992 F.3d at 961–62, 964. Similarly, Belgau was forced to continue union payments at 65–79% of regular

member dues until his narrow 10-day annual escape period. *Belgau*, 975 F.3d at 945, 950. *See also Fischer*, 842 Fed. Appx. at 753.[2] And plaintiff Riberio in *Creed v. Alaska State Emples. Assoc.*, 472 F. Supp. 3d 518, 521 (D.C. Alaska, 2020), was forced to fund union speech five months following his resignation, over his objection, due to a 10-day revocation window included in his dues-deduction authorization. *Id.*

In these cases, plaintiffs argued that the affirmative consent waiver requirement set forth by this Court in *Janus* applied equally to them because they never waived their First Amendment right not to make payments to the union in the first place. Nor could their union cards or dues deduction agreements constitute a waiver of their right not to pay the union, because at the time these workers became union members, they were unaware of the right to pay no money to the union. Rather, these workers were required to pay money to the union in one form or another, as a member or nonmember—an unconstitutional "choice" under *Janus*. Therefore, these workers and other pre-*Janus* workers who became members under similar conditions, could not have freely or voluntarily waived their right not to fund union speech. Put another way, consent in its true form was impos-

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[2] The *Fischer* and *Smith* plaintiffs at the Third Circuit were fastened between the ten-day revocation period in New Jersey's Workplace Democracy Enhancement Act, N.J. Stat. Ann. § 52:14-15.9e, and the period prescribed in their authorization cards; July 1 or January 1 of each year. The Third Circuit has yet to answer the question of which escape window would have applied in the case where statute conflicts with the union's escape window because, upon the filing of *Fischer*, the union ceased deducting payments.

sible given this Hobson's choice of subsidizing the union in one form or another and the fact that their right to be free from forced union subsidization had not yet been expressly recognized by this Court.

Yet these district courts along with the Third, Seventh, Ninth, and Tenth Circuits circumvented *Janus* by limiting its holding to agency-fee payers and finding that proof of a waiver is not required for government and unions to extract dues from these and other nonmembers if, at some point during the employees' tenure, they signed a form to authorize the deductions. *See Fischer*, 842 Fed. Appx. at 753, *Oliver v. SEIU Local 668*, 830 F. App'x 76 (3d Cir. 2020) (nonprecedential decision); *Troesch*, No. 21-1525, 2021 WL 2587783, *Bennett*, 991 F.3d at 731-33; *Belgau*, 975 F.3d at 950-52; *Hendrickson*, 992 F.3d at 961-62, 964; *Creed*, 472 F. Supp. 3d at 521. *See also Belgau*, 975 F.3d at 951 n.5 (collecting district court cases).

In contrast, this Court in *Janus* stated that "[b]y agreeing to pay, nonmembers are waiving their First Amendment rights, and such a waiver . . . must be freely given and shown by clear and compelling evidence." 138 S. Ct. 2448, 2486 (2018) (citations omitted). But agency-fee payers, like Mark Janus, never agreed to pay money to the union. Indeed, the most obvious way for a nonmember to agree to pay money to a union would be to join the union by signing a membership and dues deduction authorization card. Thus, the lower courts' decisions limiting the *Janus* waiver analysis to nonmember agency-fee payers would result in the *Janus* waiver analysis almost *never* applying.

The lower courts have engaged in circular logic to the benefit of labor unions in an effort to limit the *Janus* waiver analysis. *Compare Bennett,* 991 F.3d at 724 ("Having *consented* to pay dues to the union, regardless of the status of her membership, [a worker] *does not* fall within the sweep of *Janus's* waiver requirement.") (emphasis added) with *Janus*, 138 S. Ct. at 2486 ("[*b*]*y agreeing to pay*, nonmembers *are waiving* their First Amendment rights, and such a waiver cannot be presumed.") (emphasis added). *See also*, *Hendrickson*, 992 F.3d at 961 *("*"By choosing to become a Union member, [the plaintiff] affirmatively consented to paying union dues,' and thus 'was not entitled to a refund based on *Janus*.'") quoting *Oliver,* 830 F. App'x at 80; *Belgau*, 975 F.3d at 952 (*Janus* "in no way created a new First Amendment waiver requirement for union members before dues are deducted pursuant to a voluntary agreement."). Surely this Court did not intend for its decision in *Janus* to be restricted in the manner applied by the lower courts.

B. Pre-*Janus* dues deduction authorizations alone are incapable of meeting the requirements for a valid constitutional waiver.

This Court has long held that certain standards must be met for a person to properly waive his or her constitutional rights. Waiver of a constitutional right must be of a "known right or privilege." *Johnson v. Zerbst*, 304 U.S. 458, 464 (1938). Waiver must also be freely given; it must be voluntary, knowing, and intelligently made. *D. H. Overmyer Co. v. Frick Co.,* 405 U.S. 174, 185-86 (1972). Because a court will "not presume acquiescence in the loss of fundamental rights,"

Ohio Bell Tel. Co. v. Pub. Utils. Com., 301 U.S. 292, 307 (1937), the waiver of constitutional rights requires "clear and compelling evidence" that the employees wish to waive their First Amendment right not to pay union dues or fees. *Janus*, 138 S. Ct. at 2484. In addition, "'[c]ourts indulge every reasonable presumption against waiver of fundamental constitutional rights.'" *College Savings Bank v. Fla. Prepaid Postsecondary Educ. Expense Bd.*, 527 U.S. 666, 682 (1999) (quoting *Aetna Ins. Co. v. Kennedy ex rel. Bogash*, 301 U.S. 389, 393 (1937)).

Neither Troesch nor the plaintiffs in these other incorrectly-decided cases could have voluntarily, knowingly, or intelligently waived their First Amendment rights under *Janus* when they signed a union membership card and/or dues deduction authorization because, at the time, this Court had not yet issued its decision in *Janus*. Thus, they had no knowledge of the rights they were purporting to waive in the first place. Moreover, it was impossible for these plaintiffs and workers like them to voluntarily waive their First Amendment right under *Janus* because they were forced into an unconstitutional choice: pay union dues as a member or pay agency fees to the union as a nonmember. As a result, the "contracts" signed by these workers are incapable of meeting the requirements of a *Janus* waiver. Unions and government employers therefore had no right to continue to withhold money from these workers' paychecks following *Janus* by limiting their withdrawal from the union to an arbitrary window specified in the union membership and dues deduction authorization.

This Court should grant the petition in this case to find that Troesch, and those similarly situated to her, could not have waived her First Amendment rights under *Janus* simply by signing the union card and dues deduction authorization prior to this Court's *Janus* decision. When Troesch agreed to join and pay the union, she was a nonmember. Thus, under *Janus*, waiver analysis applies to Troesch and her pre-*Janus* "contract" with the union fails to waive her constitutional right to refrain from funding union speech. *See Harper v. Va. Dep't of Taxation*, 509 U.S. 86, 97 (1993) ("[w]hen this Court applies a rule of federal law to the parties before it, that rule is the controlling interpretation of federal law and must be given full retroactive effect in all cases still open on direct review and as to all events, regardless of whether such events predate or postdate our announcement of the rule.").

II. For waiver to be effective, workers must be appraised of their *Janus* right not to fund union speech.

As a result of the lower courts treatment of *Janus*, slim revocation windows have effectively functioned as unions' end-around the *Janus* waiver requirement, often resulting in lengthy periods of lock-in for employee membership dues following their resignation. Until this Court safeguards employees' *Janus* rights by clarifying that waiver analysis applies to all nonmembers, the upshot of the lower courts' decisions is that unions will have every incentive to ensure that government employees remain ignorant of their rights under *Janus* and will continue every effort to ensure employees immediately join the union without knowledge of their *Janus* rights.

For example, in a pending case before the Northern District of Illinois, an English-as-a-second-language teacher from Spain employed by a school district under a cultural exchange program, who was unaware of this Court's *Janus* decision, signed a union card and dues deduction authorization after attending a mandatory new-hire presentation by the union. *Ramon Baro v. Lake County Federation of Teachers Local 504*, No. 1:20CV02126 (N.D. Ill.). Because Ramon-Baro believed she was required to join the union, she signed the union card only to later realize she was not required to do so. When she almost immediately attempted to withdraw from the union and cease dues payments based on her mistaken understanding, the union told her that she would have to wait until her opt-out window almost a full year later.

If these lower court decisions are left untouched, workers like Ramon-Baro who sign a union card without any knowledge they had another option cannot lay a constitutional claim against the union and their employer. As a result, Ramon-Baro and those who are similarly unaware of their *Janus* rights will end up paying union dues for lengthy periods of time out of their lack of legal expertise as opposed to their unequivocal waiver—a result surely unintended by this Court in *Janus*.

The lower courts' evisceration of *Janus* rights for former members will also encourage legislation further thwarting individual liberties. These results are already playing out. Take, for instance, Section 11.1 of Illinois's Education Labor Relations Act ("IELRA"), amended effective December 20, 2019, requiring public educational employers to enforce escape periods as

short as ten-days and making it easier for public sector unions to control the flow of information about union membership to employees in their bargaining unit. 115 Ill. Comp. Stat. §5/11.1 (as amended by P.L. 101-0620, eff. Dec. 20, 2019). IELRA not only requires employers to give unions contact information about employees in their bargaining unit, it also explicitly prevents any private third-party from obtaining the same contact information. This makes it more difficult for third-party organizations who want to inform public sector workers about their *Janus* rights to reach workers. Further, IELRA prevents employers from "discouraging" union membership, which makes it less likely that an employer would risk informing its employees about their rights to not join or pay a union under *Janus*, because doing so could be seen as an unfair labor practice.

On the same note, New Jersey enacted the Workplace Democracy Enhancement Act ("WDEA") roughly one month before the Court issued *Janus*, in an apparent effort to preemptively undermine the workers' rights this Court would soon recognize. P.L. 2018, ch.15, § 6, eff. May 18, 2018. WDEA not only requires compulsory union orientations for employees but also amended the State's dues deduction statute, New Jersey Statutes Annotated Section ("N.J. Section") 52:14-15.9e, to make it harder for employees to revoke dues deduction authorizations. Prior to the amendment, employees who wanted to stop government dues deductions could submit a revocation notice effective as of the January 1 or July 1 "succeeding the date on which notice of withdrawal is filed." The WDEA amended the statute to limit the revocation window to "10 days following each anniversary date of

their employment," which shall not be effective until the "30th day after the anniversary date of employment." N.J. Section 52:14-15.9e (as amended by P.L. 2018, c.15, § 6, eff. May 18, 2018).

Without a *Janus* waiver analysis for employees who consent to pay the union, laws like these in Illinois and New Jersey will allow public sector unions to prey on employees' ignorance of their constitutional rights under *Janus*. It is well-established that waiver of a constitutional right must be of a "known right or privilege." *Johnson v. Zerbst*, 304 U.S. 458, 464 (1938). The post-*Janus* lower court decisions addressed above remove any protection for workers unaware of their right not to fund union speech.

In addition, relying on the Ninth Circuit's conclusion that the *Janus* waiver analysis does not apply to those who have joined the union, numerous district courts have dismissed cases filed by public sector employees who allege that they never signed union membership agreements and that their government employers deducted union dues from their paychecks, based on a union's forgery of their signatures on union membership agreements. *See* Brief of Goldwater Institute and National Taxpayers Union as Amici Curiae, *Belgau*, 975 F.3d 940 (*citing Jarrett v. Marion County*, No. 6:20-cv-01049-MK, 2021 WL 65493, (D. Or. Jan. 6, 2021), appeal docketed, No. 21- 35133 (9th Cir. Feb. 19, 2021); *Zielinksi v. SEIU Local 503*, 499 F.Supp.3d 804 (D. Or. 2020), appeal docketed, No. 20-36076 (9th Cir. Dec. 15, 2020); *Schiewe v. SEIU Local 503*, No. 3:20-cv-00519-JR, 2020 WL 5790389, (D. Or. Sept. 28, 2020), appeal docketed, No. 20-35882 (9th Cir. Oct. 9, 2020); *Wright v. SEIU Local 503*, 491

F.Supp.3d 872 (D. Or. Sept. 28, 2020), appeal docketed, No. 20-35878 (9th Cir. Oct. 8, 2020); *Semerjyan v. SEIU Local 2015*, 489 F.Supp.3d 1048 (C.D. Cal. Sept. 25, 2020), appeal docketed, No. 21-55104 (9th Cir. Feb. 9, 2021); *Yates v. Wash. Fed'n of State Emps.*, 466 F.Supp.3d 1197, 1201 (W.D. Wash. 2020), appeal docketed, No. 20-35879 (9th Cir. Oct. 8, 2020); *Quezambra v. United Domestic Workers of Am. AFSCME Local 3930*, 445 F.Supp.3d 695, 702 (C.D. Cal. 2020), appeal docketed, No. 20-55643 (9th Cir. June 23, 2020).

Only because the Ninth Circuit in *Belgau* ignored this Court's clear holding in *Janus*—that a government employer may not withhold money from an employee's paycheck unless that employee affirmatively consents to waive his or her First Amendment right—could these courts have held that forging an employee's signature on a union membership card is not a constitutional violation. As a result of the lower court's refusal to enforce the plain language of this Court's ruling in *Janus*, unions have been able to take advantage of government employees' ignorance of their First Amendment rights, lobby for legislation that makes it more likely that employees will remain ignorant of those rights by giving unions near-exclusive power to communicate with employees about union membership, and even use coercion, fraud, and forgery in order to have money withheld from employees' paychecks on unions' behalf.

This Court should grant the petition in this case, or another like it, not only because the lower courts have refused to apply the plain language of this Court's *Janus* decision, but because unions are using

the lower courts' refusal to do so to continue violating the First Amendment rights of employees that *Janus* recognized. As a result, unless or until this Court grants review in one of the cases raising this issue, public sector workers will continue to have money withdrawn from their paychecks and remitted to unions without the employees' freely given and informed affirmative consent.

III. Until this Court grants review of this or a similar case, union preferences will supersede individual freedom.

The subject of dues deductions or checkoffs and narrow revocation windows pits union financial stability against individual freedom of choice. See *International Association of Machinist Dist. Ten v. Allen*, 904 F.3d 490, 513–14 (7th Cir. 2018) (Limitations on checkoff agreements are a matter of "'the employee's freedom of decision.'"), quoting *Felter v. S. Pac. Co.*, 359 U.S. 326, 333 (1959). By finding the *Janus* waiver inapplicable to former members, the lower courts not only mince the meaning of *Janus*, they grant preference to labor unions over individual liberties. On this score, Judge Manion's dissent in *Allen* correctly observed:

> "While management and labor may bargain over the existence and terms of checkoff agreements, neither side adequately represents the freedom of employees to revoke their agreements. It is in the union's interest to procure the maximum irrevocability period allowed

> under the law, not to bargain for the best interests of its members."

Allen, 904 F.3d at 514 (Manion, J., dissenting).

The holdings of the Third, Seventh, Ninth and Tenth Circuits reinforce the imbalance of power between unions and individual freedom by granting unions (and government employers) the unfettered ability to restrict when an employee can *effectively* opt out of the union, regardless of how long they must continue to fund union speech over their objection and never having waived their rights not to subsidize the union in the first place. *Fischer*, 842 Fed. Appx. at 753, *Troesch*, 2021 WL 2587783*, Bennett*, 991 F.3d at 731-33; *Belgau*, 975 F.3d at 950-52; *Hendrickson*, 992 F.3d at 961-62, 964. These decisions result in the sacrifice of individual constitutional rights over the unions' desire for more secure funding. *Davenport v. Washington Educ. Ass'n*, 551 U.S. 177, 185 (2007) ("[U]nions have no constitutional entitlement to the fees of nonmember-employees."); *Knox v. Serv. Employees Intern, Union*, 567 U.S. 298, 321 (2012) (In the context of agency fees, the union is "the side whose constitutional rights are *not* at stake.")

Yet *Janus* eviscerated disproportionate union power when it acknowledged that coerced speech threatens constitutional freedoms as much as measures that restrict speech. 138 S. Ct. at 2464. The lower courts circumvent this principle by limiting the reach of *Janus* to nonmembers alone. Putting aside this unduly narrow reading of *Janus*, these decisions ignore the "bedrock principle that, except in the rarest of circumstances, no person in this country may be

compelled to subsidize speech by a third party that he or she does not wish to support." *Harris v. Quinn*, 573 U.S. 616, 656 (2014).

In a related context involving the private sector, this Court held in *Patternmakers League v. N.L.R.B.*, 105 S. Ct. 3064, 3068 (1985) that a proviso in the National Labor Relations Act allowing unions membership retention rules did not permit the union to create rules restricting resignations by fining members who resign during a strike. *Id.* citing 29 U.S.C. §158(b)(1)(A). Indeed, such fines impermissibly restrain employees' Section 7 right to refrain from any or all concerted activities. *Id.* This Court properly noted the "inconsistency between union restrictions on the right to resign and the policy of voluntary unionism" and rejected the union's argument that its rule did not interfere with members' employment rights because the union was merely fining members. This Court aptly noted: "a union has not left a 'worker's employment rights inviolate when it exacts [his entire] paycheck in satisfaction of a fine imposed for working.'" *Id.* at 3071, quoting Harry *Wellington, Union Fines and Workers' Right*s, 85 Yale L. J. 1022, 1023 (1976). Rather, "[b]y allowing employees to resign from a union at any time, [the Act] protects the employee whose views come to diverge from those of his union." *Id.* at 3071 *citing* 29 U.S.C. §158(a)(3). *See also* M*cCahon v. Pa. Tpk. Comm'n*, 491 F.Supp.2d 522, 527 (M.D. Pa. 2007) (finding plaintiffs likely to succeed in extending nonmember's First Amendment right not to associate to members who are unable to resign due to 'maintenance of membership' provision of 3-year collective bargaining agreement).

Unless or until this Court clarifies that the "contract" standard does not replace the *Janus* waiver analysis for *all* nonmembers, workers will impermissibly continue to fund union speech unwillingly even where their views "diverge from those of the union." Membership resignation has little meaning when an employee must continue to fund speech and activities the employee no longer supports and never waived the right not to fund in the first place. Nothing in *Janus* supports such disproportionate power for the unions over former members who seek to cease union payments. Nor does *Janus* suggest that unions' interest in fees trump individual liberties for some (former union members) but not for others (nonmembers). Instead, *Janus* set forth a clear and unambiguous directive: "States and public-sector unions may no longer extract agency fees from nonconsenting employees." 138 S. Ct. at 2486. Because this straightforward rule makes no exceptions for nonconsenting former union member employees, this Court should grant certiorari to resolve the lower courts' decisions holding otherwise.

CONCLUSION

Janus indeed "was a gamechanger in the world of unions and public employment." *Belgau*, 975 F.3d at 944. And it has, unsurprisingly, led to a significant amount of litigation around the nation. Unfortunately, nearly all of the decisions have been universally hostile to the rights recognized in *Janus*. This Court's intervention is necessary to clarify that it meant what it said in *Janus*: unions may not take money from employees without their affirmative consent.

This Court made clear in *Janus* that waiver analysis applies when a nonmember agrees to pay a union. The lower courts have prevented such analysis in its most likely application: when a nonmember agrees to become a member and pay union dues. This Court must make clear that there is no exception to waiver analysis for a nonmember who agrees to pay money to a union as a member.

Respectfully submitted,

Jeffrey M. Schwab
Counsel of Record
Stefanie Tripoli
LIBERTY JUSTICE CENTER
141 W. Jackson St. #1065
Chicago, IL 60604
(312) 637-2280
jschwab@libertyjustice-center.org

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