No. 24-1306

In the Supreme Court of the United States

TERRY KLEE,

Petitioner,

v.

INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 501, *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

BRIEF IN OPPOSITION FOR THE STATE RESPONDENTS

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QUESTION PRESENTED

Under California law, public employees have the right to join or decline to join a union. For employees who choose to become union members, state law allows the California State Controller to deduct union dues from their paychecks only pursuant to the employees' written authorization. The union is responsible for informing the State Controller which employees have provided this written authorization. In this case, petitioner alleges that he withdrew his prior authorization in accordance with the terms of his agreement with the union, but the union failed to notify the State Controller and terminate his dues deductions. State law provides several remedies for public employees when a union unlawfully collects dues from their paychecks.

The question presented is whether a union acts under color of state law for purposes of 42 U.S.C. § 1983 when, in violation of state law, it fails to notify the State Controller to terminate dues deductions after a public employee withdraws a prior authorization.

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STATEMENT

1. California law guarantees state employees the right to join or decline to join a union. *See* Cal. Gov't Code § 3515. Neither the State nor the union may "[i]mpose or threaten to impose reprisals on employees," "discriminate or threaten to discriminate against employees," or otherwise "interfere with, restrain, or coerce employees because of their exercise" of these rights. *Id.* §§ 3519(a), 3519.5(b). In addition, no public employer may require an employee who chooses not to become a union member to pay an agency fee. *See Janus v. Am. Fed'n of State, Cnty., & Mun. Emps., Council 31*, 585 U.S. 878, 882-886 (2018).

State employees who choose to become members of a union may authorize the California State Controller, the official responsible for administering the state payroll system, to deduct union dues from their paychecks. *See* Cal. Gov't Code § 1153(b). Before collecting dues in this way, the union must obtain a written "authorization, signed by the individual from whose salary or wages the deduction . . . is to be made." *Id*. Based on this signed authorization, the union may then ask the State Controller to deduct "membership dues" and other fees from the employees' paychecks. *Id.* § 1152. The State Controller will "honor these requests" only if the union has certified that it "ha[s] and will maintain" the employee's written authorization. *Id.* §§ 1152, 1153(b). The union must "indemnify the [State] Controller for any claims made by the employee for deductions made in reliance on" the union's certification. *Id.* § 1153(g).

California law also allows state employees to revoke their previous authorizations to deduct dues. Like the original authorization, "requests to cancel or change deductions" are "directed to the [union], rather than to the [State] Controller." Cal. Gov't Code § 1153(h). "Deduction[s] . . . may be revoked only pursuant to the terms of the employee's written authorization," and the union is obliged to process revocation requests and communicate those requests to the State Controller. *Id.* The State Controller must "rely on information provided by" the union regarding whether a previous dues-authorization agreement was "properly canceled or changed." *Id.* And as with an employee's initial dues deductions, the union must agree to "indemnify the [State] Controller for any claims made by the employee for deductions made in reliance on that information." *Id.*

If disputes arise concerning a union's collection of dues from a public employee, state law provides several potential avenues for relief. For example, California law contemplates that if the State Controller is made aware of a conflict about "the existence or terms of [an] authorization," she can demand that the union "provide a copy of [the] individual authorization." Cal. Gov't Code § 1153(b). Public employees can also present "unfair practices" claims to California's Public Employment Relations Board. *See, e.g.*, Cal. Gov't Code §§ 3513(h), 3541.3(i), 3541.5; *Edelen v. Cal. Statewide Law Enf't Ass'n*, 2009 WL 8154980 (Cal. Pub. Emp. Rel. Bd. Dec. 31, 2009) (finding that a union engaged in unfair labor practices when it refused to honor two public employees' valid requests to withdraw from union membership, and ordering the union to make the employees whole); *Trevisanut v. Cal. Union of Safety Emps.*, 1993 WL 13699367 (Cal. Pub. Emp. Rel. Bd. Dec. 13, 1993) (similar). And public employees have the right to pursue remedies in state court, including, for example, presenting state-law theories of unjust enrichment, breach of contract, conversion, and/or violations of the Unfair Competition

Law. *See, e.g.*, *Wright v. Serv. Emps. Int'l Union Loc. 503*, 48 F.4th 1112, 1118 n.3 (9th Cir. 2022) (noting that the aggrieved employee in that case also brought "state law claims for common law fraud and wage theft in violation of" Oregon state law).

2. According to the complaint, petitioner Terry Klee has been a "Material Stores Supervisor I at the California Department of Corrections since 2010." C.A. E.R. 88. He alleges that he initially joined respondent International Union of Operating Engineers, Local 501—which is the union responsible for representing public employees like Klee in collective bargaining with the State—"shortly" after starting work at the Department of Corrections. *Id.* at 88-89, 90. Klee's initial membership in the union continued until October 2019, when he "notified [the union] of his desire to resign from the union and stop paying dues," and the union "immediately" complied with that request. *Id.* at 90.

Klee later "reconsider[ed] his resignation," however. C.A. E.R. 90. He wanted "union assistance with [a] workplace conflict," so he elected to rejoin the union to "obtain" that benefit. *Id.* at 91. On November 22, 2019, he signed the union's membership application, which contained a dues-authorization agreement. *See id.* at 110. According to the agreement's terms, "[i]n exchange for obtaining the benefit of exclusive representation" by the union, Klee "authorize[d] the State Controller to deduct . . . union dues and other fees and assessments" from Klee's paychecks. *Id.* The signed authorization further provided that it was "irrevocable for a period of one year and year-to-year thereafter" unless it was revoked between 30 and 45 days "prior to the anniversary date of th[e] authorization or the termination of the contract between [the Department of Corrections] and the Union, whichever comes first." *Id.* Finally, Klee agreed that—if he wanted to revoke his dues authorization—he would "notify the Union and [the Department of Corrections] in writing, with [his] valid signature." *Id.*

Klee soon had another change of heart. On December 30, 2019—approximately one month after rejoining the union and signing the union's dues-authorization agreement—he attempted to (again) withdraw from the union. *See* C.A. E.R. 92. He avers that he sent the union a letter by certified mail, which purported to "resign[] his membership and withdraw[] his authorization and consent for dues or any other deductions for [union] purposes." *Id.* The letter also asked the union to send him any information concerning whether there was "a 'window' period during which [he could] resign or revoke any withholding authorizations," and it instructed that—if he could not immediately resign—the union should "hold [his] letter until such time as [it] believe[d] that [he could] resign effectively." *Id.* at 312; *see also id.* at 92. He apparently followed up on this letter with several additional emails and other communications to union officials concerning his request, but he received no response from the union other than an acknowledgment that his letter "ha[d] been received and w[ould] be processed accordingly." *Id.* at 93-94.

When the union continued to collect dues from his paychecks, Klee sent the union additional certified letters. For example, he sent a second certified letter dated November 10, 2020, which was substantively "identical" to his first letter. C.A. E.R. 95-96. He again followed-up on this letter with emails and other communications to union officials. *See id.* at 96-97. In response, the union informed Klee that the union had received the November withdrawal request "outside of [Klee's] agreed upon cancelation window," and that he could revoke his authorization only by notifying the union of his withdrawal "between October 8th and October 23rd"—*i.e.*, the 30-to-45-day revocation window that falls before November 22 (which is the date Klee signed his dues-authorization agreement). *Id.* at 340; *see also id.* at 96. Despite these instructions, on January 19, 2021, Klee sent the union a third certified letter asking to resign his membership. *See id.* at 97. That letter was also unsuccessful: the union informed Klee that his third opt-out request (like his second request) could "not be processed as the request [was] outside of the appropriate time to submit such a request." *Id.* at 344; *see also id.* at 97.

Klee then sent the union a fourth certified letter resigning his union membership on October 20, 2021—a date that fell within the union's understanding of the dues-authorization agreement's opt-out window. *See* C.A. E.R. 98; *see also id.* at 340. Following the union's receipt of this letter, it "ceased" deducting dues from Klee's paychecks. *Id.* Klee nowhere alleges that he ever informed the Department of Corrections or the State Controller of his various demands to withdraw from the union. *See generally id* at 86-108.

3. Although the union's dues deductions had ended by November 2021, Klee filed suit in January 2022 against the union, the Department of Corrections, the California Attorney General, and the State Controller. *See* C.A. E.R. 88-90, 108. As relevant here, Klee's complaint asserted claims under 42 U.S.C. § 1983. Klee alleged that defendants had violated his First Amendment rights by making unauthorized dues deductions from his paychecks. *See id.* at 99-100. In Klee's view, his dues deductions should have ended

no later than May 17, 2020. *See id.* at 100. As he understands the dues-authorization agreement, that is the first withdrawal window to open following the union's receipt of his December 30, 2019, certified letter. *See id.* at 91 (explaining Klee's belief that his "dues may cease between May 17, 2020, and June 1, 2020"); Petr. C.A. Br. 7.[1]

Based on these allegations, Klee sought $924.04 in compensatory damages from the union, nominal damages from the remaining defendants, attorney's fees and costs, a declaratory judgment, and a permanent injunction preventing the defendants from collecting dues from Klee without his "affirmative consent and without any contractual basis." C.A. E.R. 105-108; *see also id.* at 100-101. Notably, Klee's complaint did not seek relief based on any state-law theories of liability, such as breach of contract, conversion, unjust enrichment, unfair competition, or fraud. *See generally id.* at 86-108; *see also supra* pp. 2-3.

The district court dismissed Klee's complaint. *See* Pet. App. 8-44. The court held that Klee lacked standing to bring any of his prospective claims for injunctive or declaratory relief. *See id.* at 26-34. As the court explained, Klee had not alleged that the union was continuing to deduct dues from his paychecks at the time he filed his lawsuit, and there was "no evidence that the Union w[ould] begin doing so unless [Klee] cho[se] to rejoin the Union." *Id.* at 26. And although

[1] The union disputes Klee's understanding of the dues-authorization agreement's terms. *See, e.g.*, Union C.A. Br. 8 (suggesting that union members must submit their "requests to revoke" within "the bounds of" an authorized opt-out window); *see also id.* at 21-22 (explaining "that the entire controversy may have been the product of a mutual misunderstanding due to the ambiguous wording of [Klee's] membership agreement").

the court found that Klee had standing to bring retrospective claims for damages, it held that his claims for relief against the state respondents—the Department of Corrections, the Attorney General, and the State Controller—were barred by sovereign immunity. *See id.* at 25-26, 34-36.

That left only Klee's Section 1983 claim for damages from the union. But the district court dismissed that claim as well, on the ground that Klee could not show that the union "engaged in 'state action' when it deducted dues from [Klee's] paychecks." Pet. App. 36. Specifically, the court held that the union did not act "under color of law" for purposes of Section 1983 merely because it misused a "state procedure to take amounts deducted from [Klee's] paychecks without his . . . consent." *Id.* at 37. As the court explained, Klee "concedes that he initially authorized pay deductions for union dues; the state did not compel him to do so." *Id.* And "[a]lthough he alleges that he had effectively withdrawn his consent, the purported basis for the deductions was [his] private agreement" with the union. *Id.* Klee's "claimed constitutional deprivation" therefore "arose from th[at] private agreement, not state action." *Id.* at 38.

The court of appeals affirmed. *See* Pet. App. 1-7. It noted that Klee had failed to preserve several of his claims: in particular, his appellate briefs made "no argument sufficiently stated relating to the dismissal of his claims against [the Department of Corrections] or for compensatory relief against the state officials." *Id.* at 2 n.1. The court of appeals also agreed with the district court that the retrospective claims against the Attorney General and the State Controller had to be dismissed on sovereign-immunity grounds, and that Klee's claims for injunctive and declaratory relief failed for want of Article III standing. *See id.* at 5-7. Klee was "no longer a member of the Union and ha[d] no intention to become one," meaning "[h]is risk of future injury" was far too attenuated to support standing. *Id.* at 6-7.[2]

The court of appeals also rejected Klee's claim for damages from the union, because the union was not a "state actor" within the meaning of Section 1983. *See* Pet. App. 2-5. Klee argued that he properly revoked his authorization to deduct dues, and that defendants' continued deductions violated both his membership agreement and his First Amendment rights. *See* Petr. C.A. Br. 6 (arguing that "per the plain meaning of the language in" Klee's dues-authorization agreement, he "complied with [the agreement's] requirements and should have been released"). But as the court explained, the parties' "dispute" was about "the terms of [Klee's] Union membership," and thus "the source of the alleged constitutional harm [was] not a state statute or policy but the particular private agreement between [Klee and] the union." Pet. App. 3. (internal quotation marks omitted).

ARGUMENT

Klee offers no persuasive reason for this Court to review whether the union engaged in state action when it allegedly collected dues from his paychecks without authorization. As the courts below correctly held, Klee's Section 1983 claims failed for want of state action. There is no disagreement among the lower courts on that question, and this Court has recently and repeatedly denied other petitions raising

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[2] Klee's petition does not contest the lower courts' dismissal of his claims against the Department of Corrections, the Attorney General, and the State Controller. *See* Pet. i, 14-24; S. Ct. R. 14(1)(a).

the same or similar questions presented—including eight such cases just last Term.[3] Those repeated denials make good sense: litigants in Klee's shoes can pursue appropriate remedies under state law against unions that deduct dues without authorization. There is no sensible reason to constitutionalize this area of the law—and certainly no reason for this Court to grant certiorari—when remedies available in state court provide adequate paths to relief.

1. Section 1983 provides a cause of action for the deprivation of constitutional rights by those acting "under color of state law." *Am. Mfrs. Mut. Ins. Co. v. Sullivan*, 526 U.S. 40, 49-50 (1999). "Like the state-action requirement of the Fourteenth Amendment, the under-color-of-state-law element of § 1983 excludes from its reach merely private conduct, no matter how . . . wrongful." *Id.* at 50 (internal quotation marks omitted). Only conduct that is "fairly attributable to the State" may form the basis of a Section 1983

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[3] *See, e.g.*, *Bourque v. Eng'rs & Architects Ass'n*, 145 S. Ct. 592 (2024) (No. 24-2); *Parde v. Serv. Emps. Int'l Union, Local 721*, 145 S. Ct. 418 (2024) (No. 24-307); *Laird v. United Tchrs. L.A.*, 145 S. Ct. 141 (2024) (No. 23-1111); *Cram v. Serv. Emps. Int'l Union Loc. 503*, 145 S. Ct. 142 (2024) (No. 23-1112); *Kant v. Serv. Emps. Int'l Union, Loc. 721*, 145 S. Ct. 142 (2024) (No. 23-1113); *Hubbard v. Serv. Emps. Int'l Union Loc. 2015*, 145 S. Ct. 151 (2024) (No. 23-1214); *Deering v. Int'l Brotherhood of Elec. Workers Loc. 18*, 145 S. Ct. 151 (2024) (No. 23-1215); *Craine v. Am. Fed'n of State, Cnty., & Mun. Emps. Council 36, Loc. 19*, 145 S. Ct. 280 (2024) (No. 24-122); *Burns v. Serv. Emps. Int'l Union Loc. 284*, 144 S. Ct. 814 (2024) (No. 23-634); *Jarrett v. Serv. Emps. Int'l Union Loc. 503*, 144 S. Ct. 494 (2023) (No. 23-372); *Polk v. Yee*, 143 S. Ct. 405 (2022) (No. 22-213); *Woods v. Alaska State Emps. Ass'n, AFSCME Loc. 52*, 142 S. Ct. 1110 (2022) (No. 21-615); *Anderson v. Serv. Emps. Int'l Union Loc. 503*, 142 S. Ct. 764 (2022) (No. 21-609); *Belgau v. Inslee*, 141 S. Ct. 2795 (2021) (No. 20-1120).

claim. *Lugar v. Edmondson Oil Co.*, 457 U.S. 922, 937 (1982). To establish fair attribution, courts "employ a two-prong inquiry comprised of 'the state policy requirement' and 'the state actor requirement.'" Pet. App. 3; *see also* Pet. 16-17. Applying this two-prong test is a "necessarily fact-bound inquiry." *Lugar*, 457 U.S. at 939. And on the facts of this case, the court below did not err when it held that Klee could not satisfy either prong of the state-action analysis.

a. Regarding the first prong, to show state action, Klee must establish that the alleged "deprivation" was "caused by the exercise of some right or privilege created by the State or by a rule of conduct imposed by the State or by a person for whom the State is responsible." *Lugar*, 457 U.S. at 937. Analysis of this prong focuses on "the specific conduct of which the plaintiff complains." *Sullivan*, 526 U.S. at 51 (internal quotation marks omitted); *see also Lugar*, 457 U.S. at 940. Here, Klee contends that the union caused him constitutional injury by collecting dues from his paychecks without his authorization. *See* C.A. E.R. 87; *see also* Pet. 11 (summarizing Klee's claim "that California's scheme of permitting dues to continue to be deducted from his paycheck notwithstanding his request to resign from the union violated his First Amendment rights").

But that alleged "deprivation" did not "result[] from the exercise of a right or privilege having its source in state authority." *Lugar*, 457 U.S. at 939. The source of the union's power to obtain dues and other contributions was Klee's private agreement with the union: he voluntarily joined the union and agreed to have dues deducted from his paychecks when he signed the union's membership application in November 2019. *See* C.A. E.R. 110; *see also id.* at 91 (acknowledging that Klee voluntarily "re-enrolled" with the union). No government entity or state law required Klee to join the union or to start paying dues; rather, California law guaranteed him the right to refuse to join or participate in the activities of the union. *See* Cal. Gov't Code § 3515. And California law forbade the union from seeking any deductions from Klee's paychecks that he had not himself "authoriz[ed]" in writing. *Id.* § 1153(b).

Klee claims that the union engaged in state action because it "enlist[ed] state support" in improperly collecting his dues "by providing a 'notification' to the state that it should proceed with dues deductions" even though Klee had terminated his dues-authorization agreement. Pet. 18. But even assuming Klee properly canceled his dues authorization, *but cf. supra* p. 6 & n.1 (discussing competing interpretations of Klee's contract), that would not convert the union's continued receipt of dues into state action. There is no basis under state law for a union to continue to obtain dues if an employee properly withdraws his authorization. The employer may deduct dues only pursuant to the employee's written authorization. *See* Cal. Gov't Code § 1153(b). And California law gives employees the right to revoke that authorization, subject to the terms of their private agreement with the union. *See id.* § 1153(h). When an employee "properly cancel[s]" his authorization, the union is responsible for informing the State Controller so that deductions can be terminated. *Id.*

At most, then, Klee's allegations suggest that the union violated state law by falsely certifying to the State Controller that Klee had authorized the continued deduction of union dues from his paychecks. That kind of alleged misconduct is not fairly attributable to the State and does not constitute state action for purposes of Section 1983. As this Court recognized in *Lugar*, "private misuse of a state statute does not describe conduct that can be attributed to the State." 457 U.S. at 941. Put differently, the alleged union misconduct in this case cannot "be ascribed to any governmental decision" because the union was "acting *contrary to* the relevant policy articulated by the State," which plainly contemplates dues deductions only with the employee's authorization. *Id.* at 940 (emphasis added). And as discussed above, *supra* pp. 2-3, state law provides remedies against unions that deduct dues without proper authorization.

This Court's decision in *Lindke v. Freed*, 601 U.S. 187 (2024), is not to the contrary. *See* Pet. 22. That case considered whether a city manager's activity on Facebook constituted state action that might support a Section 1983 claim. *See Lindke*, 601 U.S. at 190-191. Because a government actor performed the challenged conduct, the Court analyzed "whether a *state official* engaged in state action"—an entirely different question from the one presented here. *Id.* at 196. And although the Court reasoned that "the *misuse* of power, possessed by virtue of state law, constitutes state action," it also made clear that "the state-action doctrine requires that the State have granted an official the type of authority that he used to violate rights." *Id.* at 199, 200 (internal quotation marks and brackets omitted). The "authority" that the union allegedly "misused" here was its power to collect union dues. *See* Pet. App. 87, 99-101. As just described, however, state law does not give the union the power to collect dues from state employees. Only a signed authorization from each individual employee can do that. *See* Cal. Gov't Code §§ 1152, 1153(b).

b. Klee also fails to establish the state-action doctrine's second prong, which turns on whether "the party charged with the deprivation" was "a person who may fairly be said to be a state actor." *Lugar*, 457 U.S. at 937. This Court has articulated several tests for this aspect of the state-action inquiry. Most relevant here, "a private entity can qualify as a state actor . . . when the government acts jointly with the private entity." *Manhattan Cmty. Access Corp. v. Halleck*, 587 U.S. 802, 809 (2019); *see* Pet. 20-21 (arguing that the union was a state actor under the "joint action" test). Not just any "joint action" will qualify, however. The State must have provided "significant aid" to the union's allegedly unconstitutional conduct. *Lugar*, 457 U.S. at 937. In other words, the State must have "so significantly encourage[d] the private activity as to make the State responsible for" the union's allegedly unconstitutional dues deductions. *Sullivan*, 526 U.S. at 53; *see also S.F. Arts & Athletics, Inc. v. U.S. Olympic Comm.*, 483 U.S. 522, 546 (1987) ("[A] government normally can be held responsible for a private decision only when it has exercised coercive power or has provided such significant encouragement . . . that the choice must in law be deemed to be that of the government.").

Here, the court of appeals correctly held that the union was not a state actor under this "joint action" test. *See* Pet. App. 4-5. Klee does not allege that the State was aware of his dispute with the union about his membership, much less that the State "so significantly encourage[d]" the union's continued dues deductions "as to make the State responsible for" the union's misconduct. *Sullivan*, 526 U.S. at 53. Instead, Klee alleges only that the State Controller—unaware of Klee's attempts to withdraw from the union—continued to process payroll deductions pursuant to the union's certification that it had Klee's written authorization to do so. Cal. Gov't Code § 1153(b); *see also* C.A. E.R. 89, 100. That kind of ministerial task is insufficient to make the State Controller and the union "joint actors" as that term is "used in [this Court's] state-action jurisprudence." *Sullivan*, 526 U.S. at 54; *see also id.* (explaining that "a private party's mere use of the State's . . . machinery," without more, cannot be considered state action).

Klee disagrees. He principally relies on *Lugar* to argue that the State Controller's processing of dues deductions pursuant to California's statutory scheme is enough to establish "joint action" under Section 1983. *See* Pet. 17-19; *see also* Br. of Amici Curiae State of West Virginia, et al. 17-18; Br. of Amici Curiae Nat'l Right to Work Legal Defense Found., Inc., et al. 15-16. But that argument reads *Lugar* far too broadly. The Court in *Lugar* found state action only to the extent the plaintiff alleged that the private-actor defendant *fully complied with* "the procedural scheme created by" state law. 457 U.S. at 940-941 & n.22. That state-action determination says nothing about this case, where the union is alleged to have *violated* state law. *See supra* pp. 11-12. Moreover, the Court in *Lugar* was careful *not* to hold that "a private party's mere invocation of state legal procedures constitutes joint participation . . . with state officials satisfying the § 1983 requirement of action under color of law." 457 U.S. at 939 n.21 (internal quotation marks omitted). Instead, the Court explained that its finding of state action was "limited to the particular context of prejudgment attachment." *Id.*; *see also Sullivan*, 526 U.S. at 58 (warning that *Lugar* "must not be torn from the context out of which it arose").

2. Klee also fails to establish any genuine conflict among the lower courts regarding the application of the state-action doctrine to union-dues cases like this one. To the extent courts have addressed the state-action question in this context, they have all agreed with the Ninth Circuit.

As Klee acknowledges, the Sixth and Eighth Circuits have joined the Ninth Circuit in holding that there is no state action where a union (allegedly) wrongfully collects dues from public employees. *See* Pet. 25-26. For example, in *Littler v. Ohio Ass'n of Public School Employees*, 88 F.4th 1176, 1181 (6th Cir. 2023), the Sixth Circuit held that a union did not engage in state action when it "improperly instructed the state to withhold union dues after [the employee] withdrew her union membership." As the Sixth Circuit explained, the wrongful withholding "was caused by a private actor"—the union—"acting *contrary* to any rule of conduct imposed by the state," which necessarily meant that the union's conduct could not "be attributed to the state." *Id.*

The Eighth Circuit has reached the same conclusion on similar facts. In *Hoekman v. Education Minnesota*, 41 F.4th 969, 978 (8th Cir. 2022), for example, the Eighth Circuit held that a union's alleged misconduct in failing to promptly process two members' resignations and continuing to collect dues after the resignations was not state action. Like the court below, the Eighth Circuit recognized that the "harm allegedly suffered by [the resigning members was] attributable to private decisions and policies, not to the exercise of any state-created right or privilege." *Id.* After all, "[t]he source of the unions' right to collect . . . dues . . . [was] not state authority; it [was] the private agreement between the unions and the employees." *Id.*; *see also Todd v. Am. Fed'n of State, Cnty., & Mun. Emps., Council 5*, 125 F.4th 1214, 1217 (8th Cir. 2025) (holding that "[t]here is . . . no state action where the union allegedly acted unlawfully" (internal quotation marks omitted)).[4]

The only case that Klee cites to allege a circuit conflict is the Seventh Circuit's decision in *Janus* following this Court's remand. *See* Pet. 24-25. But that case involved a union's collection of agency fees that state law *entitled* the union to collect from nonconsenting employees. *See Janus v. Am. Fed'n of State, Cnty. & Mun. Emps., Council 31*, 942 F.3d 352, 354 (7th Cir. 2019) (noting that the case concerned a "compulsory fair-share or agency fee arrangement[]" established pursuant to state law). This case, by contrast, involves a private party's unauthorized collection of union dues that—if proven—would amount to a *violation* of state law. Recognizing that distinction is critical to the proper application of the state-action test. *See supra* pp. 11-12; *see also Wright*, 48 F.4th at 1122 n.7 (distinguishing *Janus* on this basis); *Littler*, 88 F.4th at 1182 n.2 (similar).

3. Klee contends that the question presented warrants plenary review because the issue of wrongful union dues deductions is "exceptionally important." Pet. 27-30. According to Klee, unions are "abusing their

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[4] The plaintiff in *Todd* has filed a petition for certiorari, which remains pending. *See* Pet. for Writ of Cert., *Todd v. Am. Fed'n of State, Cnty., & Mun. Emps., Council 5*, No. 24-1305 (Jun. 20, 2025). The *Todd* petition correctly concedes that there is "no disagreement" among the courts of appeals regarding whether there is state action in cases like this one, where a union allegedly violated state law by deducting union dues without the employee's authorization. *Id.* at 22; *see also id.* at 19-22.

state-granted authority to continue to extract union dues from nonconsenting employees," *id.* at 28, and "the Ninth Circuit [has] held that [plaintiffs like Klee] ha[ve] no remedy," *id.* at i.

That is wrong. As discussed above, *supra* pp. 2-3, state law provides several avenues for relief for public employees in Klee's position. Those avenues include: notifying the State Controller of the dues-authorization dispute so that the State Controller can review "a copy of [the] individual authorization," Cal. Gov't Code § 1153(b); presenting a claim to California's Public Employment Relations Board, *see id.* § 3541.5; and filing breach of contract, conversion, unfair competition, or other state-law claims against the union, *see Wright*, 48 F.4th at 1118 n.3. Klee's choice not to pursue these available state-law remedies for his claimed injuries does not transform his dispute with the union into an "important" federal question requiring a constitutional response. Pet. 27; *see also* Pet. App. 3 ("At bottom, Klee challenges the Union's refusal to let him leave, which is a dispute over the terms of Union membership.").

In any event, this case would be an exceptionally poor vehicle for addressing the question presented because its resolution would not affect the case's outcome. Klee is not entitled to prospective relief because he terminated his union membership, and the union stopped collecting dues. *See supra* pp. 6, 7-8. And any claim for damages would fail on the merits. Even on the assumption that the union acted under color of state law, *but see supra* pp. 9-14, Klee would still fail to show that the union's continued collection of dues from his paychecks amounted to a First Amendment violation. *See, e.g.*, *Belgau v. Inslee*, 975 F.3d 940, 950-952 (9th Cir. 2020) (rejecting comparable claim on the merits, because the First Amendment does not "provide a right to 'disregard'" the terms of the plaintiffs' dues-authorization agreements).

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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