

No. 25-1189

IN THE
Supreme Court of the United States

ROCKLIN UNIFIED SCHOOL DISTRICT,
Petitioner,
v.

PUBLIC EMPLOYMENT RELATIONS BOARD;
ROCKLIN TEACHERS PROFESSIONAL ASSOCIATION,
Respondents.

**On Petition for Writ of Certiorari to the
California Supreme Court**

**AMICUS CURIAE BRIEF OF
AMERICANS FOR FAIR TREATMENT
IN SUPPORT OF PETITIONER**

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INTEREST OF *AMICUS CURIAE*¹

Americans for Fair Treatment (“AFFT”) is a national nonprofit organization that empowers public employees to understand and exercise their constitutional rights in the workplace, particularly in unionized environments. Through a free membership program, AFFT provides education on workers’ rights—including to opt out of union membership, avoid compulsory dues, and ensure that contributions are not used for partisan politics. AFFT protects employees from retaliation or discrimination when they exercise those rights. AFFT currently serves nearly 20,000 public sector employees nationwide, including in California. If the decision of the California Public Employment Relations Board (“PERB”) were permitted to stand, it would have significant implications not only for AFFT members in California, but for similarly situated public employees across the country.

PERB says it can invalidate school board policies affecting parents’ fundamental constitutional rights because it has independent jurisdiction over California’s public-sector labor law. That is a non sequitur. Jurisdiction over labor law disputes does not and should not permit PERB to commandeer school board policies promulgated by elected officials that have nothing to do with labor law—*i.e.*, the terms and conditions of employment in a unionized workplace. But PERB favors unions

¹ Pursuant to Rule 37.2, counsel of record for all parties received notice at least ten days prior to the date of filing of *Amicus Curiae*’s intention to file this brief. No counsel for any party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No one other than *Amicus Curiae* and their counsel made a monetary contribution to this brief’s preparation or submission.

above all else and there is only a marginal opportunity for independent and fair judicial review of its decisions (California's courts defer to PERB subject to limited and often illusory exceptions), so PERB has no incentive to stay in its lane. This structure has insulated PERB's decisions from and effectively vanquished the right to unbiased judicial review as to public-sector workplaces at large in California, which is inconsistent with the republican form of government guaranteed to the States and the people by the United States Constitution.

AFFT has a significant interest in protecting democratically elected government officials' rights to implement non-labor policies as they see fit, and in so doing so ensure that policy decisions affecting constitutional rights are not ensnared by a specialized independent agency that has no effective judicial oversight.

SUMMARY OF ARGUMENT

PERB is a California state quasi-judicial administrative agency that is responsible for administering and enforcing California's public-sector collective bargaining statutes. One of PERB's functions, as relevant here, is adjudicating unfair labor practice ("ULP") charges through an internal process. Cal. Gov't Code § 3541.3. In practice, this has allowed PERB to appropriate issues that extend beyond, or are only loosely connected to, its mandate over public-sector labor relations.

This matter involves a School District that adopted revisions to its administrative regulations addressing parental notification and student privacy in connection with gender identity-related requests. After the District announced the policy, the local teachers' union

filed a ULP with PERB, alleging failure to bargain over its effects. Although the District appropriately characterized the policy as involving non-mandatory subjects of bargaining with no direct nexus to the terms and conditions of employment, PERB nevertheless exercised jurisdiction over the ULP through its internal process.

PERB's undertaking effectively displaced the will of the District's elected officials by subjecting their policy to bargaining. PERB's decision then proceeded through the statutory writ process for judicial review, where both reviewing courts declined to review without opinion. Pet. App. 1a–2a. When resolving the initial charge, PERB assessed not only alleged labor-relations questions, but also the legal characterization of a policy touching on parental notification and student identity—an issue that implicates broader constitutional rights. This well underscores the extent to which PERB's current structure enables it to operate with nearly unfettered control and unchecked power.

Beyond the Fourteenth Amendment due process rights that Petitioners address, we will explain that PERB decisions are subject to only discretionary and deferential review by the California Court of Appeals and then the California Supreme Court. Challengers must overcome several hurdles before reaching an opportunity to appeal. First, receiving a final, reviewable order, as interlocutory or preliminary determinations are not ordinarily subject to court review. Second, obtaining permission where required because review does not proceed through a conventional appeal as of right. Instead, challengers must pursue the limited writ procedures expressly authorized by statute, thereby invoking the reviewing court's discretionary extraordinary-writ jurisdiction. Cal. Gov't Code

§§ 3509.5, 3542. Third, even where review is granted, challengers must overcome the deferential standard of review. PERB’s factual findings are upheld if supported by “substantial evidence,” its remedial orders are reviewed only for abuse of discretion, and its legal interpretations are afforded complete deference. Cal. Gov’t Code § 3509.5(b); *Boling v. Pub. Emp. Rels. Bd.*, 5 Cal. 5th 898, 912 (2018). This structure permits PERB to appropriate authority that has nothing to do with public-sector labor relations, resolving legal issues in a way that expands its own reach while obstructing access to judicial correction.

PERB’s authority is insulated from democratic accountability and judicial oversight that are essential to our constitutional order under the Guarantee Clause, Article IV, § 4, of the United States Constitution. Although this Court has often deemed Guarantee Clause problems to be nonjusticiable, its recent precedent has signaled that some claims under the Clause may indeed be justiciable. With fundamental constitutional rights at stake, this Court should take a hard look at how PERB’s structure is inconsistent with a republican form of government.

ARGUMENT

I. PERB’S STRUCTURE COMPROMISES THE RIGHT TO FAIR JUDICIAL REVIEW

The limited judicial review of PERB’s decisions is inconsistent with the right to fair judicial review that is a hallmark of a republican form of government. “The framers of the Constitution clearly evinced their belief that a separate and independent judiciary is an indispensable element of a republican form of government.” *Bauers v. Heisel*, 361 F.2d 581, 588 (3d Cir. 1966). PERB is supposed to provide specialized

and efficient resolution of public-sector labor disputes; yet its consolidation of investigatory, prosecutorial, and adjudicative functions means external accountability is substantially constrained from the outset. Cal. Gov't Code § 3541.3. Petitioners outline how PERB infringes on rights protected by the Fourteenth Amendment, particularly by being subject to only limited judicial review. At the same time, these features raise broader structural concerns when PERB addresses matters that extend beyond its public-sector labor relations boundaries. Given that PERB decides in the first instance whether alleged conduct constitutes unfair practice, it effectively controls—and does, in practical effect, completely set—the scope of its own authority. Then, if judicial review even becomes available, it is highly deferential, leaving limited opportunity for correction when PERB takes on legal issues outside of its domain. By permitting isolated authority within a system far removed from the judiciary, California has created a framework that strains the guarantee of a republican form of government provided in Article IV, § 4 of the United States Constitution.

A republican form of government presupposes the exercise of public power protected by *meaningful* checks and balances, including independent judicial oversight. *The Federalist No. 51* (James Madison) (“Justice is the end of government. It is the end of civil society. It ever has been and ever will be pursued until it be obtained, or until liberty be lost in the pursuit.”). When reviewing a ULP charge, PERB follows a structure akin to other administrative agencies. Cal. Gov't Code § 3541.5. The quasi-judicial agency is comprised of an Office of the General Counsel, Administrative Law Judges (“ALJ”), and an appointed, five-member Board. Cal. Gov't Code § 3541.3. However,

it is well established that appointed ALJs are selected due to their union endorsement, which leads to decisions that consistently align with union interests.² PERB's internal processes only intensify these concerns given the absence of mandatory judicial review.

Generally, PERB has statutory jurisdiction over certain categories of public employers and employees in California.³ For instance, under the Educational Employment Relations Act ("EERA"), PERB's core adjudatory powers include: exclusive initial jurisdiction over ULP charges (*i.e.*, duty to meet and confer in good faith, prohibitions on interference with employee organizing rights, and prohibitions on employer

² PERB's structure and the deference afforded it well demonstrate its pro-union perception. *Contra Costa Cmty. Coll. Dist.*, PERB Dec. No. 2652, 44 PERC ¶ 28, at 8 n.6 (2019) (holding that under California law, an employee's right to representation is broader than federal Weingarten representation rights). PERB's decisional history reflects a consistent pattern of interpreting ambiguous statutory terms in favor of union rights, imposing presumptions that favor employees, adopting expansive interpretations of concepts like "deter or discourage" union membership, the unilateral change doctrine, and eliminating safe-harbor protections for employer speech. *Alliance Marce & Eva Stern Math & Science High Sch. v. Pub. Emp. Rels. Bd.*, 107 Cal.App.5th 930 (2024); *Kern Cnty. Hosp. Auth. v. Pub. Emp. Rels. Bd.*, 100 Cal.App.5th 860 (2024); *Palomar Health v. Nat'l Nurses United*, 97 Cal.App.5th 1189 (2023) (holding that a healthcare employer's civil lawsuit against union organizers for trespassing was preempted by PERB's exclusive jurisdiction, even though a PERB determination had not yet been made, creating "a substantial danger that a judicial decision would interfere with PERB's primary jurisdiction over this labor dispute").

³ Educational Employment Relations Act ("EERA") (Cal. Gov't Code §§ 3540 *et seq.*); Meyers-Milias-Brown Act ("MMBA") (Cal. Gov't Code §§ 3500 *et seq.*); Ralph C. Dills Act (Cal. Gov't Code §§ 3512 *et seq.*); Higher Education Employer-Employee Relations Act ("HEERA") (Cal. Gov't Code §§ 3560 *et seq.*).

or union coercion), bargaining unit determinations, representation elections, organizational mergers, grievance arbitration award review, rulemaking and research to recommend legislation, and enforcement of its orders and decisions. Cal. Gov't Code §§ 3541.3, 3541.5. California courts have routinely held that PERB's exclusive initial jurisdiction operates as a preemption doctrine that divests California superior courts of their original jurisdiction over matters "arguably protected or prohibited" under PERB's statutes. *El Rancho Unified Sch. Dist. v. Nat'l Educ. Assn.*, 33 Cal. 3d 946, 960 (1983). Simultaneously, PERB has stated that it has boundaries and says there are claims it cannot hear. Those are employment discrimination claims;⁴ whistleblower protections claims;⁵ causes of action under federal civil rights statutes;⁶ California's Labor Code, Penal Code, and Workers' Compensation laws; and constitutional claims under the United States or California Constitutions. *State of California (Dep't of Transp.)*, PERB Dec. No. 2338-S, 38 PERC ¶ 103 (2013). Regardless of these proclaimed limitations, PERB still construes its statutory authority in its favor to bring within its jurisdiction disputes beyond its core statutory mandate, including those that implicate constitutional questions such as those presented here.

⁴ California's Fair Employment and Housing Act (Cal. Gov't Code §§ 12900 *et seq.*).

⁵ California Whistleblower Protection Act (Cal. Gov't Code §§ 8547 *et seq.*).

⁶ Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act, the Age Discrimination in Employment Act, and the Occupational Safety and Health Act.

Under California's framework, parties seeking to challenge PERB determinations encounter extremely narrow access to the judiciary. If judicial review becomes available, it is done with the highest level of deference that effectively insulates the agency's decisions from rigorous scrutiny. *See* Cal. Gov't Code § 3540 *et seq.*; Cal. R. Ct. 8.728; *Boling v. Pub. Emp. Rels. Bd.*, 5 Cal. 5th 898, 903 (2018). Specifically, limitations arise when a party desires to appeal a final decision by PERB, as interlocutory rulings are generally not appealable. Cal. Gov't Code § 3542. As a default rule, courts review PERB decisions through petitions for writ of extraordinary relief, subject to deferential standards on factual findings and agency expertise. Cal. Gov't Code § 3542(b). Direct appellate review is typically unavailable absent statutory authorization. *Int'l Ass'n of Fire Fighters v. Pub. Emp. Rels. Bd. (City of Richmond)*, 51 Cal. 4th 259, 266 (2011). There are three narrow exceptions where judicial review is available by petitioning the superior court for a writ of mandate: if PERB's decision (1) violates a constitutional right, (2) exceeds a specific grant of authority, or (3) is based on an erroneous statutory construction. *Ibid.* (citing *Belridge Farms v. Agric. Labor Rels. Bd.*, 21 Cal. 3d 551, 556–57 (1978)).

Such statutes grant the California Court of Appeals discretion but do not require it to review any PERB decision (as here, Pet. App. 2a). Even when reviewed, courts routinely acquiesce in PERB's legal findings, typically framing PERB's decisions as outside court expertise. *E.g.*, *Boling*, 5 Cal. 5th at 903. This reduces the judiciary's role to the correction of only the most obvious or extreme errors. *See ibid.* This structure and unrepresentative composition have enabled PERB to usurp authority outside its statutory bounds and operate virtually unchecked. The result is an anti-

republican form of government that concentrates public power in an isolated decision-making body and allows it to overrule democratically elected officials with only the slimmest reed of accountability and oversight.

II. PERB'S STRUCTURE OFFENDS OUR GUARANTEED REPUBLICAN FORM OF GOVERNMENT

Article IV, Section 4 of the Constitution provides that the United States shall “guarantee to every State in this Union a Republican Form of Government . . .” U.S. Const. art. IV, § 4. That language is mandatory. It does not describe a political aspiration; it imposes a constitutional guarantee central to the federal design. At minimum, the Clause mandates that state government must remain representative rather than monarchical, constitutionally ordered rather than arbitrary, and accountable. *See* Erwin Chemerinsky, *Cases Under the Guarantee Clause Should be Justiciable*, 65 U. Colo. L. Rev. 849, 867 (1994). The Framers adopted the Constitution against a backdrop of concern that instability, faction, and internal upheaval could distort or displace republican institutions in the States. The Guarantee Clause was designed to address that danger by binding the national government to preserve republican forms of government in the States. *Ibid.* Contemporaneously, James Madison’s discussion in *The Federalist No. 43* instructs that the Union must have power to secure each State against departures from republican government. *The Federalist No. 43* (James Madison) (“But who can say what experiments may be produced by the caprice of particular States, by the ambition of enterprising leaders, or by the intrigues and influence of foreign powers? To the second question it may be

answered, that if the general government should interpose by virtue of this constitutional authority, it will be, of course, bound to pursue the authority.”). Madison there outlined why the Guarantee Clause exists and that it reflects two linked premises: first, that state governmental form matters to the ongoing constitutional order as a whole; and second, that the federal system cannot remain secure if member States are free to become anti-republican in structure. *Ibid.* Understanding this bears directly on the proper scope of judicial review for state agencies. Where the Clause safeguards a structural principle, courts should interpret related constitutional provisions with due regard for that principle. Sound review does not require courts to adjudicate every Guarantee Clause dispute—but it does require them to avoid diminishing a constitutional command the Framers made plain is essential to the Union.

Historically, this Court has treated claims arising under the Guarantee Clause as nonjusticiable. *See Chemerinsky, supra*, at 850. As case law has developed, however, the strength of that categorical rule has eroded, and the Constitution’s structural provisions remain binding, even if their execution in certain contexts is committed primarily to the political branches. *Ibid.* at 875. This nonjusticiability rule should erode further, lest California continue to unlawfully limit access to fair review for its public officials and employees. So too for those subject to like structures in other States.

The idea that the Guarantee Clause is nonjusticiable is best traced back to *Luther v. Borden*, where the Court did not decide the case on the merits and held the matter was a political question for Congress. 48 U.S. 1, 42 (1849). It noted that although a court

must “always be ready to meet any question confided to it by the Constitution, it is equally its duty not to pass beyond its appropriate sphere of action.” *Ibid.* at 47. Since then, this Court has reaffirmed that principle in other contexts. See, e.g., *Texas v. White*, 74 U.S. 700 (1868) (readmission of states to the Union); *United States v. Cruikshank*, 92 U.S. 542 (1875) (federal criminal enforcement); *Forsyth v. City of Hammond*, 166 U.S. 506 (1897) (municipal boundaries); *Taylor v. Beckham*, 178 U.S. 548 (1900) (election dispute); *Attorney General of State of Mich. v. Lowrey*, 199 U.S. 233 (1905) (school district boundaries); *South Carolina v. United States*, 199 U.S. 437 (1905) (regulation on the sale of liquor). But this Court has adjudicated the merits of the Guarantee Clause on at least two occasions: *Minor v. Happersett*, 88 U.S. 162 (1874), and *In re Duncan*, 139 U.S. 449 (1891). Notably, *Minor* involved an individual voting-rights claim against a registrar, in which this Court viewed the case as a justiciable constitutional dispute rather than a political legitimacy question. *Minor*, 88 U.S. at 175–77. Similarly, in *Duncan*, the Court reaffirmed that States control the validity of their statutes (there habeas corpus), but courts have jurisdiction to determine whether particular statutory provisions are applicable, including whether a statute had been enacted in accordance with the relevant state constitution. *In re Duncan*, 139 U.S. at 461–62.

Following this, in *Pacific States Telephone & Telegraph Co. v. Oregon*, this Court outlined *Luther’s* holding that Guarantee Clause claims are outside the Court’s jurisdiction and deferred to the political branches to determine whether a state’s government was sufficiently republican. 223 U.S. 118, 151 (1912). In turn, Chief Justice White’s opinion in *Pacific States* served as secondary foundation, with little debate, to

dispose of later cases posing Guarantee Clause questions. *See, e.g., Kiernan v. City of Portland*, 223 U.S. 151 (1912); *Marshall v. Dye*, 231 U.S. 250 (1913); *Colegrove v. Green*, 328 U.S. 549 (1946).⁷ In *Baker v. Carr*, 369 U.S. 186 (1962), the Court revisited discussion on the scope of the Clause and distinguished earlier precedents as not blocking review of an Equal Protection apportionment claim. Justice Brennan for the majority stated that “the mere fact that the suit seeks protection of a political right does not mean it presents a political question,” but a Guarantee Clause claim may still fail because courts do not have workable standards for deciding it. *Ibid.* at 209. In essence, Justice Brennan’s point was not that Equal Protection claims are simple, but that they are more judicially manageable than Guarantee Clause claims. The Court utilized the *Baker* framework in later cases, frequently saying it would not reach the merits because the Clause is nonjusticiable. *E.g., Reynolds v. Sims*, 377 U.S. 533 (1964); *Powell v. McCormack*, 395 U.S. 486 (1969); *Gregory v. Ashcroft*, 501 U.S. 452 (1991).⁸

⁷ *See also O’Neill v. Leamer*, 239 U.S. 244 (1915); *Ohio ex rel. Davis v. Hildebrandt*, 241 U.S. 565 (1916); *Mountain Timber Co. v. Washington*, 243 U.S. 219 (1917); *Ohio ex rel. Bryant v. Akron Metro. Park Dist. for Summit Cnty.*, 281 U.S. 74 (1930); *Cochran v. La. State Bd. of Educ.*, 281 U.S. 370 (1930); *Highland Farms Dairy v. Agnew*, 300 U.S. 608 (1937).

⁸ *See also Oregon v. Mitchell*, 400 U.S. 112 (1970); *City of Rome v. United States*, 446 U.S. 156, 183 n.17 (1980) (addressing that the Court did not “reach the merits of the appellants’ argument that the Act violates the Guarantee Clause, Art. IV, § 4, since that issue is not justiciable.”); *South Carolina v. Baker*, 485 U.S. 505 (1988) (O’Connor, J., dissenting) (Justice O’Connor mentions “that the States’ autonomy is protected from substantial federal

Toward the end of last Century, the Court began to hint at a change. In *New York v. United States*, Justice O'Connor argued that the Court has suggested not all Guarantee Clause claims are nonjusticiable. *New York v. United States*, 505 U.S. 144, 185 (1992) ("More recently, the Court has suggested that perhaps not all claims under the Guarantee Clause present nonjusticiable political questions.") (citing *Reynolds v. Sims*: "**some** questions raised under the Guarantee Clause are nonjusticiable." (emphasis added)). Yet, the Court did not need to "resolve this difficult question today." 505 U.S. at 185.

Justice O'Connor's signal in *New York* found its place in the Court's most recent Guarantee Clause opinions. *Ariz. State Legislature v. Ariz. Indep. Redistricting Comm'n*, 576 U.S. 787 (2015); *Rucho v. Common Cause*, 588 U.S. 684 (2019). Neither case tested the Clause's nonjusticiability boundary. Particularly in *Rucho*, the Court acknowledged that some cases once thought to be nonjusticiable under the Clause became judicially enforceable through Equal Protection standards. 588 U.S. at 685. But, in *Rucho*, partisan gerrymandering lacked such standards. *Ibid.* Justice Kagan argued in dissent that federal courts "develop and apply neutral and manageable standards" from lower-court precedents and apply them consistently on an Equal Protection and the First Amendment basis, so courts could plausibly decide Guarantee Clause claims related to partisan gerrymandering. *Ibid.* at 749–51 (Kagan, J., dissenting).

The proposition that Guarantee Clause claims are nonjusticiable has been challenged throughout our

incursions by virtue of the Guarantee Clause of the Constitution, Art. IV, § 4"); *Quinn v. Millsap*, 491 U.S. 95 (1989).

Nation's history. Chemerinsky, *supra*, at 849. This Court has sometimes found alternative avenues to adjudicate cases that facially raise questions under the Clause, and several Justices have implied potential carve out opportunities for review. *Ibid.* at 781. Outside of the Guarantee Clause context, members of this Court have rejected a blanket bar on deciding questions that appear political. See *Vieth v. Jubelirer*, 541 U.S. 267, 324, 346 (2004) (Stevens, J., dissenting) (arguing that courts could determine political gerrymandering claims using manageable standards derived from Equal Protection principles); *Nixon v. United States*, 506 U.S. 224, 243–47 (1993) (White, J. concurring) (citing *Baker* in arguing that justiciability turns on whether courts have workable criteria, but no clear standard existed for reviewing Senate impeachment procedures). Taken as a whole, the blanket proposition that all Guarantee Clause claims are nonjusticiable can and should be reconsidered to ensure that an important constitutional provision is not a dead letter.

III. ALLOWING PERB'S DECISION TO STAND WOULD BE INCONSISTENT WITH THE GUARANTEE CLAUSE

To date, we are unaware of any case brought to this Court that directly requires establishing manageable standards for reviewing Guarantee Clause problems. Here, for example, Petitioners present arguments under the Fourteenth Amendment and not the Guarantee Clause. Nevertheless, we think the Court should consider the Guarantee Clause issues presented in the background as it decides whether to grant certiorari.

No other branch of the federal government is equipped to properly enforce the Guarantee Clause on these facts. See Chemerinsky, *supra*, at 877.

Addressing PERB's structural concerns has a direct influence on the judiciary's role in one of fifty States; leaving it for Congress to monitor is unrealistic and might raise additional constitutional constraints. *Ibid.* ("Imagine that Congress believed that a specific state had adopted a form of government that was not republican in nature. Conceivably, Congress would need to pass a law declaring the particular state practice illegal and commanding the state to adopt a new law changing its ways.").

At a minimum, the Guarantee Clause reflects a structural requirement that states must operate consistent with principles of a republican form of government. This informs how courts should approach gaps in judicial oversight. Where an administrative body such as PERB exercises significant authority affecting public rights and obligations, the absence of meaningful judicial review raises concerns about whether those structural principles are being adequately safeguarded. Even when granted appeal permission, California's courts lean on PERB's alleged expertise on appeal—those being a "substantial evidence" standard for factual findings and nearly complete deference on legal interpretations. Cal. Gov't Code § 3509.5(b). This near complete insulation from judicial scrutiny risks undermining the constitutional design by concentrating interpretive and adjudicative power within a single body. "Deferential review" of PERB decisions is "particularly concerning" given courts' "tendency to overwhelmingly agree with" it. *Axon Enter., Inc. v. FTC*, 598 U.S. 175, 197 (2023) (Thomas, J., concurring).

One reason this issue is particularly important is that California's PERB is not the only state-level agency that places stringent limitations and obstacles

to seeking judicial review in the context of public sector unions. For example, the New York PERB provides judicial review as a right after exhausting all remedies, which usually means obtaining a final Board decision. *See* N.Y. C.P.L.R. § 7801. When a petitioner seeks review, the New York Supreme Court will determine whether the case raises a “substantial evidence” question; if it does, then it will be transferred to New York’s Appellate Division. N.Y. C.P.L.R. § 7804(g). If it does not, then the New York Supreme Court retains the case to issue a decision. *Ibid.* From here, a petitioner can appeal the case through the judicial system.⁹ Compared to the California PERB, New York offers a more meaningful opportunity for review within its lower courts where a case does not meet the standard for the Appellate Division. The Florida Public Employees Relations Committee (“PERC”) has a similar procedure, but there is an added opportunity for petitioners to seek interlocutory review of non-final agency decision in narrow circumstances. Fla. Stat. § 120.68(7)(c); Fla. R. App. P. 9.130. These include when the agency exceeds its jurisdiction; there is irreparable injury without adequate later remedy; or it is a purely legal issue serving judicial economy. Fla. R. App. P. 9.130.

In marked contrast, on the federal level, judicial review for cases before the Federal Labor Relations Authority (“FLRA”) is much better structured and

⁹ The New Jersey Public Employment Relations Commission (“PERC”) has a more streamlined process than the New York PERB. New Jersey PERC provides for appeal as a right after exhausting the administrative remedies; the only other limitation is that any further appeal directly to the New Jersey Supreme Court is discretionary by requiring a party to file a petition for certification. N.J.S.A. § 40A:65-34.

direct. A party aggrieved by a final order may seek review in an appropriate United States Court of Appeals. 5 U.S.C. § 7123. Unlike the aforementioned state agencies, review is not routed through a writ mechanism but proceeds as a direct petition for review of a final agency order. The federal appellate courts review decisions under the Administrative Procedure Act's ("APA") framework. 5 U.S.C. § 7123(c). The APA requires courts to set aside agency action if it is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law," to uphold factual findings if supported by "substantial evidence on the record considered as a whole," and defer to reasonable agency interpretations of ambiguous statutes. *Ibid.* FLRA's process allows for more of a balance between administrative expertise and judicial accountability.

Similarly, for the National Labor Relations Board ("NLRB"), any party aggrieved by a final Board order may obtain review directly in the proper United States Court of Appeals. 29 U.S.C. § 160(f). The NLRB may also seek judicial enforcement of its orders through the federal appellate courts. 29 U.S.C. § 160(e). When reviewing NLRB decisions, federal courts also apply the APA's standards. *See Universal Camera Corp. v. NLRB*, 340 U.S. 474, 487 (1951) ("It would be mischievous wordplaying to find that the scope of review under the Taft-Hartley Act is any different from that under the Administrative Procedure Act."). For both the NLRB and FLRA, the availability of appellate review and the judiciary's oversight of arbitrary and capricious or otherwise unlawful administrative action better sees that administrative power remains in check, instead of operating in an isolated system.

Professor Chemerinsky's argument that courts should not treat Guarantee Clause issues as wholly nonjusticiable is well taken in view of PERB's structure, which allows it to arrogate power without effective judicial review. Chemerinsky, *supra*, at 865. The Guarantee Clause is not merely concerned with the formal structure of government, but with preserving the substantive characteristics of republican government. In this context, a state agency insulated from effective review but with vast power does not merely raise procedural concerns; it threatens the principle that government in our republic must remain accountable to the people through constitutional constraints that are actually enforceable in practice. This issue begins to compound when an agency bestows upon itself the power to address legal matters outside its limited statutory mandate. In turn, our citizens are subjected to agency decisions that courts are unable or unwilling to review in any meaningful way, the agency effectively becomes a catalyst for unchecked sovereign authority. The dangers further escalate when an agency's decision puts fundamental rights, such as parental rights as here, at risk, making meaningful judicial review imperative.

We submit that Guarantee Clause concerns are profound here, and this Court should take those concerns into account as it considers review of a decision that offends fundamental constitutional rights. No other federal branch of government is well suited to provide a remedy that vindicates structural rights under the Guarantee Clause that spill over to encumber other constitutional rights. "In a confederacy founded on republican principles, and composed of republican members, the superintending government ought clearly to possess authority to defend the system against aristocratic or monarchical innovations. The

more intimate the nature of such a union may be, the greater interest have the members in the political institutions of each other; and the greater right to insist that the forms of government under which the compact was entered into should be SUBSTANTIALLY maintained. But a right implies a remedy; and where else could the remedy be deposited, than where it is deposited by the Constitution?" *The Federalist No. 43* (James Madison).

CONCLUSION

For the foregoing reasons and those stated by the Petitioner, the Court should grant the petition.

Respectfully submitted,

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