No. 25-43

IN THE

Supreme Court of the United States

FREEDOM FOUNDATION,
Petitioner,
v.

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, LOCAL 117, *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 UNION RESPONDENTS

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QUESTION PRESENTED

Whether a union engaged in state action for purposes of a First Amendment claim under 42 U.S.C. § 1983 where it allegedly refused to accept mail from a third-party organization which may have contained a public employee's withdrawal of a voluntary payroll dues-deduction authorization, where there is no showing that any employee had dues deducted without contractual consent, and the challenged state law does not require, prohibit, or regulate unions' acceptance of mail from third parties?

CORPORATE DISCLOSURE STATEMENT

Respondents are not corporations and so have neither parent corporations nor publicly held stock.

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INTRODUCTION

Petitioner Freedom Foundation is a private, nonprofit organization that wants public employees not to pay union dues. To that end, it conducts campaigns to persuade public employees who have voluntarily contracted to authorize dues deductions from their wages to revoke those contractual authorizations. In support of these campaigns, the Foundation provides public employees forms they may use to revoke prior authorizations. When the Foundation receives executed revocation forms, it mails them to the employees' unions. The Foundation alleges three Unions, Respondents Teamsters Locals 117, 760, and 763, refused to accept its mail.

The Foundation sued in federal court under 42 U.S.C. § 1983, contending the Unions and the state of Washington violated public employees' First Amendment rights along with the Foundation's own right to freedom of association. The district court dismissed all claims on summary judgment. It held that the Foundation lacked standing to assert the claims, the claims failed on the merits because the Unions did not engage in state action by allegedly refusing another private party's mail, and, even if they had, the Foundation showed no constitutional violation. In an unpublished opinion, the Ninth Circuit affirmed. The majority of the Ninth Circuit panel found that the Foundation had organizational standing based on injuries it suffered as an organization, but affirmed unanimously that there was no state action, and hence, no constitutional violation.

The Foundation now petitions for review only of the state-action holding, the same holding at issue in the petition currently pending in *Klee v. Int'l Union of Operating Eng'rs*, No. 24-1306. Petition for Writ of

Certiorari at i, Klee v. IUOE Loc. 501, No. 24-1306 (U.S. June 20, 2025).

This case does not meet the Court's criteria for review, both for the reasons set forth in the *Klee* opposition and for additional reasons specific to this case. As explained in the *Klee* opposition, there is no circuit split. Brief in Opposition for Respondent IUOE, Loc. 501 at 12–13, Klee v. IUOE Loc. 501, No. 24-1306 (U.S. Oct. 10, 2025). Every circuit court that has addressed a § 1983 claim predicated on a union's alleged misuse of a state dues-authorization law has faithfully applied this Court's decision in *Lugar v. Edmondson Oil Co.*, 457 U.S. 922 (1982), to hold that § 1983 provides no remedy for disputes over the terms of a voluntary dues deduction authorization agreement which involves no state action.

The Foundation knows this well, as it was counsel to all eight petitioners who presented the same state-action question last Term: *See Bourque v. Eng'rs & Architects Ass'n*, 145 S. Ct. 592 (Nov. 25, 2024); *Parde v. SEIU Loc. 721*, 145 S. Ct. 418 (Oct. 21, 2024); *Craine v. AFSCME Council 36, Loc. 119*, 145 S. Ct. 280 (Oct. 7, 2024); *Cram v. SEIU Loc. 503*, 145 S. Ct. 142 (Oct. 7, 2024); *Deering v. IBEW Loc.* 18, 145 S. Ct. 151 (Oct. 7, 2024); *Hubbard v. SEIU Loc. 2015*, 145 S. Ct. 151 (Oct. 7, 2024); *Kant v. SEIU Loc. 721*, 145 S. Ct. 142 (Oct. 7, 2024); *Laird v. UTLA*, 145 S. Ct. 141 (Oct. 7, 2024). The Court denied all eight petitions.

The Foundation now comes to this Court not only as counsel but also as a party, presenting the question yet again. There have been no legal developments since last Term that have made this question more worthy of this Court's review. And this case is an even weaker vehicle to take up the question than the eight petitions denied last Term.

There are several other reasons why this case does not present a vehicle to address the question posed by the Foundation. First, although state-action inquiries are fact-intensive, the Foundation identifies no other circuit that has addressed state action in the context of a union's refusal to accept another organization's mail, let alone found state action in any context involving revocations of payroll deduction authorizations.

Second, the case does not present the question framed by the Foundation, which seeks review of state action in the context of an employee who had dues deducted without his consent. Here, the lower courts found that the Foundation failed to identify any such employee.

Third, the Foundation lacks standing to bring employees' claims before this Court. Below, the Ninth Circuit found that the Foundation met the requirements of organizational standing, as the Unions alleged refusal mail perceptibly impaired the Foundation's business activity. By finding that an alleged rejection of a small amount of mail perceptibly impaired the vast work of the Foundation, this yet again expands the definition of organizational standing, defying the recent clarification of standing made in *FDA v. All. for Hippocratic Med.*, 602 U.S. 367 (2024).

For these reasons, as well as those set forth in the *Klee* opposition, the Court should deny the petition.

STATEMENT OF THE CASE

A. Legal Background: Under Washington law, public employers may deduct union dues from public employees' wages only upon his authorization, and only after the union to which the dues will be transmitted has been certified or recognized as the bargaining unit's exclusive representative. Wash. Rev. Code § 41.56.061(1) (2019).[1] An employee may revoke his authorization by making a written request to his union in accordance with the authorization's terms and conditions. § 41.56.061(2)(c), (3)(a). Once a public employer receives confirmation from the union that the employee has revoked his dues authorization, the employer must stop deducting dues. § 41.56.061(3)(b). The employer relies on information provided by the union regarding "the authorization and revocation of deductions." § 41.56.061(4).

Washington law also prohibits unions from interfering with an employee's exercise of his or her rights guaranteed by state labor law such as declining to join or support a labor union. Wash. Rev. Code § 41.56.047(1) (1969) (previously codified as Wash. Rev. Code § 41.56.150). *See, e.g., Washington State Department of Labor and Industries*, Decision 13089, slip op. 7, 2019 WL 6112755, *5 (PSRA, 2019) (recognizing that a union conditioning representation on execution of dues authorization agreement could constitute interference).

B. Facts and procedural history: Respondents are three local affiliates of the International Brotherhood of Teamsters. App.10. Each local Union represents private and public sector workers in Washington state. App.10. None of their collective bargaining agreements with the state or other public entities require employees to join the Union or pay dues as a condition of employment. App.10. The Respondent Unions deduct dues only from employees who have executed dues authorization agreements, and they hon-

[1] This provision was previously codified as Wash. Rev. Code §41.56.110 (2019). *See* Wash. Laws 2025, ch. 290, § 2 (eff. July 27, 2025). The provisions material to this case have not changed.

or employees' requests to revoke authorizations in accordance with the terms of those authorizations. App.14; CA9.SER.084–85 (¶¶ 7–11), CA9.SER.089–90 (¶¶ 7–11); CA9.SER.095–96 (¶¶ 7–9).

Petitioner Freedom Foundation is a nonprofit Washington organization that advocates for public employees not to pay union dues. App.1, 10–11. It conducts outreach to public employees to persuade them to stop financially supporting unions. CA9.ER.0010 (¶¶ 30–31). It also provides public employees forms they can use to revoke prior dues authorizations. CA9.ER.0010 (¶ 32). It solicits these authorization-revocation cards through the Foundation's website, mailings, and door-to-door advocacy. CA9.ER.0012 (¶ 40); App.11. The Foundation also offers to send signed authorization-revocations to public employees' unions. CA9.ER.0012 (¶¶ 39–47); App.11. The Foundation avers that it spends $33 to solicit and mail each authorization-revocation. CA9.ER.0013 (¶ 47).

The Foundation alleges that the Respondent Unions refuse to accept mail in packaging bearing the Foundation's logo or return address. App.11. Yet, as found below, the Foundation has not identified "a single employee who has tried but been unable to resign from" the Respondent Unions. App.14. *See also* App.25 (finding the record contains no facts showing any of the Respondent Unions failed to process and effectuate an employee's revocation).

The Foundation nonetheless sued, asserting four claims: (1) a 42 U.S.C. § 1983 claim that the Unions violated public employees' First Amendment right to revoke dues authorizations; (2) a claim that the Unions and state together fail to provide procedural safeguards to ensure adequate protection of public employees' First Amendment rights regarding dues authorizations and revocations; (3) a § 1983 claim for conspiracy to violate public employees' First Amendment right to disassociate from their unions, as well as the Foundation's own right to associate with public employees who object to supporting their unions; and (4) common-law conspiracy under Washington law. App.11; CA9.ER.0017–22 (¶¶ 79–117). The Foundation sought: a declaration that the Unions violated public employees' and the Foundation's own First Amendment rights and that the state law violates due process; damages to the Foundation for its costs mailing revocation-authorizations; and an injunction barring the Unions from refusing the Foundation's mail and invalidating the state law insofar as it requires dues objectors to make requests through their unions. CA9.ER.0023–24 (¶¶ 118–128).

After denying a preliminary injunction (CA9.ER.0155–69), the district court rendered summary judgment for the Unions. App.9–26. It held that the Foundation lacked both organizational standing and standing to assert the rights of third-party public employees. App.12–16. The district court held, alternatively, that the Unions are not state actors in respect to their challenged conduct and, in any event, the Foundation failed to show any deprivation of public employees' or its own constitutional rights. App.17–25.

The Ninth Circuit affirmed in an unpublished opinion. App.1–6. The court held the Foundation has organizational standing, finding a hindrance of a core activity. App.3. Writing separately, Judge Malloy would have affirmed the district court's finding that the Foundation lacked organizational standing. App.6. On the merits, the Panel unanimously held that the Foundation's claims against the Unions failed for lack of state action. App.4–5.

REASONS FOR DENYING THE PETITION

I. There is No Circuit Split as the Courts Below Uniformly Apply this Court's Decision in *Lugar*

1. As in the pending petition for certiorari in *Klee v. International Union of Operating Engineers*, No. 24-1306, the Foundation seeks a determination that a union engages in state action when it deducts union dues from what the Foundation characterizes as a nonconsenting public-sector employee. The brief in opposition to the *Klee* petition ably shows that the lower courts, applying *Lugar v. Edmondson Oil Co.* and its progeny, agree: a private party does not engage in state action when it misuses a state statute in violation of state law. 457 U.S. at 941; Brief in Opposition for Respondent IUOE, Loc. 501 at 7–13, Klee v. IUOE Loc. 501, No. 24-1306. All circuits confronting the question have held that a union does not engage in state action when, in violation of state law, it allegedly asks a public employer to remit dues deductions from an employee who has not contractually authorized them. *See Littler v. Ohio Ass'n of Pub. Sch. Emps.*, 88 F.4th 1176 (6th Cir. 2023) (no state action where union allegedly refused to accept authorization-revocation that claimed to be compliant with terms of authorization); *Todd v. AFSCME Council 5*, 125 F.4th 1214 (8th Cir. 2025) (no state action where union allegedly forged authorization), *cert. pending*, No. 24-1305; *Wright v. SEIU Local 503*, 48 F.4th 1112 (9th Cir. 2022) (same), *cert. denied*, 143 S. Ct. 749 (2023).

The lower courts have reached the same result in contexts that are not related to unions which involve alleged misuse of state procedures. *See, e.g., Cobb v. Saturn Land Co.*, 966 F.2d 1334, 1335–36 (10th Cir.

1992) (no state action where defendant wrongfully used *ex parte* statutory procedure to obtain liens); *Hoai v. Vo*, 935 F.2d 308, 314 (D.C. Cir. 1991) (no state action where defendant lied to court to receive property interest from plaintiff); *Roudybush v. Zabel*, 813 F.2d 173, 177 & n.7 (8th Cir. 1987) (no state action where defendant allegedly obtained supersedeas bond through fraudulent inducement and instructed sheriff to act on bond).

The *Klee* petitioner, whose position the Foundation adopts here, nonetheless contends that the Seventh Circuit departed from this consensus in *Janus v. AFSCME Council 31*, 942 F.3d 352 (7th Cir. 2019) (hereinafter *Janus II*). Petition for Writ of Certiorari at 24, Klee v. IUOE Loc. 501, No. 24-1306. But *Janus II* involved a state law—previously found unconstitutional by this Court in *Janus I*—that required dues deductions even from nonconsenting employees. *Id.* at 354; *Janus v. AFSCME Council 31*, 585 U.S. 878, 905 (2018) (hereinafter *Janus I*) (deductions under that law were "compulsory"). There was no allegation in *Janus I* that the defendant union misused state law; instead, it was alleged that the union obtained dues from nonconsenting employees *pursuant to* that law. *Id.* at 930. By contrast, in the aftermath of *Janu*s *I,* the state statutes in *Littler*, *Todd*, *Wright*, *Klee*, and this case direct public employers to deduct and remit dues only upon employee authorization. *Littler*, 88 F.4th at 1182; *Todd*, 125 F.4th at 1217; *Wright*, 48 F.4th at 1125; *Klee v. Int'l Union of Operating Eng'rs, Loc. 501*, No. 23-3304, 2025 WL 252478, at *2 (9th Cir. Jan. 21, 2025).

The petitioners in these cases came before the courts alleging the defendant unions wrongly obtained or misrepresented employee consent in violation of state law, not that the dues laws themselves required deductions from nonconsenting employees. In short, all circuits that have considered the question agree that if a private party allegedly misuses state law, it could in no way have engaged in state action under § 1983.

2. The Foundation's case for certiorari grows weaker yet accounting for this Court's repeated admonition that state-action questions require fact-intensive inquiries focused on the specific conduct challenged. *See, e.g.*, *Lindke v. Freed*, 601 U.S. 187, 197 (2024); *American Mfrs. Muts. Ins. Co. v. Sullivan*, 526 U.S. 40, 51 (1999); *Blum v. Yaretsky*, 457 U.S. 991 (1982); *Gilmore v. Montgomery*, 417 U.S. 556, 574 (1974); *Reitman v. Mulkey*, 387 U.S. 369, 378 (1967).

The Foundation specifically challenges the Respondent Unions' purported refusal to accept its mail. Yet it identifies no case from any circuit—or any district court for that matter—finding a union engaged in state action by refusing to open mail from a private organization, and Respondent Unions are aware of no such case.[2] There simply is no circuit split on the state-action question in any factually similar context, as state-action inquiries have historically required. The idiosyncratic facts of this case reiterate just how unworthy of review the question urged here is.

II. This Case Does Not Present An Appropriate Vehicle To Resolve the Question Presented In the Petition.

1. This case also does not tee up the question the Foundation presents. The Foundation requests this Court review whether "unions that invoke the aid of state officials to deduct union dues from a *nonconsent-*

[2] The Foundation represents that unions in eight states are refusing its mail. Pet at 12–13. But it points to no judicial decision from any court finding such conduct to be state action.

ing public-sector employee" engage in state action." Petition for Writ of Certiorari at i, Freedom Found. v. Teamsters Loc. 117, No. 25-43 (U.S. July 10, 2025) (emphasis added). Yet there is no nonconsenting employee involved in this case who had dues withheld from his wages.

The district court specifically held, on the undisputed facts of the summary-judgment record, that the Foundation failed to identify "a single employee who has tried but been unable to resign from" the Respondent Unions. App.14. The Ninth Circuit did not disturb that finding. The Foundation's petition does not address this—apart from making the bald assertion that the Respondent Unions, which allegedly refused the Foundation's mail, continued to demand dues deductions from "employees who would rather have no association with those unions or their activities." Petition for Writ of Certiorari at 8, Freedom Found. v. Teamsters Loc. 117, No. 25-43. To support that assertion, the Foundation cites only general allegations, which don't identify any particular employee who objected to paying union dues but nonetheless had dues deducted from her wages. The answer to the question presented by this petition, limited in scope only to nonconsenting employees, would thus have no impact on this case because, as the lower courts found, the Respondent Unions did not deduct dues from nonconsenting public-sector employees.

2. Further undermining the usefulness of this case as a vehicle for review is the question of standing. Among the petitions pending before the Court on the question of state action, this is the only one filed on behalf of an organization. In this case, the Foundation seeks review of the state-action question in the context of a claim asserting someone else's rights.

This Court has made clear, time and again, that to "get in the federal courthouse door and obtain a judicial determination of what the governing law is, the plaintiff cannot be a mere bystander, but instead must have a 'personal stake' in the dispute." *All. for Hippocratic Med.*, 602 U.S. at 379 . Thus, as a general rule, a party seeking standing to assert the rights of others has a substantially more difficult causal showing to make than a party asserting its own rights. *Id.* at 382.

The Foundation seeks review of the state-action question only in the context of a § 1983 claim focused on dues deductions "from a nonconsenting public-sector employee." The Foundation, in other words, seeks review of the state-action question in the context of a claim asserting someone else's rights. Yet "standing is not dispensed in gross.'" *See Murthy v. Missouri*, 603 U.S. 43, 61 (2024) (quoting *TransUnion LLC v. Ramirez*, 594 U.S. 413, 431(2021)). Plaintiffs must demonstrate standing "for each claim that they press against each defendant, and for each form of relief that they seek." *Id.* at 61. The Foundation cannot establish standing – either organizational or third-party standing – for the claims pressed in its petition.

A finding that the Foundation has standing would contradict the decision this Court issued just last term in *All. for Hippocratic Med.*, 602 U.S. 367. In that case, this Court rejected an "expansive theory" of organizational standing, and overturned the two-part test that the Ninth Circuit previously applied, analyzing whether an organization could show frustration of mission and diversion of resources. *Id.* at 370 (citing *Havens Realty Corp. v. Coleman*, 455 U.S. 363 (1982)). Instead, the Court made clear that organizational standing is limited to cases like *Havens*, where an organization has suffered injury due to a perceptible impairment of its business activities. *Havens Realty Corp.*, 455 U.S. at 379. As a guardrail, the Court stressed that a defendant cannot manufacture organizational standing, or "spend its way into standing," by "expending money" to "advocate against the defendant's action." *All. for Hippocratic Med.*, 602 U.S. at 370.

Unlike in *Havens Realty Corp.,* the Foundation's business has not been perceptibly impaired by the alleged action. The only injury the Foundation suffered was its expenditures on additional mailings in response to the defendants' alleged actions. To find that injury is enough to show standing is exactly the expansion of organizational standing that *All. For Hippocratic Med.* cautioned against. *Id.*

Nor can the Foundation establish third-party standing. Under this Court's precedents, it cannot do so. In the courts below, the Foundation tried to shoehorn its case within the Court's vendor precedents, chiefly *Craig v. Boren*, 429 U.S. 190 (1976); CA9.Op.Br.29–32. In that case, the operation of the challenged law, which prohibited the sale of low-alcohol beer to men and women of different ages, directly "inflicted" injury on the appellant, a beer vendor, by creating "legal duties . . . addressed directly to vendors." *Id.* at 194. Here, Wash. Rev. Code § 41.56.061 inflicts no direct injury on the Foundation because it does not regulate the activities of private organizations that would assist public employees in revoking dues authorizations.

The Court has emphasized that third-party standing additionally requires the litigant asserting another's rights to show a sufficiently close relationship with the absent party to warrant adjudication by proxy *and* a hindrance to the absent party's ability to protect his own interests. *Kowalski v. Tesmer*, 543 U.S. 125, 130 (2004). The Foundation fails to meet either of the two tests of third party standing. There is no ongoing close relationship between the Foundation and public employees who utilize their form letters. And no hindrance has been shown to a public employee's ability to protect his own interests.

The Foundation has no standing to advocate for public employees' rights through the question it presents in this petition.

CONCLUSION

The petition should be denied.

Respectfully submitted,

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