No. 25-43

In the Supreme Court of the United States

FREEDOM FOUNDATION,

PETITIONER,

v.

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, LOCAL 117; INTERNATIONAL BROTHERHOOD OF TEAMSTERS, LOCAL 763; INTERNATIONAL BROTHERHOOD OF TEAMSTERS, LOCAL 760; BOB FERGUSON, IN HIS OFFICIAL CAPACITY AS GOVERNOR OF THE STATE OF WASHINGTON,

RESPONDENTS.

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

BRIEF IN OPPOSITION

NICHOLAS W. BROWN
Attorney General

NOAH G. PURCELL
Solicitor General

ALICIA O. YOUNG
Deputy Solicitor General
Counsel of Record

PETER B. GONICK
Deputy Solicitor General

1125 Washington Street SE
Olympia, WA 98504-0100
360-753-6200
Alicia.Young@atg.wa.gov

QUESTIONS PRESENTED

Washington State law authorizes state agencies to deduct union dues from employee paychecks only "[u]pon the authorization of an employee" and "until expressly revoked by the employee in accordance with the terms and conditions of the authorization." Wash. Rev. Code § 41.56.061(1), (2)(c); Wash. Rev. Code § 41.80.100(1), (2)(c). When employees withdraw their authorization, the union is responsible for informing the state agency employer and requesting the termination of dues deductions. Wash. Rev. Code § 41.56.061(4); Wash. Rev. Code § 41.80.100(2)(g). The questions presented are:

Does a union engage in state action if it violates state law requiring it to notify the employer to terminate deductions after an employee legally withdraws a prior authorization?

Does a private organization lack standing to challenge a union's system for processing employee revocations where no employee is a member of the organization, a party to the case, or even a witness claiming that a dues revocation was improperly handled?

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Constitutional Provisions

Statutes

Regulations

Rules

INTRODUCTION

Petitioner Freedom Foundation, a private organization that does not represent any public employee, complains that a union, another private organization, acted unconstitutionally when it refused to accept certified mail from the Foundation. But this is not state action under any stretch of the imagination. The Ninth Circuit's dismissal of this claim for lack of state action is completely consistent with this Court's precedent and fails to implicate any circuit split. This Court should deny review.

A Washington State employee's decision to join and financially support a union is a completely voluntary and private contractual matter between the employee and the union. State agency employers deduct union dues from employee salaries only after employees affirmatively and voluntarily authorize the deductions as part of their individual agreements with unions. State agency employers terminate deductions when employees revoke their authorizations under those same agreements. It is the responsibility of the unions to notify the State when employees authorize and revoke authorizations for dues deductions. And if a union intentionally refuses to process and report to the State revocations from employees who have properly revoked their authorizations, the union would be violating state law.

Rather than seeking state law remedies against the union here for allegedly refusing to process dues revocations, Freedom Foundation has attempted to turn this matter into a federal constitutional dispute. This attempt fails on at least two levels.

First, Freedom Foundation's allegation that the union is refusing to process dues revocations alleges a *misuse* of state law by a private actor, which is not state action under precedent from this Court or any other. Freedom Foundation's attempt to constitutionalize payroll disputes would turn the state action doctrine on its head and inundate federal courts with disputes that are properly resolved by state courts and administrative agencies.

Second, Freedom Foundation lacks standing to pursue the constitutional rights of individual employees who are not parties to this case or members of the organization. This case is thus an unworkable vehicle to address the question presented by Freedom Foundation, even if that question were cert-worthy.

This Court should deny certiorari.

STATEMENT OF THE CASE

A. Washington State Authorizes Union Dues Payroll Deductions Only After a Public Employee Has Affirmatively Authorized Them

Under Washington's Public Employees Collective Bargaining Act and Personnel System Reform Act, public employees have the statutory right to organize and select a labor organization to serve as their exclusive representative to negotiate terms and conditions of employment for bargaining unit members. Wash. Rev. Code § 41.80.050; Wash. Rev. Code § 41.56.040. Individual bargaining unit members likewise have the statutory right to

decline to join or financially support labor unions. Wash. Rev. Code §§ 41.80.050, .100; Wash. Rev. Code §§ 41.56.040, .061.

If a state employee chooses to become a union member and receive membership benefits in exchange for paying membership dues, that is a private, voluntary "contractual relationship" between the union and its members. *Belgau v. Inslee*, 975 F.3d 940, 950 (9th Cir. 2020). Under such agreements, employees may also choose to sign authorizations directing their employer to deduct monthly union dues payments from their paychecks. Wash. Rev. Code § 41.80.100; Wash. Rev. Code § 41.56.061; CA9.SER.84, CA9.SER.89, CA9.SER.95-96. As union membership agreements are private contracts between unions and members, and the union serves as the exclusive bargaining representative for bargaining unit members, state law directs the employer to rely on information provided by the union regarding the authorization and revocation of deductions. Wash. Rev. Code § 41.80.100(2)(g); Wash. Rev. Code § 41.56.061(4).

Upon notice from the union of an employee's authorization, the employer is required to deduct and remit dues payments until the authorization is expressly revoked by the employee in accordance with the terms and conditions of the authorization. Wash. Rev. Code § 41.80.100; Wash. Rev. Code § 41.56.061. Upon notice from the union that an employee has revoked authorization, the employer is required to end the deduction no later than the second payroll after receipt of notice. Wash. Rev. Code § 41.80.100(2)(f); Wash. Rev. Code § 41.56.061(3)(b). Alternatively, employees may choose to refrain from the convenience

of automatic dues deductions and instead send their dues payments directly to the union. CA9.SER.84, CA9.SER.89, CA9.SER.96.

Union dues are not the only voluntary employee deductions the State makes. For example, employees may authorize payroll deductions to support certain charities or voluntary professional organizations. Wash. Rev. Code §§ 41.04.036, .230. Employees also may select health insurance plans that involve employee contributions through payroll deduction. *See, e.g.*, Wash. Admin. Code §§ 182-08-197, -198; *see also* Wash. Rev. Code § 41.04.230 (generally addressing payroll deductions); Wash. Admin. Code § 182-08-199 (limiting employees who elect to enroll in medical Flexible Spending Account, Dependent Care Assistance Program, or both from terminating deductions outside of annual enrollment window).

State law does not authorize a public employer to make union deductions without an employee's valid consent, as the authority and duty to make deductions is premised on an employee's "authorization." Wash. Rev. Code § 41.80.100; Wash. Rev. Code § 41.56.061. It is the union's responsibility to inform the employer when employees have legally revoked their authorizations in accordance with the terms and conditions of their authorization. Wash. Rev. Code § 41.80.100(2)(d)-(g); Wash. Rev. Code § 41.56.061(2)-(4).

It is an unfair labor practice and a violation of state law for an employer or union to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed by state labor laws. Wash.

Rev. Code § 41.80.110(1)(a), (2)(a); Wash. Rev. Code §§ 41.56.045(1), .047(1). The Washington Public Employment Relations Commission is "empowered and directed to prevent any unfair labor practice and to issue appropriate remedial orders[.]" Wash. Rev. Code § 41.56.051(1); Wash. Rev. Code § 41.80.120(1).

B. Proceedings Below

This lawsuit was brought by the Freedom Foundation, a non-profit organization with no individual members, which seeks to educate public-sector employees about their constitutional right to abstain from union membership and financial support of union speech. Pet. 5; CA9.ER.180. As part of its mission, Freedom Foundation asserts that it assists employees in resigning union membership by mailing revocation forms "on their behalf" to the unions. Pet. 5. *See also* CA9.ER.180.

Freedom Foundation alleges that three specific unions—Teamsters Locals 117, 760, and 763 (Teamsters), violated public employees' and Freedom Foundation's First and Fourteenth Amendment rights when, on fourteen occasions since June 2021, the unions declined to receive certified mail from Freedom Foundation containing employee communications seeking to revoke dues authorizations. Pet. App. 2; CA9.ER.13-14. Freedom Foundation is not joined in this lawsuit by any employee who claims to have had union dues deducted beyond the period the employee authorized. CA9.ER.4-24.

Freedom Foundation also named the Governor of the State of Washington as a defendant, but did not allege any facts regarding him and instead sought

only to prospectively invalidate the statute that directs public employers to make dues deductions according to the above-described process. CA9.ER.4-22. The district court dismissed all the Freedom Foundation's claims for lack of standing, lack of state action, and on the merits. Pet. App. 9-30.

As to Freedom Foundation's own claimed harm, the district court concluded that Freedom Foundation failed to show "frustration of its mission" because it could still educate and assist employees with union resignation even if Teamsters' actions frustrated Freedom Foundation's chosen tactic of sending bulk dues revocations by certified mail. Pet. App. 13-14. Moreover, Freedom Foundation did not "identify a single employee who has tried but been unable to resign[.]" Pet. App. 14. As to third-party standing, the court rejected Freedom Foundation's multiple theories, noting that Freedom Foundation "provide[d] only conclusory arguments that it maintains close relationships with employees it assists." Pet. App. 15-16.

On appeal, the Ninth Circuit affirmed dismissal of the sole claim against the Governor for lack of standing and the rest of the claims against Teamsters for lack of state action. Pet. App. 2-5. Regarding state action, the Ninth Circuit affirmed that a "union's refusal to accept delivery of a public employee's dues revocation is not state action[,]" because it does not result from "'the exercise of some right or privilege created by the State or by a rule of conduct imposed by the state[.]'" Pet. App. 4 (quoting

Naoko Ohno v. Yuko Yasuma, 723 F.3d 984, 994 (9th Cir. 2013)). Moreover, Washington could not authorize, encourage, or facilitate conduct that it did not even know about. Pet. App. 5.

As to the claim against the Governor, the Ninth Circuit stated that "Freedom Foundation argues that it has been injured by the Washington statute . . . [b]ut it has not shown that the statute limits any association or expression." Pet. App. 5.[1] Freedom Foundation does not seek review of the dismissal of this claim. Pet. i (Question Presented). It challenges only the conclusion that Teamsters was not acting under color of state law when it allegedly declined to receive mail from Freedom Foundation.

REASONS FOR DENYING THE PETITION

Freedom Foundation does not include any authority in its Petition as to why review should be granted, instead referring to a Petition filed in an entirely different case. Pet. 12 (referencing certiorari petition in *Klee v. International Union of Operating Engineers, Local 501*, No. 24-1306 (U.S. filed June 20, 2025) (*Klee* Pet.)). But that Petition fails to show that the Ninth Circuit's state action analysis is inconsistent with decisions of this Court or those of other circuits. Moreover, unlike in *Klee*, there is not one employee in this case who is claiming that they

[1] The Ninth Circuit's description of the Freedom Foundation's claim against the Governor does not match the Foundation's Complaint, which alleged only that the statutory procedure jeopardized the rights of public employees—not the Freedom Foundation's rights. CA9.ER.20. Nonetheless, Freedom Foundation does not seek review of the Ninth Circuit's holding that the Foundation lacks standing to make this claim. Pet. i.

have been made to pay union dues beyond those expressly authorized, so there are serious standing problems that would prevent the Court from reaching the question presented by Freedom Foundation. For the reasons set forth in the Briefs in Opposition in *Klee*, and the additional reasons here, the *Klee* Petition provides no basis for review of this case, and this Petition should not be held pending *Klee*.

A. The Ninth Circuit's State Action Analysis Creates No Conflict with Decisions of This Court or Other Circuits

Freedom Foundation's Petition boils down to an argument that Teamsters engage in state action by declining to open mail when it comes from Freedom Foundation. But this is clearly private conduct by a private party that cannot form the basis of a Section 1983 claim. Even if Freedom Foundation's claim is recharacterized as one alleging that Teamsters is failing to process and notify the State of dues authorization revocations, such conduct would clearly be a *misuse* of a state statutory procedure that is redressable under state law, not a Section 1983 claim. The Ninth Circuit's conclusion that state action is lacking here faithfully applies this Court's precedent, does not implicate a circuit split, and avoids the extreme consequences of Freedom Foundation's theory, which would turn federal courts into substitutes for state courts and state labor boards in addressing employee payroll deduction disputes.

1. The Ninth Circuit's decision faithfully applies this Court's state action precedent

"Section 1983 provides a cause of action against '[e]very person who, *under color of any statute, ordinance, regulation, custom, or usage, of any State*" deprives someone of a federal constitutional or statutory right." *Lindke v. Freed*, 601 U.S. 187, 194 (2024) (alteration in original) (quoting 42 U.S.C. § 1983). "As its text makes clear, this provision protects against acts attributable to a State, not those of a private person." *Id*. The essence of Freedom Foundation's lawsuit is that Teamsters did not open mail from the Freedom Foundation. Pet. i, 2. But "absent some very unusual facts, no one would credit [as state action] a child's assertion of free speech rights against a parent, or a plaintiff's complaint that a nosy neighbor unlawfully searched his garage." *Lindke*, 601 U.S. at 195. Freedom Foundation's complaints about what Teamsters chooses to do with its mail are akin to these examples. None falls within any ordinary meaning of state action.

Alternatively, Freedom Foundation's challenge here could be understood to be that, by declining to open mail from Freedom Foundation that Teamsters knows contains dues authorization revocations, Teamsters is refusing to process valid dues authorization revocations or report them to the State as state law requires. But private actions in contravention of state law and policy cannot be attributable to the State. *See Lugar v. Edmondson Oil Co., Inc.*, 457 U.S. 922, 940 (1982). In *Lugar*, this Court held that where a private defendant invoked

a Virginia procedure that allowed for prejudgment attachment of a debtor's property "without the grounds to do so," the defendant was acting in violation of state law, and its action, therefore, "could in no way be attributed to a state rule or a state decision." *Id.*

Similarly here, if Freedom Foundation is correct that Teamsters has intentionally refused to process and report to the State revocations from those employees who have properly revoked their authorizations, then Teamsters' action is a violation of state law and cannot be state action. Wash. Rev. Code § 41.80.100(2)(d)-(g); Wash. Rev. Code § 41.56.061(2)-(4). By failing to communicate to the State when employees who have previously authorized dues deductions have properly revoked their authorizations, Teamsters would be causing deductions to be made without authorization and in violation of state law. But "private misuse of a state statute does not describe conduct that can be attributed to the State" for purposes of a Section 1983 claim. *Lugar*, 457 at 941. Claims that a union is abusing state law to cause deductions to be made from employees without their consent are redressable via state law remedies. *See, e.g.*, Wash. Rev. Code § 41.80.110(1)(a), (2)(a); Wash. Rev. Code §§ 41.56.045(1), .047(1); *Ochoa v. Pub. Consulting Grp., Inc.*, 48 F.4th 1102, 1111 (9th Cir. 2022) ("Any injury that Ochoa suffered because of the union's misrepresentations is properly addressed by pursuing a state law claim against the union[.]"). *See also*

Trevisanut v. Cal. Union of Safety Emps., 1993 WL 13699367 (Cal. Pub. Emp. Rels. Bd. Dec. 13, 1993) (concluding union unlawfully interfered with employee rights when it "refus[ed] to honor signed withdrawal forms and letters").

The Petition in *Klee* argues that *Lugar* compels finding state action whenever the union is availing itself of a state-created process, *Klee* Pet. 17-19, but that argument ignores the two different claims at issue in *Lugar*: one alleging that the statutory scheme—literally applied—was procedurally deficient, and one alleging that the private party misused the statutory scheme. 457 U.S. at 924, 940. Only the former was considered to involve state action. There is no claim in this case that is analogous to the claim in which state action was found in *Lugar*.

The Court in *Lugar* identified two separate claims challenging a private-party defendant's use of Virginia's statutory prejudgment attachment statute. 457 U.S. at 924, 940. Count one was a challenge that Virginia's statutory procedure was "procedurally defective under the Fourteenth Amendment." *Id.* at 941. That claim alleged that the defendant's action violated plaintiff's due process rights even if it was taken "'line by line in accordance with Virginia law.'" *Id.* at 941 n.22 (citation omitted). In such a scenario, "the procedural scheme created by the statute obviously is the product of state action," and the Court concluded that a claim that the state law was constitutionally deficient was cognizable under Section 1983. *Id.* at 941. In contrast, count two in *Lugar* alleged that the defendant had invoked Virginia's statutory procedure without proper

grounds. *Id*. at 940. Because this claim was based on a violation of state law by a private party, the Court explained that the private party's conduct could not be state action. *Id*. at 940.

To the extent that there was any analogous claim in this case to count one in *Lugar*, it was the claim against the Governor and Teamsters that sought to invalidate the state law authorizing dues deductions based on information provided by a union. CA9.ER.20. That claim asserted that facial application of the law would result in the violation of constitutional rights for lack of sufficient procedural protections. CA9.ER.20. But, as previously explained, that claim was dismissed by the lower courts for lack of standing, and Freedom Foundation has not sought review in its Petition. Pet. App. 5; Pet. i. There is no basis for finding state action premised on a challenge that is no longer active in this case.

The remaining claim, that Teamsters was not conveying to the State alleged revocations of dues-deduction authorizations, is more like the claim in *Lugar* that this Court held was *not* state action. The Ninth Circuit opinion therefore faithfully applied this Court's precedent.

This Court's recent decision in *Lindke* likewise provides no basis for this Court's review. *See Klee* Pet. 22 (quoting *Lindke*, 601 U.S. at 199, 200). There, the Court was evaluating whether "a *state official* engaged in state action or functioned as a private citizen" when posting to social media. *Lindke*, 601 U.S. at 196, 198-99. The Court did not question or

alter *Lugar*'s well-established rule that a *private actor* engaged in misconduct in violation of state law is not engaged in state action.

2. There is no circuit split applying state action doctrine in the context of voluntary union dues authorizations and revocations

There is no conflict among circuit courts on the issue here: they have unanimously concluded that there is no state action where a union misuses a state statute by requesting that a public employer remit dues deductions from an employee who has not authorized the deductions.

Thus, in *Littler v. Ohio Ass'n of Public School Employees*, 88 F.4th 1176 (6th Cir. 2023), the Sixth Circuit held: "Littler alleges that [the union] improperly instructed the state to withhold union dues after she withdrew her union membership. The deprivation was caused by a private actor—[the union]—acting *contrary* to any rule of conduct imposed by the state, and thus cannot be attributed to the state." *Id.* at 1181.

Similarly, in a case alleging that a union failed to promptly process a resignation request, resulting in deduction of additional membership dues, the Eighth Circuit wrote:

> Whether or not the union officials were correct in declining to honor the e-mail request, the decision was made by the union officials alone, and does not constitute state action. That the State continued to deduct dues from [the

> employee] as long as he remained on the union rolls does not make the State responsible for the decision of union officials . . . .

Hoekman v. Educ. Minn., 41 F.4th 969, 978 (8th Cir. 2022). *Accord*, *Wright v. Serv. Emps. Int'l Union Loc. 503*, 48 F.4th 1112 (9th Cir. 2022) (union's alleged forgery of public employee's dues authorization not attributable to government), *cert. denied*, 143 S. Ct. 749 (2023); *Belgau v. Inslee*, 975 F.3d 940, 950-52 (9th Cir. 2020) (holding union not engaged in state action where it entered into membership agreements containing "allegedly insufficient consent for dues deduction"), *cert. denied*, 141 S. Ct. 2795 (2021).

The *Klee* Petition argues that these cases are at odds with the Seventh Circuit's decision on remand in *Janus*, *Klee* Pet. 24-26, but it is incorrect. *Janus* involved a state law or policy requiring nonmembers to provide financial support to a union as a condition of employment. *Janus v. Am. Fed. of State, Cnty., & Mun. Emps., Council 31*, 942 F.3d 352, 361 (7th Cir. 2019). There, the union was a "joint participant with the state in the agency-fee arrangement." *Id.* In contrast, neither this case nor any of the other cases alleged to be at odds with *Janus* involve a state law or policy compelling union dues payments. These cases all involve allegations that the union is engaging in action *contrary* to the statutory scheme that precludes coerced union financial support. This Court has denied certiorari in numerous cases raising the same

or similar question presented.[2] Freedom Foundation fails to offer any changed circumstances that would warrant this Court's review now.

3. Freedom Foundation's argument would completely distort the state action doctrine

The ramifications of Freedom Foundation's incorrect state action argument are significant. Freedom Foundation essentially argues that any time a private party receives money through a voluntary payroll deduction, and any time the State relies on information from a private party to make a payroll deduction, the private party becomes a state actor. Thus, any dispute about whether that third party engaged in misconduct to obtain or communicate an employee's authorization would be cognizable in federal court. This turns the state action analysis on its head and fails to acknowledge the competence

---

[2] *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, Loc. 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 Bhd. 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. 119*, 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).

of state courts and administrative agencies to adjudicate state law disputes regarding contract, unjust enrichment, fraud, forgery, or other related issues.

According to Freedom Foundation, if the State relied on information from the United Way to make voluntary payroll deductions for employees wishing to make charitable contributions, the United Way would be a state actor. *See* Wash. Rev. Code § 41.04.230(9) (authorizing charitable contribution deductions). Likewise, any professional organization an employee directs contributions towards could be subject to Freedom Foundation's overbroad state action rule. *See* Wash. Rev. Code § 41.04.230(5). Under that theory, an employee could bring a claim in federal court anytime they claimed that these private organizations engaged in misconduct to communicate an employee's authorization to the State. Turning every such dispute into a state action would substantially distort the state action rule, inundate the federal courts with state law disputes, and undermine the common practice of voluntary payroll deductions.

There is no reason for this Court to step in and unsettle the law in this area.

B. This Case is a Poor Vehicle for the Question Raised

Not only is the opinion below consistent with this Court's precedent and all other circuit court opinions to address similar issues, but this case is a terrible vehicle for the question raised by the Petition for at least three reasons.

First, the Court would likely never reach the state action question because Freedom Foundation lacks standing (and facts) to pursue the rights of individual employees. Freedom Foundation "does not identify a single employee who has tried but been unable to resign from Union Defendants." Pet. App. 14 (citing Pl.'s Opp'n to Summ. J., CA9.ER.170-193). Indeed, there is not one employee who is a party or a witness to this case at all. Even if there were evidence that Teamsters caused the State to deduct union dues from any specific employee beyond the time the employee expressly authorized such deductions, Freedom Foundation would not have standing to prosecute any such violation on behalf of individual public employees. *See generally Powers v. Ohio*, 499 U.S. 400, 410-11 (1991) ("In the ordinary course, a litigant must assert his or her own legal rights and interests, and cannot rest a claim to relief on the legal rights or interests of third parties."). Freedom Foundation has no members, CA9.ER.180, so it cannot claim to be pursuing a case on behalf of any such members, and it failed to show any other basis for litigating the rights of others.

Freedom Foundation is left with its argument that it is harmed as an organization when Teamsters' rejection of its mail causes it to spend more money to re-send its mail. But this is not sufficient to establish Article III standing, which, even for an organization, requires "the usual standards for injury in fact, causation, and redressability that apply to individuals." *Food & Drug Admin. v. All. for Hippocratic Med.*, 602 U.S. 367, 393-94 (2024). A cognizable injury "must be particularized; the injury

must affect 'the plaintiff in a personal and individual way' and not be a generalized grievance." *Id.* at 381 (quoting *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 n.1 (1992)). As the district court correctly concluded, Freedom Foundation cannot establish that it has a legally enforceable right for its mail to be accepted and processed by Teamsters. Pet. App. 25. Thus, it has failed to assert a particularized cognizable injury redressable in federal court. These serious standing problems would prevent the Court from reaching the question Freedom Foundation claims it should decide.

Second, contrary to Freedom Foundation's characterization of its Petition, this case does not present a constitutional challenge to a public employee dues deduction system. There is no present allegation that a state official or practice is violating anyone's constitutional rights, and there is no employee alleging a violation of their rights.

Freedom Foundation has abandoned its claims against the State, and for good reason. The sole claim alleged against a state official or challenging a state law or practice was Plaintiffs' Count II (CA9.ER.19-20), which alleged that the State and Teamsters employed a procedure that failed to include sufficient procedural safeguards to avoid the deprivation of constitutional rights of public employees. CA9.ER.19-20. As the statute in question did not govern Freedom Foundation's activity at all, and Freedom Foundation failed to establish standing to litigate the constitutional rights of others, the district court dismissed that claim for

lack of standing, and the Ninth Circuit affirmed, Pet. App. 5. Freedom Foundation does not argue the Court should grant review of the dismissal of that claim and it is forfeit. Rule 14(1)(a).

Third, the court of appeals' decision is unpublished and has no precedential value, even within the Ninth Circuit. Circuit Rule 36-3. Thus, the opinion is likely to have little to no impact beyond this individual case, not meriting this Court's review.

In sum, this case is not well-suited to adjudicate the question presented by the Petition.

C. This Case is Materially Distinguishable from *Klee* and Would Not Benefit from a Decision in that Case

Finally, this Court should not grant review in *Klee* for the reasons stated in the briefs in opposition in that case and for many of the same reasons asserted here. But even if the Court does grant review in that case, there is no reason to hold this petition in the interim. The *Klee* case is markedly different and would not affect the outcome in this case.

First, unlike *Klee*, there is not a single employee in this case that claims to have had union dues deducted without their authorization. Thus, the lack of standing here would mean that any decision in *Klee* would have no impact in this case. Second, to the extent that any generally applicable holding came out of *Klee*, Washington, like other states, would faithfully follow it without the need for repeated case-by-case adjudications. There is no basis to hold this petition pending a decision in *Klee*.

CONCLUSION

The petition for a writ of certiorari should be denied.

RESPECTFULLY SUBMITTED.

NICHOLAS W. BROWN
Attorney General

NOAH G. PURCELL
Solicitor General

ALICIA O. YOUNG
Deputy Solicitor General
Counsel of Record

PETER B. GONICK
Deputy Solicitor General

1125 Washington Street SE
Olympia, WA 98504-0100
360-753-6200

October 27, 2025