

No. 25-43

In the
Supreme Court of the United States

FREEDOM FOUNDATION,

Petitioner,

v.

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, LOCAL
117, a non-profit corporation; INTERNATIONAL
BROTHERHOOD OF TEAMSTERS, LOCAL 763, an
unincorporated association; INTERNATIONAL
BROTHERHOOD OF TEAMSTERS, LOCAL 760, an
unincorporated association; 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**

REPLY BRIEF FOR PETITIONER

TIMOTHY R. SNOWBALL	ERIN E. MURPHY
RAVI PRASAD	<i>Counsel of Record</i>
FREEDOM	ANDREW C. LAWRENCE
FOUNDATION	MITCHELL K. PALLAKI
P.O. Box 552	CLEMENT & MURPHY, PLLC
Olympia, WA 98507	706 Duke Street
(360) 956-3482	Alexandria, VA 22314
	(202) 742-8900
	erin.murphy@clementmurphy.com

Counsel for Petitioner

November 12, 2025

TABLE OF CONTENTS

TABLE OF AUTHORITIES.....	ii
REPLY BRIEF	1
CONCLUSION	5

TABLE OF AUTHORITIES

Cases

<i>Caplin & Drysdale, Chartered</i> <i>v. United States</i> , 491 U.S. 617 (1989).....	3
<i>City of Littleton v. Z.J. Gifts D-4, L.L.C.</i> , 541 U.S. 774 (2004).....	3
<i>CSX Transp., Inc. v. Ala. Dep’t of Revenue</i> , 562 U.S. 277 (2011).....	4
<i>Diaz v. United States</i> , 602 U.S. 526 (2024).....	4
<i>Elrod v. Burns</i> , 427 U.S. 347 (1976).....	3
<i>Ex parte Parker</i> , 131 U.S. 221 (1889).....	4
<i>FDA v. All. for Hippocratic Med.</i> , 602 U.S. 367 (2024).....	2
<i>Janus v. AFSCME, Council 31</i> , 585 U.S. 878 (2018).....	2
<i>Kimbrough v. United States</i> , 552 U.S. 85 (2007).....	4
<i>Klee v. Int’l Union of Operating Eng’rs</i> , <i>Local 501</i> , No. 24-1306 (U.S. filed June 20, 2025)	1, 5
<i>New York Times Co. v. United States</i> , 403 U.S. 713 (1971).....	3
<i>Roman Cath. Diocese of Brooklyn v. Cuomo</i> , 592 U.S. 14 (2020).....	3
<i>U.S. Dep’t of Labor v. Triplett</i> , 494 U.S. 715 (1990).....	3

<i>United States</i>	
<i>v. Detroit Timber & Lumber Co.,</i>	
200 U.S. 321 (1906).....	2
<i>Vill. of Arlington Heights</i>	
<i>v. Metro. Hous. Dev. Corp.,</i>	
429 U.S. 252 (1977).....	3
Rule	
9th Cir. R. 36-2	4
Other Authority	
Cert.Reply, <i>Klee v. Int’l Union of Operating</i>	
<i>Eng’rs, Local 501</i> , No. 24-1306	
(U.S. Oct. 29, 2025).....	1

REPLY BRIEF

This case presents the question whether public-sector unions that are empowered by state law to act as the sole gatekeeper in determining whether state officials will deduct union dues from a nonconsenting public-sector employee act “under color of law” for purposes of 42 U.S.C. §1983. As respondents agree, that is the “same” question presented in the petition filed in *Klee v. International Union of Operating Engineers, Local 501*, No. 24-1306 (U.S. filed June 20, 2025). Union.BIO.1; see State.BIO.7-8. Unsurprisingly, then, respondents press the same objections as the respondents in *Klee*: They deny the circuit split, suggest that the Ninth Circuit has faithfully applied this Court’s state-action cases, and claim that the question presented is insufficiently important because this Court denied other petitions raising similar issues and because affected employees can pursue state-law remedies. See State.BIO.1-2, 8-16; Union.BIO.2, 7-9. As the *Klee* petitioner recently explained in his reply brief, those arguments are wrong across the board. See Cert.Reply.2-12, *Klee*, No. 24-1306, *supra*. Freedom Foundation thus adopts the *Klee* petitioner’s arguments here, and the conceded overlap between this case and *Klee* only reinforces its point that the Court should either grant both cases or grant plenary review in *Klee* and hold this petition in the interim.

Perhaps recognizing that the *Klee* respondents’ arguments come up short, respondents advance a handful of supplemental theories why the Court should deny this petition. Those arguments are uniformly meritless.

First, respondents suggest that this case is a poor vehicle because Freedom Foundation purportedly lacks standing. *See* State.BIO.17-18; Union.BIO.10-13.¹ A Ninth Circuit panel otherwise skeptical of Freedom Foundation’s claims squarely rejected that argument, *see* Pet.App.3-4, and for good reason. The unrebutted evidence in this case demonstrates that Freedom Foundation’s core business activities involve assisting public-sector employees in resigning their union membership—a mission that includes the mail campaign at issue here. *See* Pet.App.3-4; CA9.ER.27-30, 39-40, 221. There is also no dispute that respondents’ refusal to process Freedom Foundation’s mail has required the organization to use additional resources to ensure that it can achieve its goal of assisting employees in exercising their rights under *Janus v. AFSCME, Council 31*, 585 U.S. 878 (2018). *See* Pet.App.4; CA9.ER.34, 221. This case thus is on all fours with this Court’s organizational standing cases: The unions’ refusal to accept Freedom Foundation’s mail “perceptibly impair[s] [its] ability to provide” its pre-existing union-resignation “services” to interested public-sector employees. *All. for Hippocratic Med.*, 602 U.S. at 395; *see Vill. of*

¹ The unions repeatedly cite the reporter-prepared syllabus appended to this Court’s opinion in *FDA v. Alliance for Hippocratic Medicine*, 602 U.S. 367 (2024), *see* Union.BIO.11-12, even though the syllabus “is not the work of the court” and does not “state its decision,” *United States v. Detroit Timber & Lumber Co.*, 200 U.S. 321, 337 (1906). By contrast, the Ninth Circuit (correctly) invoked the Court’s actual decision in *Alliance for Hippocratic Medicine*. *See* Pet.App.3.

Arlington Heights v. Metro. Hous. Dev. Corp., 429 U.S. 252, 261-63 (1977). Standing thus is no obstacle here.²

Second, respondents posit that the petition does not present a proper challenge to Washington’s dues-deduction regime. In their view, because some public-sector employees have ultimately succeeded in resigning their union memberships, there cannot be any constitutional violation. See Union.BIO.9-10; State.BIO.18-19. That assertion is fundamentally misguided. As this Court has admonished, “[t]he loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury” to constitutional rights. *Roman Cath. Diocese of Brooklyn v. Cuomo*, 592 U.S. 14, 19 (2020) (per curiam) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976) (plurality op.)); accord *City of Littleton v. Z.J. Gifts D-4, L.L.C.*, 541 U.S. 774, 780 (2004) (“undue delay” in approving a “license for a First Amendment-protected business” to operate “results in the unconstitutional suppression of protected speech”). If the government forced a journalist to delay publishing his exposé on a candidate for office until after the election, it would obviously violate the First Amendment. See *New York Times Co. v. United States*, 403 U.S. 713 (1971). The same principle

² In fact, Freedom Foundation has standing for an additional reason. Because public-sector employees have associated with Freedom Foundation and requested that it act as their agent for the purpose of exercising their First Amendment rights under *Janus*, the unions’ mail-refusal scheme necessarily impinges on both Freedom Foundation’s and those employees’ constitutional rights. See, e.g., *U.S. Dep’t of Labor v. Triplett*, 494 U.S. 715, 720-21 (1990); *Caplin & Drysdale, Chartered v. United States*, 491 U.S. 617, 623 n.3 (1989).

applies here. The unions’ refusal to accept Freedom Foundation’s mail delays the ability of public-sector employees to vindicate their First Amendment rights under *Janus*. Neither a refund after the fact nor an employee’s later release from his membership can unring that bell—the public-sector employees have already been coerced into funding objectionable union speech in direct contravention of *Janus*.

Third, the state argues that this Court’s review is unnecessary because the decision below is not precedential. See State.BIO.19. But this Court often reviews non-precedential decisions that apply established circuit precedent precisely because they implicate an entrenched split. See, e.g., *CSX Transp., Inc. v. Ala. Dep’t of Revenue*, 562 U.S. 277, 282-83 & n.4 (2011); *Kimbrough v. United States*, 552 U.S. 85, 93 & n.4 (2007); see also *Diaz v. United States*, 602 U.S. 526 (2024). Indeed, publication is rare if a decision does not deviate from existing circuit law, see 9th Cir. R. 36-2, which is exactly what happened below, see Pet.App.4-5. Declining to review unpublished decisions in that context thus could have the untenable result of effectively insulating the first decision to resolve an important issue from review.

Finally, the state argues that the Court need not hold this petition pending the outcome in *Klee* because it will “faithfully follow” any decision that this Court hands down. State.BIO.19. This Court has not accepted such arguments before. See, e.g., *Ex parte Parker*, 131 U.S. 221, 225 (1889) (“Rights under our system of law and procedure do not rest in the discretionary authority of any officer.”). And there is even less reason to countenance them here, where the

state is openly arguing that *Klee* “would not affect the outcome in this case.” State.BIO.19; see Union.BIO.9-10.

* * *

In short, this petition, like the one in *Klee*, cleanly tees up the Ninth Circuit’s profoundly flawed application of this Court’s state-action precedent, which has provided a roadmap for unions and states to eviscerate this Court’s decision in *Janus*. None of the arguments advanced by the respondents in *Klee* or this case remotely undermines the conclusion that the Court should either grant plenary review in both *Klee* and this case or hold this petition for a decision in *Klee*.

CONCLUSION

This Court should grant the petition or hold it pending the disposition of *Klee v. International Union of Operating Engineers, Local 501*, No. 24-1306 (U.S. filed June 20, 2025).

Respectfully submitted,

TIMOTHY R. SNOWBALL RAVI PRASAD FREEDOM FOUNDATION P.O. Box 552 Olympia, WA 98507 (360) 956-3482	ERIN E. MURPHY <i>Counsel of Record</i> ANDREW C. LAWRENCE MITCHELL K. PALLAKI CLEMENT & MURPHY, PLLC 706 Duke Street Alexandria, VA 22314 (202) 742-8900 erin.murphy@clementmurphy.com <i>Counsel for Petitioner</i>
---	--

November 12, 2025