No. 16-753

In the
Supreme Court of the United States

MARY JARVIS, SHEREE D'AGOSTINO, CHARLESE DAVIS, MICHELE DENNIS, KATHERINE HUNTER, VALERIE MORRIS, OSSIE REESE, LINDA SIMON, MARA SLOAN, LEAH STEVES-WHITNEY,

Petitioners,

v.

ANDREW CUOMO, IN HIS OFFICIAL CAPACITY AS THE GOVERNOR OF THE STATE OF NEW YORK, ET AL.,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Second Circuit

BRIEF AMICUS CURIAE OF PACIFIC LEGAL FOUNDATION, GOLDWATER INSTITUTE, THE FAIRNESS CENTER, PIONEER INSTITUTE, INC., AND EMPIRE CENTER FOR PUBLIC POLICY, INC., IN SUPPORT OF MARY JARVIS, ET AL.

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QUESTIONS PRESENTED

1. Does the First Amendment to the United States Constitution prohibit the State of New York from compelling an entire profession, namely individuals who operate family daycare businesses, to accept a mandatory representative for lobbying and contracting with the State over regulations and policies that affect that profession?

2. Is a private party that violates a citizen's First Amendment rights immune from liability for damages under 42 U.S.C. § 1983 if that party acted with a "good faith" belief that its unconstitutional conduct was lawful?

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INTEREST OF AMICI CURIAE[1]

Pacific Legal Foundation (PLF) was founded in 1973 and is widely recognized as the most experienced nonprofit legal foundation of its kind. Among other matters affecting the public interest, PLF has repeatedly litigated in defense of the right of workers not to be compelled to make involuntary payments to support political or expressive purposes with which they disagree. To that end, PLF attorneys were counsel of record in *Keller v. State Bar of Cal.*, 496 U.S. 1 (1990); *Brosterhous v. State Bar of Cal.*, 12 Cal. 4th 315 (1995); and *Cumero v. Pub. Employment Relations Bd.*, 49 Cal. 3d 575 (1989), and PLF has participated as amicus curiae in all of the most important cases involving labor unions compelling workers to support political speech, from *Abood v. Detroit Bd. of Educ.*, 431 U.S. 209 (1977), to *Knox v. Service Employees International Union, Local 1000*, 132 S. Ct. 2277 (2012), *Harris v. Quinn*, 134 S. Ct. 2618 (2014), and *Friedrichs v. California Teachers Association*, 136 S. Ct. 1083 (2016).

The Goldwater Institute was established in 1988 as a nonpartisan public policy and research foundation dedicated to advancing the principles of limited government, economic freedom, and individual responsibility through litigation, research papers, editorials, policy briefings, and forums. Through its

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[1] Pursuant to this Court's Rule 37.2(a), all parties have consented to the filing of this brief. Counsel of record for all parties received notice at least 10 days prior to the due date of the Amici Curiae's intention to file this brief. Letters evidencing such consent have been filed with the Clerk of the Court.

Pursuant to Rule 37.6, Amici Curiae affirm that 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 person other than Amici Curiae, their members, or their counsel made a monetary contribution to its preparation or submission.

Scharf-Norton Center for Constitutional Litigation, the Institute litigates and occasionally files amicus briefs when its or its clients' objectives are directly implicated. The Goldwater Institute seeks to enforce the features of our state and federal constitutions that protect individual rights, including the rights to free speech and free association. To this end, the Institute is engaged in policy research and analysis pertaining to union fees and dues, professional licensing fees, and related issues. Additionally, the Goldwater Institute currently represents a member of the South Dakota State Bar in a challenge to the constitutionality of compulsory member dues in that state. *See Fleck v. Wetch*, Case No. 16-1564 (8th Cir.).

The Fairness Center is a nonprofit public interest law firm offering free legal services to those facing unjust treatment from public employee union leaders. Among other cases, the Fairness Center represents two clients challenging the forced union representation imposed on them via executive order by Pennsylvania's Governor. *See Smith v. Wolf*, No. 177 MD 2015 (Pa. Commw. Mar. 6, 2015) (David Smith and his caretaker of 26 years, Donald Lambrecht, sued to restore the ability to direct their working relationship without regard to the needs or desires of the union). The issues raised by Petitioners are of particular importance to Pennsylvania, as successive Governors have attempted to force exclusive representation on previously self-represented workers by executive order. *See, e.g.*, Pa. Exec. Order No. 2007-06 (June 14, 2007) (registered family childcare providers); Pa. Exec. Order No. 2007-07 (June 14, 2007) (subsidized childcare providers exempt from certification or regulation); Pa. Exec. Order No. 2010-04 (Sept. 14, 2010) (homecare providers; order withdrawn following entry of preliminary injunction); Pa. Exec. Order No. 2015-05 (Feb. 27, 2015) (homecare providers; order invalidated at mid-level appellate state court and on appeal to the Pennsylvania Supreme Court). The Fairness Center

believes that, should the Pennsylvania Supreme Court decide that exclusive representation may be forced on workers via executive order, the First Circuit's opinion in this case would permit a state's governor to do so unilaterally, in violation of workers' rights to freely associate and petition their government.

The Pioneer Institute, Inc., is an independent, non-partisan, privately funded research organization. It seeks to improve policy outcomes through civic discourse and intellectually rigorous, data-driven public policy solutions based on free market principles, individual liberty and responsibility, and the ideal of effective, limited, and accountable government. Pioneer identified this case through PioneerLegal, its new public-interest law initiative. PioneerLegal is designed to work for changes to policies, statutes, and regulations that adversely affect the public interest in policy areas that include economic freedom and government accountability.

The Empire Center for Public Policy, Inc., is an independent, non-partisan, non-profit think tank based in Albany, New York. The Center's mission is to make New York a better place to live and work by promoting public policy reforms grounded in free-market principles, personal responsibility, and the ideals of effective and accountable government.

All Amici believe that the First Amendment protects these workers and their employers from state laws and executive orders that abruptly impose exclusive representation on thousands of individuals otherwise free to order their own lives and employment.

INTRODUCTION AND SUMMARY OF REASONS TO GRANT THE PETITION

New York's "Representation Act," N.Y. Labor Law art. 19-C §§ 695a-695g, enables childcare providers "to organize themselves and select representatives for the

purpose of discussing with the state the conditions of their employment, the stability of funding and operations of childcare programs and the expansion of quality childcare." *Id.* § 695-a. Under the Act, the State recognizes the majority-designated representative of a childcare unit and the state Office of Children and Family Services shall meet with the representative for the purpose of entering into a written agreement. *Id.* §§ 695-d; 695-e. The Act does not deem providers to be public employees, *id.* § 695-g(2), and providers may "meet or correspond with any state agency with regard to any matter of relevance," *id.* § 695-g(5). The Civil Service Employees Association (CSEA) submitted "authorization cards" from a majority of the state's childcare providers and the state certified the union as the providers' exclusive representative. Despite the language in the Representation Act that non-union member providers may correspond or meet with any state agency, the non-members' childcare operations are included in the scope of the collective bargaining agreement between the CSEA and the state. They may not bargain separately or furnish services under terms different from the collective bargaining agreement reached between the CSEA and the state.

The plaintiffs filed a facial challenge to the law, alleging that it violates their First Amendment rights to freedom of association and speech. The federal district court dismissed their case for failure to state a claim for relief, and the Second Circuit affirmed, holding that "plaintiffs were not here required to become members of the union—and, in fact, were not members of CSEA. Accordingly, they cannot demonstrate a constitutionally impermissible burden on their right to free association." Pet. App. at 4a.

The decision below fails to consider the nature of the statute's infringement on non-union workers' individual rights. It gives a green light to unions and politicians to collude to benefit the unions at the

expense of individual workers and citizens, who have basic, fundamental rights to speak and petition the government. This is an issue of growing national importance as states increasingly require in-home care workers to be subject to exclusive representation laws solely for the purpose of enhancing union power through collective bargaining.

The petition for a writ of certiorari should be granted.

REASONS TO GRANT THE PETITION

I

EXCLUSIVE REPRESENTATION UNCONSTITUTIONALLY SILENCES WORKERS

A. The Intertwined Freedoms of Speech and Association Demand Equally Rigorous Constitutional Protection

Protection of the right to associate derives from the First Amendment's guarantees of speech, assembly, petition, and free exercise of religion; and the scope of this protection corresponds to the constitutional scrutiny applied to the mode of First Amendment expression in which a particular group seeks collectively to engage. *Roberts v. U.S. Jaycees*, 468 U.S. 609, 622 (1984). "[P]olitical association is speech in and of itself," because "[i]t allows a person to convey a message about some of his or her basic beliefs." *Republican Party of Minn. v. White*, 416 F.3d 738, 762 (8th Cir. 2005) (en banc). The right to associate has a corresponding right *not* to associate. *Knox v. Serv. Employees Int'l Union, Local 1000*, 132 S. Ct. 2277, 2288 (2012) ("Freedom of association . . . plainly presupposes a freedom not to associate." (citation omitted)). *Cf. Riley v. Nat'l Fed'n of the Blind of N. Carolina, Inc.*, 487 U.S. 781, 797 (1988)

("[F]reedom of speech . . . necessarily compris[es] the decision of both what to say and what not to say.").

The state cannot "place obstacles" to a person's exercise of these collaborative freedoms. *See Regan v. Taxation With Representation of Wash.*, 461 U.S. 540, 549-50 (1983). The Court's focus must be on the non-union members forced to associate with the union through exclusive representation. Unlike individual workers, who have constitutionally protected rights to present their own views on an equal basis with others, "[c]ollective bargaining is not a fundamental right," and a union and its members "are not suspect classes." *Univ. Prof'ls of Ill., Local 4100 v. Edgar*, 114 F.3d 665, 667 (7th Cir. 1997). The union's speech, via collective bargaining, purports to reflect the interests of its membership. When the state requires independent, non-union, in-home childcare providers to submit to exclusive representation by a union, the providers are "associated" with that union in any ordinary meaning of that word. *See, e.g.*, *The American Heritage Dictionary of the English Language* 112 (3d ed., 1992) (associate defined as "to join as a partner, ally, or friend;" "to connect in the mind or the imagination;" "to keep company;" "a person united with another or others in an act, an enterprise, or a business").

An association takes on the characteristics and preferences of its membership. *See Federal Election Comm'n v. Colorado Republican Federal Campaign Comm.*, 533 U.S. 431, 448 n.10 (2001) ("We have repeatedly held that political parties and other associations derive rights from their members."). This premise underlies the concept of associational standing. *Hunt v. Washington State Apple Advertising Comm'n*, 432 U.S. 333, 343 (1977). *See also Int'l Union, United Auto., Aerospace and Agric. Implement Workers of America v. Brock*, 477 U.S. 274, 290 (1986) ("[T]he doctrine of associational standing recognizes that the primary reason people join an organization is often to

create an effective vehicle for vindicating interests that they share with others."). Assuming that unions are among those "other associations," then their right to speak derives from the rights of the union *members*. Plaintiffs in this case are *not* union members and therefore the union should not be deemed to have any right to speak on their behalf.

For all these reasons, both legal and practical, the freedoms of speech and association—the right to speak and associate and the corresponding right to refrain from speaking or associating—are protected by the First Amendment through closely intertwined analyses. *See Eu v. San Francisco County Democratic Cent. Comm.*, 489 U.S. 214, 224 (1989) ("Barring political parties from endorsing and opposing candidates not only burdens their freedom of speech but also infringes upon their freedom of association."). In matters explicitly related to political speech, political parties may determine who is entitled to membership and, conversely, the parties do not presume to speak for people who may be eligible for membership but nonetheless choose not to associate. *Tashjian v. Republican Party of Connecticut*, 479 U.S. 208, 214 (1986) (An individual voter has the right to associate with the political party of his or her choice and a political party has a right to "identify the people who constitute the association."). A state's asserted interest in "stable government" cannot justify an infringement of these rights by a ban on political party endorsement of candidates in primary elections. *Eu*, 489 U.S. at 226. *See also Sanders County Republican Cent. Comm. v. Bullock*, 698 F.3d 741, 746 (9th Cir. 2012) (enjoining Montana's ban on political party endorsements of candidates in nonpartisan judicial elections as a "content-based restriction on political speech and association" for which the state lacked a compelling interest).

The political party cases offer a compelling analogy to this case, not only because of the implicit political content of the union's collective bargaining, but also because the "stable government" interest asserted in *Eu* and other political party association cases echoes the "labor peace" rationale relied upon in *Abood v. Detroit Board of Education*, 431 U.S. 209 (1977), a key case cited by the court below in this case. Pet. App. at 4a. If "stable government" cannot justify an infringement on First Amendment rights, neither should "labor peace." Moreover, *Harris* held that *Abood's* "labor peace" interest is inapplicable to home-based independent providers, 134 S. Ct. at 2638-40, removing any possible justification for state-mandated exclusive representation. This Court should grant certiorari in this case to turn this necessary implication of *Harris* into an explicit declaration of individual constitutional rights.

B. Exclusive Representation Deprives Non-Union Members of the Right To Communicate with the State

Exclusive representation allows the union, and the union alone, to determine the employment terms and conditions of non-member childcare workers, and purports to represent the entire workforce in its lobbying efforts to obtain increased (taxpayer-funded) benefits. *See NLRB v. Allis-Chalmers Mfg. Co.*, 388 U.S. 175, 180 (1967); *Am. Commc'ns Ass'n v. Douds*, 339 U.S. 382, 401 (1950) ("[I]ndividual employees are required by law to sacrifice rights which, in some cases, are valuable to them" under exclusive representation, and "[t]he loss of individual rights for the greater benefit of the group results in a tremendous increase in the power of the representative of the group—the union."). If labor organizations "have no constitutional entitlement to the fees of nonmember-employees," *Davenport v. Wash. Educ. Ass'n*, 551 U.S. 177, 185 (2007), how can unions be

entitled to the forced association of non-member employees through exclusive representation laws? *See* Martin H. Malin, *The Legal Status of Union Security Fee Arbitration After Chicago Teachers Union v. Hudson*, 29 Boston Coll. L. Rev. 857, 870 n.87 (1988) ("One cannot distinguish the constitutional validity of the fee from the constitutional validity of the exclusive representation principle.").

The court below found no infringement on the plaintiffs' rights because they were not required to become members of the union. Pet. App. at 4a-5a. The plaintiffs' refusal to join the union, however, cannot resolve the constitutional issue because the statute deprives dissenters of any role whatsoever in closed-session negotiations between the union and the state. Even if the plaintiffs leased a billboard prominently placed outside legislative chambers, declaring their opposition to the union's positions, the legislature would ignore it in favor of the union's positions. Whether they join the union or not, their voices are effectively silenced, and any attempt to speak contrary to the union would be futile. *See Minter v. Beck*, 230 F.3d 663, 666 (4th Cir. 2000) (defining "futile" as "incapable of producing any result; ineffective; useless; [or] not successful" (citation omitted)); *cf. Cohen v. California*, 403 U.S. 15, 25 (1971) (futile speech is protected by the First Amendment).

Justice Stevens expanded on this point in his dissent in *Minn. State Bd. for Cmty. Colleges v. Knight*, 465 U.S. 271 (1984), the case that the court below held "foreclosed" the plaintiffs' constitutional challenge. Pet. App. at 4a. While the majority in that case rested on a unique theory that the government is not bound to listen just because people choose to speak, *id.* at 283,[2]

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[2] This theory has been described as an "anomaly." This Court did not apply the theory in *Perry Educ. Ass'n v. Perry Local Educators'* (continued...)

the dissenting Justices' view reflected the reality that a prohibition on "listening" means that speakers can have "no meaningful impact." *Id.* at 301 (Stevens, J., dissenting).[3] "The notion that there is a state interest in fostering a private monopoly on any form of communication is at war with the principle that 'the desire to favor one form of speech over all others' is not merely trivial; it 'is illegitimate.'" *Id.* at 322 (quoting *Carey v. Brown*, 447 U.S. 455, 468 (1980)). For this reason, the dissent would have held, as plaintiffs request in this case, that "the First Amendment does not permit any state legislature to grant a single favored speaker an effective monopoly on the opportunity to petition the government." *Id. See also Whitney v. California*, 274 U.S. 357, 375 (1927) ("[I]t is hazardous to discourage thought, hope and imagination; [the Founders understood] that fear breeds repression; that repression breeds hate; that hate menaces stable government; that the path of safety lies in the opportunity to discuss freely supposed grievances and proposed remedies[.]" (Brandeis, J., concurring)).

Moreover, in the union context, a decision that no constitutional infringement arises if dissenters can speak on their own invites retribution from union loyalists if those dissenters *do* speak. Unions rely heavily on peer pressure, intimidation, coercion, and

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[2] (...continued)
Ass'n, 460 U.S. 37, 51 (1983), in which a union sought to use the public employees' on-site mailboxes to communicate, and there is no constitutional principle that suggests employees' right to speak to coworkers should be greater than their right to speak to their public employer. Deborah A. Schmedemann, *Of Meetings and Mail Boxes: The First Amendment and Exclusive Representation in Public Sector Labor Relations*, 72 Va. L. Rev. 91, 119 (1986).

[3] Justices Brennan and Powell joined Justice Stevens' dissent on this point.

inertia to prevent dissenting members and non-members from opposing union political activities. *See* Murray N. Rothbard, *Man, Economy, and State* 626 (Nash ed., 1970) (1962); Friedrich A. Hayek, *The Constitution of Liberty* 274 (1960); Linda Chavez & Daniel Gray, *Betrayal: How Union Bosses Shake Down Their Members and Corrupt American Politics* 44-46 (2004). In fact, public employee unions are likely to exert more coercion and intimidation against dissenting workers than are private sector workers, because many public sector workers cannot readily find similar jobs in the private sector. *See, e.g.*, *Martel v. Dep't of Transp., FAA*, 735 F.2d 504, 509-10 (Fed. Cir. 1984) (Federal Aviation Administration (FAA) employee was intimidated by union members into joining strike); *Ferrando v. Dep't of Transp., FAA*, 771 F.2d 489, 492-93 (Fed. Cir. 1985) (noting that FAA union would "monitor[] the work of non-participating [workers] and report[], and even invent[], infractions until the [worker] lost his job or was suspended").

This is why the nonconformist must rely on the Constitution for protection. *See*, *e.g.*, *W. Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624, 638 (1943). *Washington v. Seattle Sch. Dist. No. 1*, 458 U.S. 457, 486 (1982) (The judiciary has a special duty to intercede on behalf of political minorities who cannot hope for protection from the majoritarian political process.). While the First Amendment union cases have thus far focused largely on compelled financial subsidization, *e.g.*, *Knox*, 132 S. Ct. at 2284-85, *Davenport*, 551 U.S. at 181, *Ysursa v. Pocatello Educ. Ass'n*, 555 U.S. 353, 355 (2009), the exclusive representation aspect equally forces non-union workers to be used as "'an instrument for fostering public adherence to an ideological point of view [they] find[] unacceptable.'" *Lehnert v. Ferris Faculty Ass'n*, 500 U.S. 507, 522 (1991) (quoting *Wooley v. Maynard*, 430 U.S. 705, 715 (1977)).

The court below held that exclusive representation statutes are a carve-out from normal constitutional scrutiny of infringements on associational freedom. The holding conflicts with this Court's jurisprudence that requires the government to provide compelling justifications for silencing those who would address their government. As Judge Learned Hand explained, the First Amendment "presupposes that right conclusions are more likely to be gathered out of a multitude of tongues, than through any kind of authoritative selection. To many this is, and always will be, folly; but we have staked upon it our all." *United States v. Associated Press*, 52 F. Supp. 362, 372 (S.D.N.Y. 1943).

II

PUBLIC EMPLOYEE UNION COLLECTIVE BARGAINING IS INHERENTLY POLITICAL

Exclusive representation provides that the union selected by a majority of a bargaining unit's members is the sole representative of the employees for collective bargaining purposes. In *Harris*, this Court criticized *Abood* for failing to distinguish between the collective bargaining implications of public-sector and private-sector workers, noting that "[i]n the public sector, core issues such as wages, pensions, and benefits are important political issues, but that is generally not so in the private sector." 134 S. Ct. at 2632. *Abood* also failed to acknowledge the difficulty of separating "chargeable" from "nonchargeable" union expenditures, a "substantial judgment call" the Court has been forced to make in a number of cases since *Abood*. *Id.* at 2633 (citing *Ellis v. Railway Clerks*, 466 U.S. 435 (1984); *Chi. Tchrs. Union, Local No. 1 v. Hudson*, 475 U.S. 292 (1986); *Lehnert*, 500 U.S. 507 ; *Locke v. Karass*, 555 U.S. 207 (2009)). Ultimately, *Harris* recognized that *Abood* and those cases on which it relied stand on shaky foundations, because those cases improperly focused on the *union's* desires and

convenience over the individual constitutional rights of dissenting employees. 134 S. Ct. at 2643. *Harris* reaffirmed that "free-rider arguments . . . are generally insufficient to overcome First Amendment objections." *Id*. at 2657.

These criticisms of *Abood* are well taken because all public employee negotiations are inherently political, whether they go to collective bargaining or to other, concededly nonchargeable, activities. Even the *Abood* Court acknowledged this reality, noting, "[t]here can be no quarrel with the truism that because public employee unions attempt to influence governmental policymaking, their activities and the views of members who disagree with them may be properly termed political." 431 U.S. at 231. Unfortunately, *Abood* discounted the legal and practical import of this "truism."

"The notion that economic and political concerns are separable is pre-Victorian. . . . It is not true in life that political protection is irrelevant to, and insulated from, economic interests. It is not true for industry or finance. Neither is it true for labor." *Int'l Ass'n of Machinists v. S.B. Street*, 367 U.S. 740, 814-15 (1961) (footnote omitted). The bottom line is that "the collective agreement is not an economic decision but a political decision; it shapes policy choices which rightfully belong to the voters to be made through the political processes. Collective bargaining in the public sector is properly and inevitably political; to try to make it otherwise denies democratic principles." Clyde Summers, *Bargaining in the Government's Business: Principles and Politics*, 18 U. Tol. L. Rev. 265, 266 (1987).

Many courts have acknowledged the inherent political tension created by public employee collective bargaining. *See, e.g.*, *Montgomery Cty. Educ. Ass'n Inc. v. Bd. of Educ.*, 534 A.2d 980, 987 (Md. 1987) ("Public school employees are but one of many groups in the

community attempting to shape educational policy by exerting influence on local boards." Because unions can force boards "to submit matters of educational policy to an arbitrator, the employees can distort the democratic process by increasing their influence at the expense of these other groups."); *Va. v. Cty. Bd. of Arlington Cty.*, 232 S.E.2d 30, 39 (Va. 1977) (Agreements between county boards and the unions "seriously restricted the rights of individual employees to be heard" and "granted to labor unions a substantial voice in the boards' ultimate right of decision in important matters affecting both the public employer-employee relationship and the public duties imposed by law upon the boards."). *See also* R. Theodore Clark, Jr., *Politics and Public Employee Unionism: Some Recommendations for an Emerging Problem*, 44 U. Cin. L. Rev. 680, 681 (1975) (The combination of public employee union collective bargaining and the unions' active participation "in the election of the officials with whom they negotiate at the bargaining table gives public sector unions a disproportionate amount of power" that "distort[s] the political process.").

In addition to the inherently political aspects of collective bargaining, this Court should acknowledge the unions' self-interest. That is, unions designated as exclusive representatives will "negotiat[e] for the inclusion of contract provisions that will benefit the union as an organization." Martha H. Good, Comment, *The Expansion of Exclusive Privileges for Public Sector Unions: A Threat to First Amendment Rights?*, 53 U. Cin. L. Rev. 781, 781-82 (1984). There are multiple instances where positions of union leadership diverge—sometimes quite starkly—with the views of

the members they exclusively represent,[4] much less with the views of those who refuse to join the union.

The political and self-interested nature of the public-sector union's collective bargaining, exclusively and on behalf of workers who explicitly decline to join the union, raises a significant issue of constitutional dimension, with nationwide import. It deserves resolution by this Court.

CONCLUSION

This Court is fully cognizant of "the preferred place given in our scheme to the great, the indispensable democratic freedoms secured by the First Amendment." *Thomas v. Collins*, 323 U.S. 516, 530 (1945). Exclusive representation severely infringes on these rights of workers who would use their own voice to state their employment preferences. It is far past time for public-employee unions to join the great American tradition of *voluntary* associations, where

[4] *See*, Peter Jamison, *Outrage after big labor crafts law paying their members less than non-union workers*, Los Angeles Times, Apr. 9, 2016, http://www.latimes.com/local/cityhall/la-me-union-minimum-wage-20160410-story.html; Matt Smith, *Union Disunity*, San Francisco Weekly, Apr. 11, 2007, http://www.sfweekly.com/2007-04-11/news/union-disunity/ (The Service Employees International Union expanded its ranks in California nursing homes by agreeing in advance to concessions in exchange for organizing assistance.).

participants *willingly* contribute to common goals. This Court should grant the petition for a writ of certiorari and uphold workers' First Amendment rights.

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Respectfully submitted,

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