No. 16-1480

IN THE

Supreme Court of the United States

REBECCA HILL, *et al.*,

Petitioners,

v.

SERVICE EMPLOYEES INTERNATIONAL UNION, HEALTHCARE ILLINOIS, INDIANA, MISSOURI, KANSAS, *et al.*,

Respondents.

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

BRIEF IN OPPOSITION OF RESPONDENT SEIU HEALTHCARE ILLINOIS, INDIANA, MISSOURI, KANSAS

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QUESTION PRESENTED

Whether Illinois' Public Labor Relations Act violates the First Amendment rights of state-compensated homecare and childcare providers by authorizing them to elect a representative for collective bargaining to set unit-wide contract terms that the State otherwise would fix unilaterally, when individual providers are not required to join or financially support the majority-chosen representative.

CORPORATE DISCLOSURE STATEMENT

Respondent SEIU Healthcare Illinois, Indiana, Missouri, Kansas is not a corporation. Respondent has no parent corporation, and no corporation or other entity owns any stock in respondent.

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STATEMENT OF THE CASE

Like many other states, Illinois includes state-compensated homecare and childcare providers within the State's public employee collective bargaining system.[1] Thus, state officials negotiate exclusively with a representative chosen by the majority of providers in each unit to fix unit-wide contract terms that the State otherwise would set unilaterally. The Illinois General Assembly's choice to use an exclusive representative system to collectively bargain contract terms reflects the essentially universal judgment by Congress and state legislatures about how best to structure such systems.

Petitioners alleged that the State is violating providers' First Amendment rights by forcing them to associate with a union. But the Illinois providers need not join or provide financial support to a union. Indeed, petitioners did not identify *any* obligation that the collective bargaining law imposes on individual providers. Nor did petitioners dispute that state officials and reasonable outsiders understand that not all providers necessarily agree with the positions of the majority-chosen representative, so individual providers are not publicly associated with the representative's speech. Nor did petitioners dispute that providers are entirely free to express their own views, whether individually or through groups of their own

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[1] *See* Pet. at 12 n.7 & 13 n.8 (identifying 18 states that authorize, or previously authorized, collective bargaining by state-compensated childcare providers and 14 states that authorize, or previously authorized, collective bargaining by state-compensated homecare providers).

choosing. Not surprisingly, the district court dismissed petitioners' complaint for failure to state a claim, and the Seventh Circuit unanimously affirmed.

The petition for certiorari does not present a question worthy of this Court's review. The Seventh Circuit's decision faithfully applies this Court's settled precedents to reach the same conclusion reached by every other court to consider the same issue. Petitioners fail to recognize that, while the government may not suppress speech, the government has no obligation to listen to all speakers and may choose its interlocutors and advisors. Government officials may, consistent with the First Amendment, negotiate unit-wide contract terms with a majority-chosen representative, *Minn. State Bd. for Cmty. Colls. v. Knight*, 465 U.S. 271, 288-90 (1984), just as government officials may, in the alternative, choose to consult exclusively with individuals, *Smith v. Ark. State Highway Emps.*, 441 U.S. 463, 464-66 (1979). Put simply, it is up to the government to choose which speaker's input it finds most valuable, and that choice does not violate the First Amendment rights of those not chosen.

A. Background

1. Illinois' Home Services Program provides home-based care to individuals with disabilities. 20 ILCS 2405/0.10 *et seq.*; 89 Ill. Admin. Code § 676.10 *et seq.* The Program "prevent[s] the unnecessary institutionalization of individuals who may instead be satisfactorily maintained at home at lesser cost to the State." 89 Ill. Admin. Code § 676.10(a). The State pays "personal assistants" to carry out the Program by performing "household tasks, shopping, or per-

sonal care," "incidental health care tasks," and "monitoring to ensure health and safety." *Id.* §§ 676.30(s), 686.20. Recipients are responsible for choosing and supervising their personal assistants, subject to State rules. *Id.* § 677.200(g). The State sets the economic terms of employment for the personal assistant workforce, including the hourly wage rate. *Id.* § 686.40(a), (b); 20 ILCS 2405/3(f).

In 2003, an Executive Order directed State officials to allow personal assistants to decide whether to designate a representative for collective bargaining with the State. The Executive Order explained that "each recipient employs only one or two personal assistants and does not control the economic terms of their employment . . . and therefore cannot effectively address concerns common to all personal assistants," and that recognition of a representative would "preserve the State's ability to ensure efficient and effective delivery of personal care services." Pet. App. 45a-47a.

Shortly thereafter, the Illinois General Assembly amended Illinois' Public Labor Relations Act ("PLRA") to cover labor relations between the State and the personal assistants. Public Act 93-204; 5 ILCS 315/3(n)-(o), 315/7. The same statute amended the Disabled Persons Rehabilitation Act to provide that "[t]he State shall engage in collective bargaining . . . concerning . . . terms and conditions of employment that are within the State's control," but collective bargaining shall not "limit the right of the persons receiving services . . . to hire and fire . . . personal assistants . . . or to supervise them within the limitations set by the . . . Program." 20 ILCS 2405/3(f).

Under the PLRA, a majority of workers in a bargaining unit may choose a labor organization to be the unit's representative for contract negotiations with the State. 5 ILCS 315/3(f), 315/6(c), 315/9. If the unit workers choose a representative, then State officials and the representative "negotiate in good faith with respect to wages, hours, and other conditions of employment" for the unit. *Id.* 315/7, 315/10(a)(4), 315/10(b)(4).

Workers are not required to become members of the organization chosen by the majority of their colleagues to serve as the PLRA representative, and workers have the right to join or support other labor organizations and, should they choose, to present their own grievances. 5 ILCS 315/6(a), (b). The PLRA makes it an "unfair labor practice" for state officials to discriminate against workers based on their membership status or support for any labor organization. *Id.* 315/10(a)(1) & (2).

In 2003, a majority of the personal assistant workforce chose to be represented by the labor organization now known as SEIU Healthcare Illinois, Indiana, Missouri, Kansas ("Union"). Pet. App. 25a (¶ 42). The State and the Union subsequently entered into collective bargaining agreements that address wages, health benefits, payment practices, training, orientations, background checks, health and safety, a registry, and grievance procedures. 7th Cir. App. 25-51.

2. Illinois' Child Care Assistance Program pays for all or part of the cost of childcare services for low-income and at-risk families. 305 ILCS 5/9A-11; 89 Ill. Admin. Code. § 50.101 *et seq*. The Program's child-

care providers include licensed day care homes and license-exempt child care providers who serve smaller groups of children. *See* Pet. App. 20a-22a; 89 Ill. Admin Code § 50.410. The State sets the payment rates for child care services; parents choose their own providers; and parents who are financially able must share the cost. 89 Ill. Admin. Code §§ 50.110(c), 50.310, 50.320.

In 2005, an Executive Order directed State officials to allow the Program's childcare providers to decide whether to designate a representative for collective bargaining with the State. The Executive Order explained that the "Department of Human Services . . . has plenary authority to determine the terms . . . under which day care services are provided in the State's child care assistance program, including setting rates and other compensation," and that the State "would benefit from a system of representation for day care home providers in implementing its goals for improvement of the State's child care assistance program." Pet. App. 48a-51a.

Shortly thereafter, the Illinois General Assembly amended the PLRA to cover labor relations between the State and the childcare providers. Public Act 94-320; 5 ILCS 315/3(n)-(o), 315/7. The same statute amended the Illinois Public Aid Code to provide that "[t]he State shall engage in collective bargaining . . . concerning . . . terms and conditions of employment that are within the State's control," but collective bargaining shall not "limit the right of families receiving services . . . to select . . . providers or supervise them within the limits of [the Program]." 305 ILCS 5/9A-11(c-5). Thus, the same PLRA procedures and

protections that apply to homecare providers also apply to childcare providers.

In 2005, a majority of the childcare provider workforce chose to be represented by the Union. Pet. App. 26a (¶ 44). The State and the Union subsequently entered into collective bargaining agreements that address payment rates, payment procedures, health insurance, a training program, and grievance procedures. 7th Cir. App 53-76.

3. Consistent with this Court's decision in *Harris v. Quinn*, 134 S.Ct. 2618 (2014), homecare and childcare workers are not required to pay any service fee or provide any financial support to the Union. Pet. App. 29a (¶ 54).

B. Proceedings Below

Petitioners are five homecare providers and two childcare providers who were in the bargaining units represented by the Union when this case was filed.[2] They filed this lawsuit in November 2015 against Illinois officials and the Union, alleging that the State's recognition of an exclusive bargaining representative for their units forces them to "associate" with that representative in violation of their First Amendment rights. Pet. App. 33a-35a. They conceded that they were not required to join or pay any fees to the Union. Pet. App. 29a. They did not claim that the State required them to endorse the Union's views or prevented them from expressing their own

[2] According to the Union's records, Petitioner Carrie Long is no longer in the childcare provider bargaining unit.

views, whether individually or through groups of their own choosing.

The district court granted respondents' motion to dismiss petitioners' claim. Pet. App. 9a-15a. The district court held that petitioners' First Amendment associational rights are not infringed because providers "[a]re free not to join or support the [Union]"; they "are free to express their views"; and, as *Minnesota State Board v. Knight* made clear, the State's "choice to listen only to an exclusive representative does not infringe on anyone's associational rights." Pet. App. 13a-14a. The district court further held that *Harris v. Quinn* did not change settled precedent on this issue because *Harris* addressed only a requirement that homecare workers pay service fees to a union. Pet. App. 14a.

The Seventh Circuit unanimously affirmed in a decision written by Judge Flaum, joined by Judges Bauer and Shadid. Pet. App. 1a-8a. Like the district court, the Seventh Circuit held that the State was not infringing petitioners' First Amendment associational rights because petitioners "do not need to join the [Union] or financially support it in any way. They are also free to form their own groups, oppose the [Union], and present their complaints to the State." Pet. App. 5a. And, like the district court, the Seventh Circuit concluded that "*Harris* does not alter this proposition." *Id.*

REASONS FOR DENYING THE PETITION

The question presented is not worthy of the Court's review. The lower courts are unanimous in rejecting petitioners' argument that exclusive representative

bargaining, by itself, infringes First Amendment associational rights. Those decisions faithfully apply this Court's precedents, which recognize that the government's right to listen to or ignore a particular group when making policy decisions "is inherent in government's freedom to choose its advisers" and "does not create an unconstitutional inhibition on associational freedom." *Minn. State Bd. v. Knight*, 465 U.S. at 288, 290. There also is no reason to hold the petition pending consideration of *Janus v. AFSCME, Council 31*, No. 16-3638, because *Janus* presents a challenge to union service fees, not exclusive representative bargaining.

I. The Lower Courts Have Unanimously Rejected Petitioners' Argument.

Virtually all collective bargaining systems in the United States authorize the democratic election of a single representative to bargain unit-wide contract terms. Legislatures choose to establish exclusive representative systems because those systems have been proven over the course of many decades, and across countless industries, to provide the best practical mechanism for collectively negotiating contract terms to cover a workforce.[3] The Illinois Legislature

[3] *See* Sen. Rep. No. 573 (1935), *reprinted in* 2 Leg. Hist. of the National Labor Relations Act 2313 (1935) ("Since it is wellnigh universally recognized that it is practically impossible to apply two or more sets of agreements to one unit of workers at the same time, or to apply the terms of one agreement to only a portion of the workers in a single unit, the making of agreements is impracticable in the absence of majority rule."); H.R. Rep. No. 1147 (1935), *reprinted in* 2 Leg. Hist. of the NLRA 3070 ("There cannot be two or more basic agreements appli-

adopted this system in its PLRA, *see* 5 ILCS 315/3(f), thereby creating a workable process for state officials to negotiate unit-wide contract terms that the State otherwise would set unilaterally.

Petitioners do not contend that the State requires them to join or support (whether financially or otherwise) the organization democratically chosen as PLRA representative for homecare- and childcare-provider bargaining units. Nor do they contend that state officials, or reasonable outsiders, would believe that every provider in the bargaining unit necessarily agrees with the representative's positions. Nor do they contend that they are prevented from expressing their own views, whether individually or through groups of their own choosing. Petitioners' sole argument is that an exclusive representative collective bargaining process should be treated as an inherent infringement on their First Amendment associational rights.

This Court already recognized in *Minnesota State Board v. Knight*, 465 U.S. at 288-90, that exclusive representative bargaining, by itself, does not infringe the First Amendment associational rights of individuals in the bargaining unit. In the *Knight* litigation, several community college instructors challenged a Minnesota law that provided for their public employer to "meet and negotiate" with an exclusive representative over employment terms and to "meet and confer" with the representative over certain employment-related policy issues. A three-judge district court rejected a First Amendment challenge to the use of exclusive repre-

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cable to workers in a given unit; this is virtually conceded on all sides.").

sentation for the "meet and negotiate" process, and this Court summarily affirmed that decision. *Knight v. Minn. Cmty. Coll. Faculty Ass'n*, 571 F.Supp. 1, 5-7 (D. Minn. 1982), *aff'd mem.*, 460 U.S. 1048 (1983). The district court invalidated the use of exclusive representation for the "meet and confer" process about non-mandatory subjects of bargaining, and this Court reversed that ruling after plenary review. *Minn. State Bd. v. Knight*, 465 U.S. at 292.

The *Knight* Court began its analysis by recognizing that the meet-and-confer process (like the meet-and-negotiate process) is not a "forum" to which there is any First Amendment right of access, and that the instructors had no constitutional right "to force the government to listen to their views." 465 U.S. at 280-83. The government, therefore, was "free to consult or not to consult whomever it pleases." *Id.* at 285.

The Court further concluded that the government's decision to consult with an exclusive representative "in no way restrained [the instructors'] freedom to associate or not to associate with whom they please, including the exclusive representative," because instructors were "free to form whatever advocacy groups they like" and were "not required to become members" of the organization acting as the exclusive representative. 465 U.S. at 288-89. The Court held that any "amplification" of the exclusive representative's voice by virtue of the meet-and-confer process "is inherent in government's freedom to choose its advisers," and that the dissenting instructors did not "demonstrate an infringement of any First Amendment right." *Id.* at 288-91.

The *Knight* Court also recognized that "the applicable constitutional principles are identical to those that controlled" in *Smith v. Arkansas State Highway Employees*, 441 U.S. at 464-66, which held that the government did not violate the First Amendment associational rights of union supporters by "refus[ing] to consider or act upon grievances when filed by the union rather than by the employee directly." *Id.* at 465; *see Knight*, 465 U.S. at 287. Whichever choice a state makes with regard to whose input it will entertain, this Court has made clear that the choice is the state's to make and that those not listened to by the state have no First Amendment complaint.

Harris v. Quinn, 134 S.Ct. 2618 (2014), held that the First Amendment prevents Illinois from requiring state-compensated homecare providers *to pay service fees* to a union representative that they "do not want to join or support." *Id.* at 2644. *Harris* reasoned that the service fees are an impingement on First Amendment rights and that the State lacks a sufficient justification for that impingement because the providers are not "full-fledged public employees." *Id.* at 2639-44. But the Court made clear that the *Harris* plaintiffs did not "challenge the authority of [the Union] to serve as the exclusive representative of all the personal assistants in bargaining with the State" and that a "union's status as exclusive bargaining agent and the right to collect an agency fee from nonmembers are not inextricably linked." *Id.* at 2640.

Nonetheless, after *Harris*, multiple lawsuits were filed (by the same legal advocacy group) alleging that—even without any service fee requirement—the First Amendment precludes a state from using

exclusive representative bargaining to set contract terms for state-compensated homecare and child-care providers. The lower courts are unanimous in rejecting this argument.

The First Circuit rejected the argument in *D'Agostino v. Baker*, 812 F.3d 240 (1st Cir.), *cert. denied*, 136 S.Ct. 2473 (2016). Justice Souter, sitting by designation, explained:

> [T]he *Harris* distinction does not decide this case . . . . [T]he issues at stake in the two cases are different. Unlike the *Harris* litigants, the appellants are not challenging a mandatory fee . . . . *Harris* did not speak to . . . the premise assumed and extended in *Knight*: that exclusive bargaining representation by a democratically selected union does not, without more, violate the right of free association on the part of dissenting non-union members of the bargaining unit.

Id. at 243-44.

The First Circuit also rejected the appellants' contention that their arguments found support in other precedents about compelled expressive association, pointing out that appellants "are not compelled to act as public bearers of an ideological message they disagree with," nor "are they under any compulsion to accept an undesired member of any association they may belong to . . . or to modify the expressive message of any public conduct they may choose to engage in." 812 F.3d at 244. Moreover, the union's message would not be attributed in the public eye to individual providers because "it is readily understood that employees in the minority, union or not,

will probably disagree with some positions taken by the agent answerable to the majority." *Id.*

The Second Circuit unanimously reached the same conclusion, for the same reasons, in *Jarvis v. Cuomo*, 660 F. App'x 72, 74-75 (2d Cir. 2016), *cert. denied*, 137 S.Ct. 1204 (2017), and the Seventh Circuit's unanimous decision here expressly agrees with the reasoning of the First and Second Circuits. Pet. App. 6a. Petitioners' argument also was rejected by district courts in *Bierman v. Dayton*, 227 F.Supp.3d 1022, 1028-31 (D. Minn. 2017), *appeal pending*, No. 17-1244 (8th Cir.), and *Mentele v. Inslee*, No. C15-5134, 2016 WL 3017713 (W.D. Wash. May 26, 2016), *appeal pending*, No. 16-35939 (9th Cir.). In all, five district court judges, eight circuit court judges, and one retired Supreme Court justice have considered and rejected petitioners' argument that the First Amendment precludes the states from using exclusive representative bargaining to negotiate contract terms for their state-compensated homecare and childcare providers. As such, there is no conflict warranting this Court's review.[4]

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[4] Petitioners misread *Mulhall v. Unite Here Local 355*, 618 F.3d 1279 (11th Cir. 2010), which did not involve a First Amendment claim. *Mulhall* held only that a private sector employee who objected to union representation had an "interest" sufficient to support standing to allege the violation of a federal statute. *Id.* at 1287-88; *see* Pet. App. 7a (distinguishing *Mulhall*); *D'Agostino*, 812 F.3d at 245 (same). *Mulhall*'s holding on standing also was called into question when this Court, having granted certiorari on the merits of the case, dismissed the writ as improvidently granted. *See Unite Here Local 355 v. Mulhall*, 134 S.Ct. 594, 595 (2013) (Breyer, J., dissenting).

Not only are the lower courts unanimous on the question presented by the petition, but cases presenting the same question, filed by the same legal advocacy group, are pending, fully briefed, before the Eighth and Ninth Circuits. In *Bierman*, No. 17-1244 (8th Cir.), the reply brief on appeal was filed on June 15, 2017. In *Mentele*, No. 16-35939 (9th Cir.), the reply brief on appeal was filed on June 6, 2017. There certainly is no reason for the Court to consider granting review of this petition prior to any judge of any court giving any credence whatsoever to petitioners' legal theory.

II. The Seventh Circuit's Decision Faithfully Applies This Court's Precedents About Expressive Association.

The petition also should be denied because petitioners' First Amendment argument proceeds from a premise that cannot be squared with this Court's precedents about expressive association. Petitioners posit that the State's decision to negotiate unit-wide contract terms exclusively with a representative chosen by the majority of providers forces individual providers to "associate" with the representative and its activities. From that premise, petitioners contend that, with respect to homecare and childcare providers who are not "full-fledged" public employees, the State lacks a sufficient justification for this alleged infringement on associational rights.

The premise of petitioners' argument is wrong because it elides the distinction between the freedom of expressive association, which the First Amendment protects, and "association" in an economic or colloquial sense. In *Rumsfeld v. Forum for Academic and*

Institutional Rights, 547 U.S. 47 (2016), for example, law schools were required to "'associate' with military recruiters in the sense that they interact with them," *id.* at 69, but there was no compelled expressive association that triggered heightened First Amendment scrutiny because the law schools were not required to endorse the recruitment efforts, and the presence of military recruiters on campus would not lead reasonable people to believe the "law schools agree[d] with any speech by recruiters." *Id.* at 65.

Petitioners here did not identify any way in which the State is compelling individual providers to do or say anything to associate with the Union or its speech. Nor, indeed, did they identify *any* obligation whatsoever that Illinois' PLRA imposes *on them.* Individual providers need not join or endorse or support or subsidize the Union or its positions or participate in any Union activities. The rhetorical bombast in the petition about the State "forcing" and "compelling" individual providers, and about inevitable "goose-stepping brigades," Pet. at 16, is not remotely supported by the facts of the case.

Petitioners also did not dispute that reasonable outsiders would understand that not every individual in the bargaining unit necessarily agrees with the views of a majority-chosen bargaining representative, just as not all parents agree with the views of a public school's parents' association. Individual providers, therefore, are not publicly "associated" with the representative's speech in the sense that is relevant under this Court's First Amendment cases. *See, e.g.*, *Lathrop v. Donohue*, 367 U.S. 820, 859 (1961) (Harlan, J., concurring) ("[E]veryone understands or

should understand that the views expressed are those of the State Bar as an entity separate and distinct from each individual."); *see also Wash. State Grange v. Wash. State Republican Party*, 552 U.S. 442, 459 (2008) (Roberts, C.J., concurring) (explaining that certain cases involved "forced association" for First Amendment purposes because outsiders would believe that parties "endorsed" or "agreed with" another party's message).

Nor did petitioners contend that the State indirectly compels them to participate in the Union's expressive activities by restricting them from engaging in expressive activities of their own. To the contrary, this Court already has cabined the permissible scope of "exclusivity" to comport with the First Amendment by holding that "[t]he principle of exclusivity cannot constitutionally be used to muzzle a public employee who, like any other citizen, might wish to express [her] view about governmental decisions concerning labor relations." *Abood v. Detroit Bd. of Educ.*, 431 U.S. 209, 230 (1977); *see also Lehnert v. Ferris Faculty Ass'n*, 500 U.S. 507, 521 (1991); *City of Madison, Joint Sch. Dist. No. 8 v. Wisc. Emp't Relations Comm'n*, 429 U.S. 167, 173-76 & 176 n.10 (1976).

This case involves no allegation that the challenged collective bargaining system fails to comply with these limits. Thus, while petitioners refer to the Union's public-directed speech, Pet. at 5, 18, the public understands that individual providers may not agree with that speech, and any dissenting providers are free to express their own views, whether individually or through other groups of their own choosing. The State has not in any way stifled "free and robust

debate." Pet. at 21. It has merely set up a process for its officials to negotiate with a majority-chosen representative about certain contract terms.

Petitioners do complain that the majority-chosen representative negotiates *unit-wide* contract terms under this system. But petitioners concede that they have no First Amendment right to compel the government to negotiate contract terms individually. Pet. at 20. The government could—and likely would—set unit-wide contract terms under any system. In fixing those unit-wide terms, the government is "free to consult or not to consult whomever it pleases." *Knight*, 465 U.S. at 285. The government's decision to have its officials negotiate unit-wide terms with a majority-chosen representative "does not create an unconstitutional inhibition on associational freedom," *id.* at 290, just as a government could, in the alternative, choose to "ignore the union" and consult exclusively with individuals. *Smith*, 441 U.S. at 466.[5]

Petitioners also complain that individual providers are placed into an "agency relationship" with the bargaining representative. Pet. at 22. As an initial matter, the characterization is misleading. The exclusive representative does not act as the personal agent of any individual provider but as bargaining representa-

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[5] Petitioners urge that *Knight* does not foreclose their argument that the government's decision to negotiate contact terms with an exclusive representative inherently forces bargaining unit workers to associate, in a First Amendment sense, with the representative. Pet. at 20-21. To the contrary, the Court held that the instructors in *Knight* had the "freedom . . . not to associate with whom they please, including the exclusive representative." *Knight*, 465 U.S. at 288.

tive of the unit as a whole. 5 ILCS 315/6(d) (PLRA representatives "are responsible for representing the interests of all public employees in the unit"). It is partly for that reason that government officials and reasonable outsiders understand that the representative's view is not necessarily the view of any individual provider. *See Knight*, 465 U.S. at 276 ("The State Board considers the views expressed . . . to be the faculty's official collective position. It recognizes, however, that not every instructor agrees with the official faculty view . . . .").

Equally to the point, petitioners get matters backwards in referring to the burden of an "agency relationship." Illinois' collective bargaining system places a legal duty only on the PLRA representative—not on the individual providers. What petitioners describe as an agency relationship is simply the PLRA representative's duty of fair representation, which requires the representative "'to represent all members of a designated unit . . . without hostility or discrimination toward any,'" including toward those individuals who choose not to become union members. *Jones v. Illinois Educ. Relations Bd.*, 650 N.E.2d 1092, 1097 (Ill. Ct. App. 1995) (quoting *Vaca v. Sipes*, 386 U.S. 171, 177 (1967)).

If there were no such duty, and the representative could, for example, "negotiate particularly high wage increases for its members in exchange for accepting no increases for others," *Lehnert*, 500 U.S. at 556 (Scalia, J., concurring in part and dissenting in part), then petitioners would likely claim that they are pressured to join a union. Thus, the duty to represent the entire unit without discrimination protects individu-

al providers' right *not to associate* with the majority-chosen unit representative. *See D'Agostino*, 812 F.3d at 244 ("it is not the presence but the absence of a prohibition on discrimination that could well ground a constitutional objection").

In sum, as in *Knight*, Illinois' system of exclusive representative bargaining "in no way restrain[s]" individual providers' First Amendment freedom of association and leaves their associational rights "wholly unimpaired." *Knight*, 465 U.S. at 288, 290 n.12. The Seventh Circuit therefore was correct to reject petitioners' argument for the application of exacting scrutiny. When the State "does not infringe any First Amendment right," the State "need not demonstrate any special justification" for its law. *Univ. of Pa. v. EEOC*, 493 U.S. 182, 201 (1990).[6] *Harris did* involve an impingement on First Amendment rights—the requirement that providers pay union service fees—so a "special justification" *was* required. *Harris*' distinction between "full-fledged" and "partial" public employees concerned only the strength of the State's justification for that service fee requirement, so the distinction has no relevance to the governing analysis here.

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[6] Petitioners misread *Abood* as holding that exclusive representative bargaining, by itself, was an infringement on associational rights that was "deemed to be justified by a public employer's interest in 'labor peace.'" Pet. at 26. As the Court subsequently explained in *Knight*, "[t]he basis for [*Abood*'s] holding that associational rights were infringed was the compulsory collection of dues from dissenting employees." *Knight*, 465 U.S. at 291 n.13.

III. *Janus* Concerns Service Fees, Not Exclusive Representative Bargaining.

Petitioners urge the Court to hold the petition pending the disposition of *Janus v. AFSCME, Council 31*, No. 16-1466. But *Janus* presents the different legal issue of whether all "public sector agency fee arrangements [should be] declared unconstitutional." *Janus* Pet. i. This Court explained in *Harris* that "a union's status as exclusive bargaining agent and the right to collect an agency fee from non-members are not inextricably linked." 134 S.Ct. at 2640. That being so, a decision in *Janus* about the constitutionality of service fees would not change the governing legal principles here.

There also would be no efficiencies gained by holding the petition in abeyance pending *Janus* and then vacating the decision below and remanding the case to the lower courts for further consideration. This case seeks only prospective relief; it is not a class action; and there is no evidentiary record. If a subsequent decision arguably changes the governing legal principles, a different plaintiff, represented by the same legal advocacy group, would promptly commence a new challenge in the district court to the same Illinois statutes.

CONCLUSION

The petition for certiorari should be denied.

Respectfully submitted,

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