No. 16-1480

In the
Supreme Court of the United States

REBECCA HILL, CARRIE LONG, JANE McNAMES, GAILEEN ROBERTS, SHERRY SCHUMACHER, DEBORAH TEIXEIRA, and JILL ANN WISE,

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 AMICUS CURIAE OF PACIFIC LEGAL FOUNDATION, LINDA CHAVEZ, GOLDWATER INSTITUTE, THE FAIRNESS CENTER, GREGORY J. HARTNETT, ELIZABETH M. GALASKA, ROBERT G. BROUGH, JR., JOHN M. CRESS, PIONEER INSTITUTE, INC., AND EMPIRE CENTER FOR PUBLIC POLICY, INC. IN SUPPORT OF PETITIONER

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QUESTIONS PRESENTED

The State of Illinois is compelling individuals who are not government employees, namely home-based Medicaid and daycare providers, to accept an advocacy organization as their exclusive representative for speaking and contracting with the State over certain public policies. The questions presented are:

1. Can the government force individuals into an exclusive-representative relationship with an advocacy organization for any rational basis, or is this mandatory association permissible only if it satisfies heightened First Amendment scrutiny?

2. If exclusive representation is subject to First Amendment scrutiny, is it constitutional for the government to force individuals who are not full-fledged public employees to accept an exclusive representative for speaking and contracting with the government?

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INTEREST OF AMICI CURIAE

Pacific Legal Foundation (PLF) was founded in 1973 and is widely recognized as the largest and most experienced nonprofit legal foundation of its kind.[1] 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 activities 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. Emp't 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. Serv. Emps. Int'l Union, Local 1000*, 567 U.S. 298 (2012), *Harris v. Quinn*, 134 S. Ct. 2618 (2014), and *Friedrichs v. Cal. Teachers Ass'n*, 136 S. Ct. 1083 (2016).

Linda Chavez has written extensively on labor union issues. She co-authored *Betrayal: How Union Bosses Shake Down Their Members and Corrupt*

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[1] Pursuant to this Court's Rule 37.2(a), all parties received notice of Pacific Legal Foundation, et al.'s intent to file this brief more than 10 days in advance, and have consented to the filing of 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.

American Politics (2004), which argues that unions have abandoned their traditional role of organizing workers and representing their interests through collective bargaining, and have become a de facto arm of the Democratic Party, using union dues to provide staff, election materials, and other in-kind contributions to candidates at the local, state, and federal levels. In 2001, President Bush nominated Chavez to be Secretary of Labor, but she subsequently withdrew her name from consideration. She was formerly the Assistant to the President of the American Federation of Teachers (AFT) and editor of the union's newspaper, American Teacher, and assistant director of legislation at the AFT, where she worked from 1974-1983.

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 Scharf-Norton Center for Constitutional Litigation, the Institute litigates and occasionally files amicus briefs when it 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 is currently representing 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. filed Mar. 3, 2016).

The Fairness Center is a nonprofit public interest law firm that provides legal services to those injured by public employee union officials. The Fairness Center supports the Petitioner's Petition for Writ of Certiorari because it represents certain clients whose rights have been violated through the seizure of so-called "fair share" fees, and it desires to serve and further those clients' interests. As a further interest, the Fairness Center currently represents fellow *amici* Gregory J. Hartnett, Elizabeth M. Galaska, Robert G. Brough, Jr., and John M. Cress, in their lawsuit, *Hartnett, et al. v. PSEA, et al.*, Case No. 17-cv-00100 (Pa. M.D. filed Jan. 18, 2017), challenging Pennsylvania laws that permit public-sector unions, pursuant to the holding in *Abood*, to seize so-called "fair share" fees from nonmember public employees as a condition of their employment.

Mr. Hartnett is an art teacher employed by the Homer-Center School District and is in his eighteenth year of teaching. He is an avid runner and directs a hunting club in his school district. Ms. Galaska is in her tenth year of teaching and is a public-school teacher and librarian for the Twin Valley School District. In addition to having some of her material published, Ms. Galaska has received numerous awards and recognitions—most recently in 2017 being awarded the Mount Vernon Institute Study Scholarship. Mr. Brough is a history and reading teacher employed by the Ellwood City Area School District and has been teaching for twenty-four years. He is a former football and baseball coach, and was previously a drug and alcohol counselor. Mr. Cress, in

his eighth year of teaching, is a learning math support teacher for the Ellwood City Area School District. In addition to starting a board game club at Lincoln High School in Ellwood City, Mr. Cress was presented with the "Child Advocate of the Year" award, given to him by the Wesley Spectrum foster care agency while serving as a foster parent.

These four Pennsylvania public-school teachers object to having any fees seized from their wages and given to the Pennsylvania State Education Association ("PSEA") and its affiliates as a condition of their employment to pay for union representation for which they never asked. They each disagree, respectively, with various political positions and actions taken by the PSEA and its affiliates, including certain positions taken by the unions in collective bargaining. Like many other teachers across the Commonwealth of Pennsylvania, they find it offensive that, as a condition of their employment, they are compelled to fund the inherently political activities of a private entity, particularly when the entity takes positions contrary to their own views and beliefs. As such, these four Pennsylvania teachers have a strong interest in this Court granting Petitioner's Petition for Writ of Certiorari, as it would likely resolve the question in their current case.

Pioneer Institute, Inc. is an independent, non-partisan, privately funded research organization that seeks to improve the quality of life in Massachusetts 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. The Institute focuses on

achieving policy goals in four issue areas: increasing access to high-performing schools and affordable, high-quality health care; ensuring that government services are efficient, accountable and transparent; expanding prosperity; and economic opportunity. PioneerLegal, as the public-interest law initiative of the Institute, utilizes a legal-based approach to work to change policies that adversely affect the public interest in the Institute's core policy areas. PioneerLegal's substantive work is consistent with the mission of the Institute as it clearly develops and promotes its brand as a public-interest law initiative.

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.

INTRODUCTION AND SUMMARY OF REASONS TO GRANT THE PETITION

Illinois' Home Services Program and Child Care Assistant Programs grant subsidies to people who provide home-based personal care and childcare services.[2] Often these personal assistants are related to the adults and children requiring care. The statutes, codifying previously enacted executive orders, allow a majority of providers to choose a union as the exclusive bargaining representative. The union "represents" all providers, both those who join the

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[2] 20 Ill. Comp. Stat. 2405/0.01-/17.1 (2016) (Home Services Program); 305 Ill. Comp. Stat. 5/9A-11 (2016) (Child Care Assistant Program); Ill. Admin. Code tit. 89, § 50.101, *et seq*.

union and those who do not join the union. Pet. at 19-20, 25-26. In *Harris v. Quinn*, this Court struck down the portion of the law that required non-union members to pay dues, and the providers in this case do not pay union dues. However, despite obviously wanting nothing to do with the union, the union and the state bargain exclusively with one another and the non-union providers are bound by whatever agreement the union and state negotiate. As the Seventh Circuit opinion below explains: "In effect, the [law] authorizes Illinois to listen to only one voice before deciding pay rates, hours, and other key work conditions for the providers, and allows a majority of a given bargaining unit to select that voice." Pet. App. at 3a.

The non-union personal care assistants filed a facial challenge to the law, alleging that it violates their First Amendment rights to freedom of association and speech. The district court dismissed the complaint as barred by *Minn. State Bd. for Cmty. Colleges v. Knight*, 465 U.S. 271 (1984), which upheld a state law that gave unions exclusive power to "meet and confer" with public employers on the theory that the dissenters were not prohibited from making their own views known to the state even though the state would not listen or act on them. *See* Pet. App. at 13. The Seventh Circuit affirmed, holding that the care providers could not prevail under the rational basis scrutiny required by *Knight*. Pet. App. at 8.

The decision below fails to properly weigh the statute's infringement on non-union workers' individual rights. It gives a green light to unions and politicians to collude to benefit public-employee 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 "deem" in-home care workers to be state employees 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. Freedom of Speech and Freedom of 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. United States 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*, 567 U.S. at 309 ("Freedom of association . . . plainly presupposes a freedom not to associate." (citation omitted)). *See also Riley v. Nat'l*

Fed'n of the Blind of N.C., 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 deems independent, non-union, in-home care providers to be state employees, authorizing a union to bargain on their behalf, the providers are not "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 Fed. Election Comm'n v. Colo. Republican Fed. 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. Wash. State Apple Advert. Comm'n*, 432 U.S. 333, 343 (1977). *See also Int'l Union, United Auto., Aerospace and Agric. Implement Workers of Am. 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 union members. Petitioners in this case are not union members and therefore the union should not be deemed to have any right—much less an exclusive 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. S.F. Cty. 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 Conn.*, 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 Cty. 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*. 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 a union, and the union alone, to determine the employment terms and conditions of non-member personal care providers, 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 B.C. 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 Petitioners' rights because they were not required to become members of the union. Pet. App. at 5a. The Petitioners' refusal to join the union, however, cannot resolve the constitutional issue because the statute explicitly deprives any non-union provider, or association of non-union providers, of any role whatsoever in negotiations. Even if the Petitioners leased a billboard prominently placed outside legislative chambers, declaring their opposition to the union's positions, the legislature is compelled to ignore it in favor of the union's positions. Whether they join the union or not, non-union care providers' voices are 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. Cal.*, 403 U.S. 15, 25 (1971) (futile speech is protected by the First Amendment).

Justice Stevens expanded on this point in his dissent in *Knight*, 465 U.S. 271, the case that the court below held foreclosed the plaintiffs' constitutional challenge. Pet. App. at 5a. 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, 465 U.S. at 283,[3] 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).[4] "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 Petitioners 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

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

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

government." *Id*. at 301. *See also Whitney v. Cal.*, 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 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 unions, 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 nonconformists must rely on the Constitution for protection. *See, e.g.*, *W. Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624, 638 (1943); *Wash. 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*, 567 U.S. at 302-03, *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 declared, 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" laws provide that a union selected by a majority of a bargaining unit's public-employee members is the sole representative of *all* 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 numerous cases since *Abood*. *Id.* at 2633 (citing *Ellis v. Railway Clerks*, 466 U.S. 435 (1984); *Chi. Teachers Union, Local No. 1 v. Hudson*, 475 U.S. 292 (1986); *Lehnert v. Ferris Faculty Ass'n*, 500 U.S. 507 (1991); *Locke v. Karass*, 555 U.S. 207 (2009)). Ultimately, *Harris* recognized that *Abood* and the 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 non-consenting employees. 134 S. Ct. at 2643. *Harris* reaffirmed that "free-rider arguments . . . are generally insufficient to overcome First Amendment objections." *Id.* at 2627.

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. 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 acknowledge 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 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,[5]

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[5] *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-

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. 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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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.).