No. 16-1466

In the
Supreme Court of the United States

MARK JANUS,
PETITIONER,

v.

AMERICAN FEDERATION OF STATE, COUNTY, AND MUNICIPAL EMPLOYEES, COUNCIL 31, ET AL.,
RESPONDENTS.

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

BRIEF IN OPPOSITION FOR RESPONDENTS LISA MADIGAN AND MICHAEL HOFFMAN

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QUESTION PRESENTED

Whether there is a special justification for this Court to overrule *Abood v. Detroit Board of Education*, 431 U.S. 209 (1977), and undo the balance it struck between a State's interests as an employer in bargaining with an exclusive representative and public employees' interests in refraining from supporting the political speech of others.

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STATEMENT

1. Illinois, like many other States, has chosen to manage labor relations between public employers and employees through a collective bargaining framework in which a union chosen by the majority of employees takes on the obligation to serve as the exclusive bargaining representative for union members and non-members alike. The Illinois Public Labor Relations Act (Act), 5 ILCS 315/1 *et seq.*, which sets out this framework, is designed to establish peaceful and orderly procedures to prevent labor strife and protect public health and safety while protecting public employees' freedom to associate, self-organize, and designate the labor representatives of their choice. 5 ILCS 315/2. To achieve its purposes, the Act confers rights and imposes correlative duties on employers and employees. *See* 5 ILCS 315/4 (employer management rights); 5 ILCS 315/6 (right to organize and bargain collectively); 5 ILCS 315/7 (duty to bargain); 5 ILCS 315/10 (unfair labor practices).

The Act protects a public employee's freedom to associate in two general ways. First, the Act ensures that an employee may form, join, or assist a labor organization, or engage in other concerted activities for the purposes of collective bargaining, free from interference, restraint, and coercion.[1] 5 ILCS 315/6(a). Second, the Act protects an employee's right to refrain from participating in such activities. *Ibid*.

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[1] A "labor organization" need not be a pre-established labor union, as it is defined as "any organization in which public employees participate and that exists for the purpose, in whole or in part, of dealing with a public employer concerning wages, hours, and other terms and conditions of employment." 5 ILCS 315/3(i).

Employees are not required to form units or select representatives. Rather, the Act permits a group of employees whose collective interests may suitably be represented by a single entity, *see* 5 ILCS 315/3(s)(1) (defining "unit"), to choose an exclusive representative by establishing that a majority of the employees in that unit want to be represented by a particular labor organization, 5 ILCS 315/9. Neither the employer nor any labor organization may interfere with an employee's freedom to support or oppose representation, 5 ILCS 315/10, and employees in the unit may later change representatives or forego representation altogether by majority vote, 5 ILCS 315/9.

The organization chosen by a unit's employees is designated as the unit's exclusive representative for purposes of collective bargaining over hours, wages, and other terms and conditions of employment. 5 ILCS 315/6(c). The Act imposes obligations on the exclusive representative to bargain in good faith, 5 ILCS 315/7, and to fairly represent the interests of all employees in the unit, regardless of whether they are members of the organization, 5 ILCS 315/6(d). To support these obligations, the Act allows the representative to collect a "fair-share fee" from employees equal to their proportionate share of the costs of collective bargaining, contract administration, and related activities. 5 ILCS 315/6(e). Despite the exclusivity of the organization's representation, all employees remain free to present grievances directly to their employers, 5 ILCS 315/6(b), and an employee with a religious objection to paying the fair-share fee may instead donate the fee to a nonreligious charity, 5 ILCS 315/6(g).

2. Petitioner Mark Janus is a state employee whose

exclusive representative for purposes of the Act is respondent American Federation of State, County and Municipal Employees, Council 31 ("AFSCME"). Pet. App. 10a. Petitioner, who is not an AFSCME member, pays a fair-share fee pursuant to the Act. Pet. App. 10a, 14a.

3. Shortly after taking office, Illinois Governor Bruce Rauner launched this case by filing a complaint in federal district court against various labor organizations that represented bargaining units of state employees. Dist. Ct. Doc. 1. The Governor sought declarations that the parts of the Act allowing for the collection of fair-share fees violated the First Amendment and that he did not exceed his powers under the Illinois Constitution by issuing an executive order barring the collection of such fees. *Id.* at 20–21. The court allowed respondent Illinois Attorney General Lisa Madigan to intervene as a defendant on behalf of the People of the State of Illinois. Dist. Ct. Doc. 53.

Defendants moved to dismiss, contending that the district court lacked subject matter jurisdiction over the complaint, that Governor Rauner did not have Article III standing to bring his claims, and that the complaint failed to state a claim. Dist. Ct. Docs. 40, 54. Shortly thereafter, Petitioner, along with state employees Brian Trygg and Marie Quigley, moved to intervene as plaintiffs. Dist. Ct. Doc. 91. Governor Rauner then filed an amended complaint adding them as plaintiffs, Dist. Ct. Doc. 96, and a motion to confirm the amendment as a matter of right, Dist. Ct. Doc. 97. The court ordered supplemental briefing on the jurisdictional issues raised by the motions to intervene and to amend the complaint. Dist. Ct. Doc. 106.

The court dismissed Governor Rauner's complaint

and denied his motion to confirm the amendment of that complaint, holding that it lacked subject matter jurisdiction over his claims and that he lacked Article III standing to challenge the constitutionality of the Act. Dist. Ct. Doc. 116. As to the motion to intervene, the court recognized that a court generally may not allow intervention when it lacks jurisdiction over the underlying action, citing *Hofheimer v. McIntee*, 179 F.2d 789, 792 (7th Cir. 1950), but applied what it viewed as an exception to that rule for when a court has an independent basis to exercise jurisdiction over a separate claim brought by an intervening party. *Id.* at 7–9 (citing *Vill. of Oakwood v. State Bank & Tr. Co.*, 481 F.3d 364, 367 (6th Cir. 2007)). The court granted the motion to intervene and ordered that the intervenors' complaint would be treated as the operative complaint in the action. *Ibid*.

Petitioner and Trygg, but not Quigley, later filed a second amended complaint against AFSCME, Attorney General Madigan, and Michael Hoffman, the Acting Director of the Illinois Department of Central Management Services, alleging that the parts of the Act that allow for the collection of fair-share fees violated their First Amendment rights. Pet. App. 8a–27a. They attached four exhibits to the complaint: the collective bargaining agreements that covered their units and notices from their exclusive representatives that explained how fair-share fees would be used. Pet. App. 28a–42a; Dist. Ct. Doc. 145-1.

Defendants moved to dismiss, contending that the collection of fair-share fees was constitutional under *Abood v. Detroit Board of Education*, 431 U.S. 209 (1977), and that Trygg's claim was barred by claim preclusion because he had already pursued his fair-share-fee challenge in state court and obtained the

relief he sought, *i.e.*, the ability as a religious objector to donate the amount of the fee to the charity of his choice. Dist. Ct. Doc. 147. Petitioner and Trygg agreed that the court should dismiss their complaint pursuant to *Abood* but argued that claim preclusion did not apply. Dist. Ct. Doc. 148. The court dismissed the complaint based on *Abood*. Pet. App. 6a–7a.

Petitioner and Trygg asked the Seventh Circuit to summarily affirm the district court on appeal. 7th Cir. Doc. 14. The Seventh Circuit affirmed the district court's dismissal under *Abood*, while also holding that Trygg's claim was barred by claim preclusion. Pet. App. 1a–5a.

REASONS FOR DENYING THE PETITION

This Court held in *Abood v. Detroit Board of Education*, 431 U.S. 209 (1977), that a State may allow the exclusive representative of a public employee bargaining unit to collect a fee from employees to pay their share of the costs of collective bargaining, contract administration, and grievance resolution, but not to fund political or ideological activities unrelated to bargaining. The Court's holding took into consideration both the State's interest as an employer in bargaining with an exclusive representative and the associational freedoms of public employees to self-organize and to refrain from supporting political speech with which they disagree. *Ibid*. Petitioner now invites this Court to undo the balance struck in *Abood* and unravel the collective bargaining systems that have grown up around it over four decades by not merely overruling that precedent but also declaring unconstitutional all fair-share fees in the public sector.

The Court should decline the invitation. In addition to the jurisdictional concern raised by respondent AFSCME, *see* AFSCME Opp. Br. at 13–17, the absence of a factual record in this case makes it a particularly poor vehicle with which to reconsider, much less undo, the balance struck by *Abood*. Moreover, although *stare decisis* is unnecessary to sustain *Abood* because it was correctly decided, *see Kimble v. Marvel Entm't, LLC*, 135 S. Ct. 2401, 2409 (2015) ("correct judgments have no need for [*stare decisis*] to prop them up"), Petitioner's justifications for departing from *stare decisis* fall short for three reasons. First, *Abood* does not stand in need of reconsideration, because its analysis is consistent with this Court's established First Amendment standard for reviewing a State's management of its internal operations as an employer.

Second, Petitioner is wrong to assert that *Abood*'s well-settled distinction between chargeable and nonchargeable expenditures has proven unworkable. And third, exceptionally strong reliance interests counsel in favor of adhering to *stare decisis* here. The petition should be denied.

I. This case is an especially poor vehicle to reconsider *Abood*'s holding because it has no factual record.

Petitioner, as the party asking this Court to overrule *Abood*, bears the burden of providing special justifications for departing from *stare decisis*. *See Halliburton Co. v. Erica P. John Fund, Inc.*, 134 S. Ct. 2398, 2407 (2014) (overturning longstanding precedent requires a special justification, "not just an argument that the precedent was wrongly decided"). Carrying that burden entails making evidentiary showings on a wide range of factual issues. Yet the evidentiary record in this case is virtually barren, consisting solely of the collective bargaining agreement between AFSCME and Petitioner's employer and a notice explaining how fair-share fees would be used, which were attached to the complaint. Pet. App. 28a–42a; Dist. Ct. Doc. 145-1.

Although Petitioner argues that *Abood* incorrectly evaluated the parties' interests, Pet. 22–29, the record is devoid of evidence to cast doubt on that decision's findings. This Court would thus be ill-equipped to resolve the myriad factual questions that reconsideration of *Abood* would entail. To list just a few: What proportion of employees would continue to pay non-mandatory fair-share fees if they knew the union was obligated to represent them regardless of the fee? Without fair-share fees, would representatives be able to continue to provide the same range of

services, or would they have to compromise one function, such as grievance resolution, for another, such as bargaining? Would representatives be available less often to negotiate with the employer or participate in grievance proceedings? Would unions need to withdraw from some States altogether, leaving those employees with few, if any, options for representation? Would resentment between those employees who pay fees and those who do not grow to such a degree that it disrupted the quality of the services provided by the State? All these issues and more are relevant to the question whether to overrule *Abood*. Petitioner's unsupported assertion that exclusive representation is not dependent upon fair-share fees, Pet. 22–25, falls far short of filling these many evidentiary gaps.

The lack of evidence is particularly problematic because if this Court were to overrule *Abood*, it would be faced with the task of replacing it with a new standard that took into account the relative strength of state and employee interests in order to determine the new scope, if any, of chargeable fees. *See Abood*, 431 U.S. at 262–63 (Powell, J., concurring) (rejecting *Abood* majority's analysis while concluding that state interests may justify collecting fees for some bargaining activities but not others). It would be imprudent for this Court to take up that fact-intensive task on a barren record.

The difficulty of that task became apparent the last time this Court was asked to reconsider *Abood*, in *Friedrichs v. California Teachers Ass'n*, 136 S. Ct. 1083 (2016). In that case, too, the record was undeveloped, as the petitioners there had obtained judgment on the pleadings against themselves. *See Friedrichs v. Cal. Teachers Ass'n*, No. SACV 13-676-JLS CWX, 2013 WL

9825479, at *1 (C.D. Cal. Dec. 5, 2013), *aff'd*, No. 13-57095, 2014 WL 10076847 (9th Cir. Nov. 18, 2014). In an attempt to fill the evidentiary vacuum, the parties and their *amici* joined issue on a wide range of key factual matters.[2] In the end, however, not only was this Court unable to reach a precedential disposition as an eight-member body, *see* 136 S. Ct. 1083 (2016) (judgment affirmed by an equally divided Court), but it subsequently denied a petition for the case to be reheard before a nine-member Court, *see* 136 S. Ct. 2545 (2016). One sensible lesson to be drawn from *Friedrichs* is that the question whether to overrule *Abood* is one that is better answered with the benefit of a fully developed record.

More broadly, Petitioner never explains why it is urgent to revisit *Abood* now, after 40 years and in the face of such empirical uncertainty. There is no such urgency. If this Court is inclined to reconsider *Abood*, it should wait for a case in which the factual issues have been explored with the benefit of a full record. In *Yohn v. California Teachers Ass'n*, No. 8:17-cv-202-JLS-DFMx (C.D. Cal.), for example, the plaintiffs raised a First Amendment challenge to California's fair-share-fee law and the district court denied their motion on the pleadings for judgment against themselves, allowing instead for discovery and the development of a factual record. *Yohn v. Cal. Teachers Ass'n*, 2017 WL 2628946 (June 1, 2017). As the court in that case explained, "[i]f the Supreme Court decides that [*Abood*] must be modified in some way, the Court

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[2] *See, e.g.*, Brief of Amici Social Scientists in Support of Respondents, *Friedrichs v. Cal. Teachers Ass'n*, 136 S. Ct. 1083 (2016), 2015 WL 7252638 (arguing that, in the absence of fair-share fees, free-ridership would be a far more significant problem than petitioners' *amici* suggested).

will be aided in making its modification in light of the realities of how public-sector unions work in practice rather than factual allegations that are merely assumed to be true." *Id.* at *9. The presence of a factual record makes *Yohn* far superior to this case as a vehicle for reconsidering *Abood*.

II. *Abood* does not conflict with this Court's other First Amendment precedents because it conducted the usual two-step analysis for reviewing the state's actions as an employer.

In *Abood*, this Court considered whether a state law violated the First Amendment by allowing an exclusive representative to collect a fee from the public employees it represented equal to the amount of their membership dues. 431 U.S. at 214–17. To answer that question the Court first turned to *Railway Employees' Department v. Hanson*, 351 U.S. 225 (1956), and *International Ass'n of Machinists v. Street*, 367 U.S. 740 (1961), which held that a similar agency-shop provision in the federal Railway Labor Act did not violate the First Amendment where fees could be used only to pay for the costs of bargaining and related activities. *Abood*, 431 U.S. at 217–23. The Court explained that *Hanson* and *Street* were founded on the judgment that any interference with employees' freedom of association was justified by the fees' value in fairly distributing the costs of exclusive representation and protecting against free-riding. *Id.* at 221–22. The Court emphasized the crucial role played by exclusive representation in structuring labor relations by avoiding the confusion that would result from negotiating and enforcing multiple agreements with different representatives while preventing inter-union rivalries and dissension within the workforce.

Id. at 220–21.

The Court then asked whether it should depart from *Hanson* and *Street* because, unlike the Railway Labor Act, the law at issue in *Abood* applied to public employees. *Id.* at 223–32.[3] While the Court noted the differences between bargaining in the public and private sectors and recognized that public-sector bargaining could be described as political, it concluded that those differences were not sufficient to upset the constitutional balance reached by *Hanson* and *Street*. *Ibid*. In particular, the Court found that public and private employers shared the same interests in labor peace and preventing free-riding, and that the difference between public and private employees' interests in withholding support for bargaining activities was not so great as to require a different result. *Id.* at 224.

Having concluded that the First Amendment permitted the collection of fees to pay for bargaining and related activities, the Court specified that such fees could not be used to support political or ideological activities that were not germane to collective bargaining and held the law at issue unconstitutional to the extent it allowed fees to be used for those prohibited purposes. *Id.* at 232–36. Finally, the Court noted that the line between chargeable and

[3] The Court considered the constitutionality of the Railway Labor Act under the First Amendment in *Hanson* and *Street* even though that statute governed labor relations in the private sector because it preempted state laws prohibiting union-shop agreements and thus sanctioned contracts that were otherwise unenforceable. *See Hanson*, 351 U.S. at 232 ("The enactment of the federal statute authorizing union shop agreements is the governmental action on which the Constitution operates, though it takes a private agreement to invoke the federal sanction.").

nonchargeable expenditures would need to be more clearly drawn in future cases because the evidentiary record before it was insufficient to make that distinction in that case. *Id.* at 236–37.

Petitioner argues that this Court should grant certiorari and overrule *Abood* because it applied the wrong constitutional standard. Pet. 13–16. Petitioner asserts that fair-share fees must be reviewed under a heightened standard of First Amendment scrutiny and claims that *Abood* conflicts with this Court's other precedents in not applying such a standard. *Ibid*. But Petitioner overlooks the deference accorded to a State's actions taken as an employer as opposed to those taken as a sovereign. Once that distinction is considered, it becomes apparent that *Abood* is fully consistent with this Court's established First Amendment jurisprudence.

This Court has long held that a state government has far broader powers when it acts to manage its internal operations as an employer than when it exercises its power to regulate as a sovereign. *Engquist v. Or. Dep't of Agric.*, 553 U.S. 591, 598 (2008). In *Pickering v. Board of Education of Township High School Dist. 205*, 391 U.S. 563 (1968), this Court developed a two-step framework for analyzing the constitutionality of government restrictions on public employee speech. *Lane v. Franks*, 134 S.Ct. 2369, 2378 (2014). The court first asks whether the restriction affects an employee's ability to speak as a citizen on a matter of public concern. If the answer to that question is yes, it then asks "whether the relevant government entity had an adequate justification for treating the employee differently from any other member of the general public." *Garcetti v. Ceballos*, 547 U.S. 410, 418 (2006). The sufficiency of the state's

justification will vary depending on the nature of the employee's speech. *Connick v. Myers*, 461 U.S. 138, 150 (1983). The objective is to protect the employee's interests to comment as a citizen on matters of public concern while accommodating the state's interests as an employer in promoting the efficiency of the services it provides through its employees. *Pickering*, 391 U.S. at 568.

This Court followed that same two-step framework in *Abood*. At step one, the Court found that the law impaired an employee's free speech interests to some degree because it required the employee to pay fees that would be used to fund expressive activities aimed at affecting public policy. *Abood*, 431 U.S. at 228–31. The Court then struck a balance between the state's interests in maintaining labor peace and preventing free-riding and public employees' freedom of expressive association by holding that an employee could be charged a fee to fund bargaining-related activities but not to fund unrelated political or ideological speech. *Id.* at 229–36. Although the Court did not expressly rely on *Pickering*, it applied the same constitutional standard.

Petitioner is thus mistaken in asserting that *Abood* conflicts with this Court's other precedents because it used the wrong First Amendment test. To the extent Petitioner argues that *Abood* did not accord enough weight to employees' interests when balancing them with those of the State, Pet. 16–17, that argument goes not to *whether* the *Abood* Court applied the correct standard but to *how* it did so. Yet this petition does not present the latter issue and, as explained *supra* Section I, this case is an especially poor vehicle for addressing that issue because it lacks a factual record.

Nor have subsequent developments eroded *Abood*'s

constitutional foundations. Quite the opposite: this Court has applied the *Abood* framework to a wide array of First Amendment issues outside the fair-share-fee context, including state bar fees, *Keller v. State Bar of Cal.*, 496 U.S. 1 (1990), student activity fees, *Bd. of Regents of Univ. of Wis. Sys. v. Southworth,* 529 U.S. 217 (2000), and agricultural marketing programs, *Glickman v. Wileman Bros. & Elliot, Inc.*, 521 U.S. 457 (1997); *Johanns v. Livestock Mktg. Ass'n*, 544 U.S. 550 (2005). And twice in the last four Terms, this Court has declined the opportunity to overrule *Abood*. *See Harris v. Quinn*, 134 S. Ct. 2618, 2638 n.19 (2014); *Friedrichs v. Cal. Teachers Ass'n*, 136 S. Ct. 1083 (2016) (judgment affirmed by an equally divided Court). *Abood* is thus hardly "the kind of doctrinal dinosaur or legal last-man-standing for which [this Court] sometimes depart[s] from *stare decisis*." *Kimble*, 135 S. Ct. at 2411. "To the contrary, the decision's close relation to a whole web of precedents means that reversing it could threaten others." *Ibid*.

III. This Court has developed a workable test for implementing *Abood*'s constitutional standard.

Abood declared the general constitutional principle that an exclusive representative may collect fees to pay for the costs of bargaining and contract administration but declined to strictly define the dividing line between chargeable and nonchargeable expenditures. 431 U.S. at 236. This Court later drew that dividing line in the context of the Railway Labor Act when it held that "the test must be whether the challenged expenditures are necessarily or reasonably incurred for the purpose of performing the duties of an exclusive representative of the employees in dealing with the employer on labor-management issues." *Ellis v. Bhd. of Ry., Airline &*

S.S. Clerks, 466 U.S. 435, 448 (1984). In *Lehnert v. Ferris Faculty Ass'n*, 500 U.S. 507, 519 (1991), this Court refined *Ellis*'s holding into a three-part test requiring that an expense must "(1) be 'germane' to collective-bargaining activity; (2) be justified by the government's vital policy interest in labor peace and avoiding 'free riders'; and (3) not significantly add to the burdening of free speech that is inherent in the allowance of an agency or union shop."

This Court demonstrated the utility of that test in *Locke v. Karass*, 555 U.S. 207, 218 (2009), by applying it to litigation expenses of a representative's national organization, as opposed to a local chapter, and holding that a fee could be used to pay an employee's share of those expenses if the litigation was related to collective bargaining and the national's services may inure to the benefit of the employees represented by the local. In addition to adopting a substantive dividing line between chargeable and nonchargeable expenditures, this Court has developed procedural requirements that an exclusive representative must follow to protect the rights of objecting employees. *Chi. Teachers Union, Local No. 1. v. Hudson*, 475 U.S. 292, 302–09 (1986).

Despite these decisions crystallizing the contours of *Abood*'s constitutional standard, Petitioner argues that *Abood* must be overruled because it has proven unworkable. Pet. 18–20. But Petitioner's argument is based on the flawed conclusion that this Court's decisions in *Lehnert* and *Locke* demonstrate an inability to distinguish between chargeable and nonchargeable expenditures. To the contrary, *Lehnert* refined a test that had been used in the context of the Railway Labor Act to differentiate between bargaining activities and ideological speech, and *Locke* applied it to the facts of that case. If anything, those decisions

establish that *Abood* struck a sensible balance that reflects the inherent differences between two separate types of union activity. Moreover, even if Petitioner could establish that the existing test for identifying chargeable expenditures was somehow inadequate, the appropriate solution would be to refine the test, not to overrule *Abood* altogether. The asserted difficulty in applying *Abood* is illusory and provides no special justification for overcoming *stare decisis*.[4]

IV. Adherence to *stare decisis* is particularly appropriate here due to the significant reliance interests that *Abood* has engendered.

Stare decisis is a pillar of the rule of law. It promotes the evenhanded, predictable, and consistent development of legal rules and ensures that those rules develop in a principled and intelligible fashion. *Michigan v. Bay Mills Indian Cmty.*, 134 S. Ct. 2024, 2036 (2014). To overcome *stare decisis* and overrule established precedent, this Court requires a "special justification" beyond the petitioner's—or the justices'—belief that the prior case was wrongly decided. *Kimble*, 135 S. Ct. at 2409. The doctrine of *stare decisis* carries such persuasive force that a special justification to depart from precedent is necessary even

[4] The few cases cited by Petitioner dealing with the chargeability of "lobbying expenses," Pet. 18 nn.7–8, fall far short of showing the kind of unworkability that would license a departure from *stare decisis*. Contrast, for instance, the blizzard of irreconcilable cases, all decided in a six-year span, that this Court cited to illustrate the umanageability of the "traditional governmental functions" test under the Tenth Amendment. *See Garcia v. San Antonio Metro. Transit Auth.*, 469 U.S. 528, 538–39 (1985) (citing cases to justify overruling *Nat'l League of Cities v. Usery*, 426 U.S. 833 (1976)).

in constitutional cases. *Dickerson v. United States*, 530 U.S. 428, 443 (2000).

Reliance is perhaps the weightiest consideration when deciding whether to depart from *stare decisis*, particularly where contract rights are involved. *Paine v. Tennessee*, 501 U.S. 808, 828 (1991). As Petitioner recognizes, more than 20 states have enacted statutes permitting the collection of fair-share fees. Pet. 9. An untold number of employment contracts have been negotiated pursuant to those laws. Those contracts, in turn, cover millions of public employees represented by unions that agreed to represent them in return for a guarantee that they would be adequately compensated for the services they were obligated by law to provide to members and non-members alike throughout the duration of the agreement. Petitioner asks this Court to undermine all of those contracts by overruling *Abood* and declaring all fair-share fees unconstitutional. It is difficult to imagine a more striking or widespread judicial violation of reliance interests.

Petitioner sets those interests at nought because he believes *Abood* was wrongly decided. But that is a non sequitur. The reliance interests that counsel adherence to a judicial precedent cannot be made to depend on the correctness of the precedent, for *stare decisis* exists to protect decisions with which judges have come to disagree. *See Kimble*, 135 S. Ct. at 2409. The significant reliance interests that have grown up around *Abood* thus strongly support adhering to *stare decisis* in this case.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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