No. 05-1657

In the
Supreme Court of the United States

WASHINGTON,
Petitioner,
v.
WASHINGTON EDUCATION ASSOCIATION,
Respondent.

On Writ of Certiorari to the
Supreme Court of the State of Washington

BRIEF OF THE STATES OF COLORADO, ALABAMA, IDAHO, OHIO, UTAH, AND VIRGINIA AS *AMICI CURIAE* IN SUPPORT OF PETITIONER

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QUESTION PRESENTED

May states give workers protection against coerced political speech beyond the constitutional minimum by requiring unions to get affirmative approval before using workers' money for political purposes?

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INTEREST OF THE *AMICI CURIAE*

The *amici* States, through their Attorneys General, respectfully submit this brief in support of petitioner. The people and elected officials of the states have recognized, as has this Court, that the complex relationship between workers and unions does not lend itself to one-size-fits-all solutions. Relying on the Court's precedents establishing that, at a minimum, workers must be permitted to opt out of paying for a union's political activities, *see Keller v. State Bar of Calif.,* 496 U.S. 1, 17 (1990), and responding to the particular conditions each faces, the states have adopted a wide variety of rules for protecting both parties to that relationship.[1]

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[1] *See* Alaska Stat. §§ 15.13.067, 15.13.074 and 15.13.400(8) (2006); Ariz. Rev. Stat. Ann. §§ 16-919, 16-920, and 16-921 (West 2006); Cal. Gov't Code §§ 3515.7(d) and 3546(d)(1) (West 2006); COLO. CONST. art. XXVIII, §§ 3(4) and 6(2); 2005 Hawaii Rev.Stat. § 89-4; Idaho Code §§ 44-2004, 44-2603, and 2602(1)(d) (Michie 2005); Ill Comp. Stat. Ann. 315/3(g) (West 2005) and 115 Ill. Comp. Stat. Ann. 5/11 (West 1998); Iowa Code Ann. § 20.26 (West 2001); Ind. Code Ann. §§ 3-9-2-4 and 3-9-2-5(b) (West 2006); Md. Code Ann., Elec. Law §§ 13-242-243 (LexisNexis Supp. 2005); Mich. Comp. Laws Ann. §§ 169.254(1) and 169.255 (West 2006); Minn. Stat. Ann. § 169A.06(3) (West Supp. 2006); Mont. Code Ann. § 39-31-402 (2006); Neb. Rev. Stat. Ann. §§ 49-1469 and 49-1469.06 (LexisNexis Supp. 2005); N.J. Stat. Ann.

These laws range from agency shop arrangements in which workers may be forced to pay fees to a union whether they wish to join or not, to right-to-work laws that forbid compulsory union fees or membership as a condition of employment. In addition to these fundamental laws governing the worker-union relationship, many states have adopted rules dealing with the more specific issue of the use of funds unions receive as fees or dues for political purposes. Some states, like Washington, have combined an agency shop rule with a provision requiring that unions get affirmative permission before using agency fees for political purposes.

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§ 34:13A-5.5(b) (West Supp. 2005); N.M. Stat. Ann. § 10-7E-4(J) (Michie Supp. 2003); N.C. Gen. Stat. § 163-278.19 (2006); N.D. Cent. Code §§ 16.1-08.1-01 and 16.1-08.1-03.3 (2006); Ohio Rev. Code Ann. §§ 3517.082, 3599.03 and 3599.031 (West 2006); Okla Const. Art. 23, § 1A; Pa. Stat. Ann. tit. 25, § 3253 and Pa. Stat. Ann. tit. 43, § 1101.1701 (West 2006); R.I. Gen. Laws §§ 17-25-3(1) and 17-25-10.1(h) (2006); S.C. Code 1976 § 41-7-30 (2005); S.D. Codified Laws §§ 12-25-1(1) and 12-25-2 (2006); Tex. Elec. Code Ann. §§ 253.094 and 253.100 (Vernon 2006); Utah Code Ann. §§ 20A-11-1403 – 1404 and 34-32-1.1 (LexisNexis Supp. 2005); Va. Code Ann. §§ 40.1-60; Vt. Stat. Ann. tit. 3, §§ 902(19) and 1011(4) (LexisNexis 2003); Wis. Stat. Ann. §§ 11.29, 111.02(10m), 111.70(1)(n), 111.81(16), 111.70(2), 111.85(2)(a); Wyo. Stat. Ann. § 22-25-102 (2006).

Many others have barred unions from using dues for political purposes, but have permitted them to set up segregated political funds that must be funded by payments separately solicited from and authorized by workers. Most states have variations or combinations of these provisions.

Should this Court affirm the decision of the Washington Supreme Court and hold that unions have a constitutional right to use workers' payments for political purposes without getting affirmative approval, much of the room in which the states have operated will be eliminated. Instead, the Court will have created a national regime in which the minimal procedures laid out in *Chicago Teacher's Union Local 1 v. Hudson*, 475 U.S. 292 (1986), would become the maximum states can do to protect the recognized right of workers not to fund political activity with which they disagree.

The states have a fundamental interest in ensuring that their people and their legislatures continue to have the freedom to examine the complex issues involved in the political use of union funds, and to adjust their laws accordingly. That interest can only be vindicated if this Court reverses the decision below.

SUMMARY OF THE ARGUMENT

This Court has traditionally appreciated that in the complex relationship between workers and union organizations, the interests of individual workers and unions are not always aligned, particularly when the unions' activities go beyond their fundamental purpose of collective bargaining. *See*

Lehnert v. Ferris Faculty Ass'n, 500 U.S. 507, 524, 528-29 (1991). Understanding that there is no one clearly preferable – let alone constitutionally-mandated – system for protecting these interests, the Court has allowed the states to play their intended role in our federalist system by experimenting with different arrangements.

The Court has also recognized that union political activity often puts the organization at odds with some employees. *See id.* at 516. As a result, the Court has developed guidelines to protect the individual employee's constitutional right "to associate for the advancement of ideas, or to refrain from doing so, as he sees fit." *Abood v. Detroit Bd. of Educ.*, 431 U.S. 209, 222 (1977). The Court in *Abood* held that unions can pay for political activity using only the "charges, dues, or assessments paid by employees who do not object to advancing those ideas and who are not coerced into doing so against their will by the threat of loss of government employment." 431 U.S. at 235-36. In *Hudson*, the court clarified that unions must at least allow employees the opportunity to opt out of paying the portion of their fees that go to political activity, and laid out procedures unions must take to ensure they are not using the funds of workers who actually object. 475 U.S. at 310.

Since then the Court has further clarified that the *Hudson* process is the "minimum set of procedures" a union must follow before it can use fees received from nonmembers for political purposes. *Keller v. state Bar of California,* 496 U.S. 1, 17 (1990).

Relying on these precedents, the states have developed a wide range of laws in this area, ranging from pure agency shop arrangements with minimal *Hudson* opt-out protections for workers, to "right to work" laws and provisions requiring unions to get consent of members before using dues for political purposes. Most states have some combination of these laws, as does Washington.

The decision of the Washington Supreme Court, which has been followed by at least one other state appellate court, eliminates one important tool the elected officials and people of the states have used to create the level of protection for workers most appropriate for their state's particular situation. The decision relies on a misreading of this Court's precedents to arrive at a result that turns *Hudson*'s minimum requirements into the *maximum* that states can do to protect the rights of a workers.

The effect of affirming that decision would be to impose an unchangeable, national rule in this complex area, upset the balance arrived at in many states, and preclude others from experimenting with the added protection of an opt-in system. *Amici* States respectfully submit that such a decision would undermine both "the theory and the utility of our federalism." *See United States v. Lopez*, 514 U.S. 549, 581 (1995) (Kennedy, J., concurring).

ARGUMENT

Creating a constitutional right to use worker funds for political purposes without their affirmative approval would undermine the foundation of many state laws.

I. The Court's precedents reveal a tradition of respect for state authority to devise appropriate measures to protect both unions and individual workers.

This Court has long understood that its role in regulating the relationship between workers and unions is limited:

> The ingredients of industrial peace and stabilized labor-management relations are numerous and complex. They may well vary from age to age and from industry to industry. What would be needful one decade might be anathema the next. The decision rests with the policy makers, not with the judiciary.

Railway Employees v. Hanson, 351 U.S. 225, 234 (1956).

At the same time, the Court has recognized "the important distinction between a union's political expenditures and 'those germane to collective bargaining.'" *Lehnert*, 500 U.S. at 515 (quoting *Railway Clerks v. Allen*, 373 U.S. 113 (1963)). As union activities move away from fundamental collective-bargaining functions and into political activity, judicial scrutiny may be necessary to

protect the First Amendment right of individual workers not to fund political activity with which they may disagree:

> Unions traditionally have aligned themselves with a wide range of social, political, and ideological viewpoints, any number of which might bring vigorous disapproval from individual employees. To force employees to contribute, albeit indirectly, to the promotion of such positions implicates core First Amendment concerns.

Id. at 516. *See also Hanson*, 351 U.S. at 235, 238 (holding that agency fees may not be used "as a cover for forcing ideological conformity" without violating workers' First Amendment rights).

The states have responded to this tension between workers' rights and unions' interest in political activism by enacting with a wide range of regimes regulating the interaction of unions with workers who may not agree with a union's political activities. The Court has afforded the states wide latitude in developing systems that balance the interests of unions and individual workers so long as they provide minimal protection of the workers' First Amendment rights. Affirming the decision below would run contrary to the Court's precedents, and would remove an important building block of many of those systems.

In this way, the Court has allowed the states to perform their intended "roles as laboratories for experimentation to devise various solutions where the best solution is far from

clear." *United States v. Lopez*, 514 U.S. 549, 581 (1995) (Kennedy, J., concurring).

A. The Court has upheld a wide range of laws governing the employee-union relationship, requiring only that employees not be coerced to pay for political and other non-collective-bargaining activities.

The Court has decided a number of cases involving the competing interests here. It has faced claims that certain laws provide too much protection for workers, and claims that others provide too little. The Court has only stepped in when necessary to ensure that individual workers' First Amendment rights are not unconstitutionally burdened. Beyond this, the Court has consistently upheld a range of laws against claims from both workers and unions.

At one end of the spectrum are the Court's decisions upholding union or agency shop laws themselves. *See Lehnert*, 500 U.S. at 520; *Abood*, 431 U.S. at 222. *See also Machinists v. Street*, 367 U.S. 740 (1961); *Ellis v. Railway Clerks*, 466 U.S. 435 (1984); *Communications Workers of Am. v. Beck*, 487 U.S. 735, 750 (1988) (analyzing agency shop provisions under federal law).

In these cases, the Court expressed serious concerns that "[t]o compel employees financially to support" unions impacts the employees' core First Amendment interests. *Abood*, 431 U.S. at 222. "[B]y allowing union-security arrangements at all, [the Court] has necessarily countenanced a significant burdening of [employees'] First Amendment rights." *Lehnert*, 500 U.S. at 518. The Court nonetheless has

deferred to "the legislative assessment of the important contribution of the union shop to the system of labor relations." *Abood*, 431 U.S. at 222.

At the other end of the spectrum, the Court has also upheld state "right to work" laws that forbid the discharge of an employee who chooses not to join or pay fees to a union, essentially outlawing agency and union shops. *Lincoln Fed. Labor Union No. 19129 v. Northwestern Iron & Metal Co.*, 335 U.S. 525 (1949); *American Fed'n of Labor v. American Sash & Door Co.*, 335 U.S. 538 (1949). These cases involved claims similar to that put forward here, that a state is forbidden by the Constitution from requiring unions to get affirmative consent from employees before taking any fees or dues from them. In *Lincoln Federal*, this Court described this argument as "rather startling" as it upheld the laws at issue. 335 U.S. at 531. In *American Sash*, the Court reiterated this holding, and additionally upheld a state law prohibiting workplace discrimination against non-union workers. 335 U.S. at 540-41.

Involving as it does conflicting federal and state legislative enactments in this area, *Hanson* merits a brief discussion of its own. Nebraska had adopted a prohibition on union shop arrangements. The federal Railway Labor Act, however, expressly permitted such arrangements for carriers covered by its terms. The Court upheld the federal law against constitutional challenges and ruled the state law was preempted. *See* 351 U.S. at 232, 238. As the *Abood* Court noted, however, "[h]ad it not been for that federal statute, the union-shop provision at issue in Hanson would have been invalidated under Nebraska law." 431 U.S. at 218 n. 12. That is, the

Court was willing to defer to the legislative judgment in either direction. *Hanson* thus is a prime example of the Court's traditional deference to the full range of legislative judgments about the proper balance in this area. As the Court said, "the question is one of policy with which the judiciary has no concern." *Hanson*, 351 U.S. at 234.

None of the Court's decisions in the half century since these cases were decided has called their holdings into question. The common thread running through these decisions and those that have followed is an understanding that the constitutional right at issue when unions use workers' money for political activity is the *individual worker's* right not to be coerced into paying for political speech with which he disagrees. *See Lincoln. Fed.*, 335 U.S. at 531 (the "constitutional right of workers to assemble . . . cannot be construed as a constitutional guarantee that" unions may require employees to join or pay the union a fee); *Hanson*, 351 U.S. 238 (workers must be protected from "forc[ed] ideological conformity or other action in contravention of the First Amendment") ; *Abood,* 431 U.S. at 235 (First Amendment principles prohibit requiring anyone "to contribute to the support of an ideological cause he may oppose as a condition of holding a job as a public school teacher"); *Lehnert*, 500 U.S. at 515-17 (workers cannot be coerced into paying for political or ideological activities that are not germane to collective-bargaining activity).

In *Hudson* the Court laid out the minimum process that must be followed to collect agency fees without violating this constitutional right. This includes giving notice and an explanation of the fee,

an opportunity to challenge it, and an escrow for disputed amounts. 475 U.S. at 310. The Court has since made clear that the *Hudson* process is the constitutional "minimum set of procedures" a union must follow in order to avoid violating the workers' rights these cases have consistently recognized. *Keller*, 496 U.S. at 17.

Beyond this constitutional minimum, however, the Court has not interfered with state efforts to provide workers with additional protection.

B. Affirming the decision below would undermine the states' varied and complex systems governing the relationship between workers and unions.

1. The States have adopted a wide variety of laws addressing the tension between union political activity and workers' First Amendment rights.

Accepting the flexibility the Court has provided and the responsibility for seeking the appropriate balance of the needs of unions and individual workers, the states have adopted a variety of approaches to balancing the interests of unions and the First Amendment rights of workers.

Twenty-two States are so-called "right to work" states, flatly prohibiting unions from collecting compulsory dues whether for political purposes or otherwise.[2]

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[2] *See* ALA. CONST. § 25-7-30; ARIZ. CONST. art. XXV; ARK. CONST. Amend. 34(1); FLA. CONST. art. 1, § 6;

A number of States, like the federal government, prohibit direct union contributions for political activities. These States typically require unions to create separate segregated political funds for which they must solicit contributions.[3]

States regulate to varying degrees how union political contributions can be collected and used. At least five states require unions to get some form of affirmative consent from members in order to use their dues for political purposes.[4] Some states, including Idaho, Utah, and Colorado, have adopted restrictions prohibiting state employers from making

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Ga. Code. Ann. § 34-6-21, -22 (2005); Idaho Code §§44-2001 to 2009 (2005); Iowa Code Ann. §§ 731.1 to 731.8 (2005); KAN. CONST. art. 15, § 12; La. Rev. Stat. Ann. §§23:981 to 987 (2005); MISS. CONST. art. 7, § 198-A; NEB. CONST. art. XV, §§ 13, 14, 15; Nev. Rev. Stat. §§ 613.230, 613.250 to 613.300 (2005); N.C. Gen. Stat. §§ 95-78. to 84 (2005); N.D. Cent. Code §§ 34.01.14 - 14.1 (2005); OKLA. CONST. art. XXIII; S.C. Code Ann. §§ 41-7-10 to 90 (2005); S.D. CONST. art. VI, § 2; Tenn. Code Ann. §§ 50-1-201 to 204 (2005); Texas Codes Ann. Title 3 §§ 101.052 (2005); Utah Code Ann. §§ 34-34-8 (2005); Va. Code Ann. §§ 40.1-60 (2005); Wyo. Stat. Ann. §§ 27-7-109 (2005).

[3] *See, e.g.,* 2 U.S.C. § 441b; Ariz. Rev. Stat. § 16-919, -920 (2005).

[4] *See* Mich. Comp. Laws § 169.255 (2005); Ohio Rev. Code Ann. § 3599.031 (2005); Utah Code Ann. § 34-32-1 (2005); Wyo. Stat. Ann. § 22-25-102(h)(2005).

any automatic payroll deductions for political purposes.[5]

Other states provide specific requirements based on the process the *Hudson* Court outlined.[6] Some states also demand a variety of procedural steps from unions that wish to engage in political activity, with some requiring disclosure of union political committees to report the names and amounts of member contributions.[7]

As can be seen from a perusal of these statues, few, if any, states have identical regimes. But it is clear that a majority of the states have provided workers with at least some additional protection beyond the minimum required in the *Abood-Hudson* line of cases.

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[5] Utah Code Ann. § 34-32-1.1; Idaho Code §§ 44-2004 & 44-2602(1)(d) (Michie 2005); Governor's Exec. Order No. D007-01 (Colo., May 25, 2001). As noted below, parts of Idaho's and Utah's regimes in this area are the subject of pending litigation in federal courts of appeals. *See Pocatello Educ. Ass'n v. Heideman*, 2005 WL 3241745 (D. Idaho 2005), *appeal docketed* No. 06-35004 (9th Cir.); *Utah Educ. Ass'n v. Shurtleff*, 2006 WL 1184946 (D. Utah 2006), *appeal docketed*, No. 06-4142 (10th Cir.). Colorado's executive order is the subject of state court litigation. *See Ainscough v. Owens,* 90 P.3d 851 (Colo. May 24, 2004).

[6] *See, e.g.,* Idaho Code § 44-2603 (2005).

[7] *See, e.g.*, N.D. Cent. Code § 16.1-08.1-03.3 (2005).

2. Many of these state systems would be imperiled if the Court affirms the decision below.

The diversity of approaches to this issue does not mean that states other than Washington would be unaffected by a decision affirming the Washington court's analysis. Indeed, at least one other state appellate court has already followed the Washington court's reasoning in striking down an opt-in rule. *See Sanger v. Dennis*, --- P.3d ---, 2006 WL 2773023 slip op. at *10 (Colo. App. 2006). Two pending appeals in federal courts also involve challenges to bans on state payroll deductions for fees used for political purposes in which the plaintiffs have asserted theories similar to those relied on by the Washington court. *See Pocatello Educ. Ass'n v. Heideman*, *appeal docketed*, No. 06-35004 (9th Cir.); *Utah Educ. Ass'n v. Shurtleff*, *appeal docketed*, No. 06-4142 (10th Cir.).

The Washington court's decision rested on its holding that getting affirmative approval in order to use nonmembers' money violates a union's "right to use nondissenting nonmembers' fees for political purposes." *Washington* v. *Washington Educ. Ass'n*, 130 P.3d 352, 362 (Wash. 2006) [hereinafter "*WEA*"]. If this Court were to agree that the Constitution contains such a right and that an opt-in provision impermissibly burdens it, any regime other than an agency shop system with minimal *Hudson* opt-out provisions will be subject to challenge.

For example, if there is a constitutional (rather than statutory) right to use nonmembers' agency shop fees for political purposes, there must be a right

to collect such fees in the first place. This of course, is directly contrary to the Court's holding in *Lincoln Federal* and *American Sash*. Such a holding would effectively overrule the right to work laws twenty-two states have adopted in reliance on those cases. Likewise, state laws that limit the collection or use of fees to bargaining representation or other non-political activity would be incompatible with a constitutional right to use such fees for political purposes.

Sustaining the decision below would also effectively require public employers to make payroll deductions for union political activities. This would contravene the well-established principle that public sector employers are not constitutionally required to provide such a service. *See City of Charlotte v. Firefighters Local 660*, 426 U.S. 283, 288 (1976).

Finally, the ramifications of revoking from states the ability to require opt-in provisions would go beyond the laws that may be directly affected. Such protection for workers is one tool among many the states have used to balance the interests of unions and workers. Taking this tool away would upset the balance the people and representatives of the states have achieved, and could force them to reevaluate the rest of their laws in this area. For example, the people of Washington appear to have been concerned that their agency shop rules allowed unions to use the money of many workers who would have preferred not to fund the union's political activity, and in response adopted the provision at issue here.

It is this balance that has been upset by the Washington court's decision, and it is the state-by-

state, democratic process that led to it that our federalism is designed to protect and encourage.

II. Nothing in the Constitution or this Court's precedents compels the result below.

Contrary to the statement of the majority below that any regime other than an agency shop system coupled with an opt-out provision "upsets the balance of members' and nonmembers' constitutional rights," *WEA*, 130 P.3d at 359, there is no single constitutional point on which those rights balance. *See id*. at 367-68 (Sanders, J., dissenting) (noting that the majority invented a "false 'balance' requirement"). Instead, as the cases above reveal, this Court has made clear that while such an arrangement is the *minimum* that must be done to protect the rights of nonmembers, the Constitution allows states to experiment with a range of policies that reach the appropriate balance for the conditions each state faces.

Of course, our federalism does not permit the states to experiment with laws that transgress the Constitution. If the court below was correct that an opt-in provision violates a constitutional right of unions to use agency fees for political purposes, it would be proper to overturn these state laws and the Court's precedents on which they rely. An examination of the court's reasoning, however, makes clear that this drastic step is unnecessary.

A. The decision below rests on mistaken interpretations of *Street* and *Abood*.

The majority below erred in turning the minimal protections for workers outlined in *Street*, *Abood*, and *Hudson* into the constitutional *maximum* states can do to protect the right of workers not to pay for political activity with which they disagree. The majority's error was based in large part on its misreading of the Court's decisions in *Abood* and *Street*.

First, the court apparently mistook *Abood*'s statement that the Constitution only requires that union political activities "be financed from charges, dues, or assessments paid by employees who do not object to advancing those ideas and who are not coerced into doing so against their will by the threat of loss of governmental employment," 431 U.S. at 235-36, as creating an affirmative constitutional "right to use nondissenting nonmembers' dues for political purposes." *WEA*, 130 P.3d at 362 (citing *Abood*, 431 U.S. at 240; *Allen*, 373 U.S. at 122).

As the dissent below correctly pointed out, what the majority mistakenly viewed as a constitutional right was actually a statutory privilege that the people of Michigan had granted to unions. *See id.* at 367 (Sanders, J., dissenting). The *Abood* Court correctly recognized that the constitutional right at issue in these cases is the First Amendment right of individual workers not to subsidize political activity with which they disagree. 431 U.S. at 211, 222; *see also Lehnert*, 500 U.S. at 516-18.

The majority similarly erred in relying on *Street*'s statement that "dissent is not to be presumed – it

must affirmatively be made known to the union by the dissenting employee." *See WEA*, 130 P.3d at 358-59 (quoting *Street*, 367 U.S. at 774). This again was based on an apparent misunderstanding of the posture of that case. Like *Abood*, *Street* was a case about the minimum constitutional protection that must be given to workers. As the dissent again correctly pointed out, the *Street* Court was discussing what a union is and is not required to do "*in the absence of a statutory scheme*." *WEA*, 130 P.3d at 367 (Sanders, J., dissenting) (emphasis in original).

Here, the people of Washington decided to adopt such a scheme. This case, therefore, is not about the minimum that unions must do to protect workers' First Amendment rights, like *Abood* and *Street*, but about the maximum that states can do, like *Lincoln Federal* and *American Sash*. The court below therefore erred in relying on these out-of-context quotes from *Abood* and *Street* to decide this case.

B. The majority below inverted proper First Amendment analysis.

This fundamental error – conflating a statutory privilege with a constitutional right – threw off the Washington court's entire analysis. For example, it led the court to apply strict scrutiny, requiring the state to demonstrate that the opt-in provision is narrowly tailored to achieve a compelling governmental interest. *WEA*, 130 P.3d at 359. The dissent again was correct in saying that this "turns the First Amendment on its head." *Id.* at 365 (Sanders, J., dissenting). As the Court's precedents discussed above in Part I.A. show, the First

Amendment right at risk in these cases is the individual "employee's freedom to associate for the advancement of ideas, or to refrain from doing so, as he sees fit." *Abood*, 431 U.S. at 222.

This Court has therefore required those *defending* agency shop laws to justify them by showing that they serve the important governmental interests in labor peace and prevention of free-riding. *See id.* at 224-25 ("The same important government interests recognized in the *Hanson* and *Street* cases presumptively support the impingement upon associational freedom created by the agency shop here."). The Court has never suggested that a law that *mitigates* the constitutional danger posed by agency shops, as does Washington's opt-in provision, must do so.

The only mention of a union right that might be implicated by efforts to protect nonmember workers is the *Street* Court's statement that "the [union] majority also has an interest in stating its views without being silenced by the dissenters." 367 U.S. at 773. This is undoubtedly true, but an opt-in provision could hardly be said to amount to silencing the union. Between that extreme and the minimum required by *Hudson* there is plenty of room in which states can provide additional protection for the minority.

CONCLUSION

The judgment of the Supreme Court of Washington should be reversed.

Respectfully submitted,

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