

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON  
TACOMA DIVISION

**Justin Carey; JoBeth Deibel;  
David Gaston; Roger Kinney; and  
Keith Sanborn**, as individuals, and  
on behalf of all others similarly situ-  
ated,

Plaintiffs,

v.

**Jay Inslee**, in his official capacity of  
Governor of the State of  
Washington; **David Schumacher**, in  
his official capacity as director of the  
Office of Financial Management; and  
**Washington Education  
Association**,

Defendants.

Case No. \_\_\_\_\_

**Plaintiffs' Class-Action Complaint**

1 Justin Carey, JoBeth Deibel, David Gaston, Roger Kinney, and Keith Sanborn are  
2 public-school teachers who bring this class action on behalf of themselves and all others  
3 similarly situated, seeking redress for the defendants' past and ongoing violations of their

1 constitutionally protected rights. The defendants have violated the representative plain-  
2 tiffs' constitutional rights by forcing them to pay compulsory "agency fees" to the Wash-  
3 ington Education Association as a condition of their employment, even though the rep-  
4 resentative plaintiffs do not belong to this union and do not wish to subsidize the union's  
5 activities. The representative plaintiffs seek a refund of all unlawfully collected agency  
6 fees, an injunction that forbids the defendants to collect union fees from nonmembers  
7 without their consent, and costs and attorneys' fees under 42 U.S.C. § 1988.

### 8 JURISDICTION AND VENUE

9 1. The Court has subject-matter jurisdiction under 28 U.S.C. § 1331 and 28  
10 U.S.C. § 1343.

11 2. Venue is proper because a substantial part of the events giving rise to the claims  
12 occurred in this judicial district. *See* 28 U.S.C. § 1391(b)(2).

13 3. Venue is additionally proper because the all of the defendants are residents of  
14 Washington and at least one of the defendants resides in this judicial district. *See* 28  
15 U.S.C. § 1391(b)(1).

16 4. Because claims arose in Thurston County, assignment to the Tacoma Division  
17 is proper. *See* Local Civil Rule 3(e)(1).

### 18 PARTIES

19 5. Plaintiff Justin Carey resides in Franklin County, Washington.

20 6. Plaintiff JoBeth Deibel resides in Spokane County, Washington.

21 7. Plaintiff David Gaston resides in Thurston County, Washington.

22 8. Plaintiff Roger Kinnery resides in Skagit County, Washington.

23 9. Plaintiff Keith Sanborn resides in Whatcom County, Washington.

1 10. Defendant Jay Inslee is the Governor of the State of Washington. His office is  
2 in Olympia, Washington. Governor Inslee is the representative of the State and is sued  
3 in his official capacity.

4 11. Defendant David Schumacher is the Director of the Washington State Office of  
5 Financial Management. He is charged with negotiating and enforcing collective-bargain-  
6 ing agreements on behalf of the governor pursuant to RCW 41.80.010. These respon-  
7 sibilities are handled by the Labor Relations Division of the Office of Financial Manage-  
8 ment, over which Schumacher exerts direct authority. He is sued in his official capacity.

9 12. Defendant Washington Education Association (WEA) is a labor union whose  
10 offices are located at 32032 Weyerhauser Way South, Federal Way, WA, 98001-9687.

#### 11 STATEMENT OF THE CLAIM

12 13. Mr. Carey is a public-school teacher employed by the Pasco School District, in  
13 a local bargaining unit affiliated with the Washington Education Association. He has  
14 taught in the Washington public schools for nearly 16 years. Mr. Carey refuses to join  
15 the WEA or its affiliates.

16 14. Ms. Deibel is a public-school teacher employed by the Central Valley School  
17 District, in a local bargaining unit affiliated with the Washington Education Association.  
18 She has taught in the Washington public schools for nearly 30 years. Ms. Deibel refuses  
19 to join the WEA or its affiliates because these entities endorse and advocate moral and  
20 political views that are contrary to Ms. Deibel's beliefs.

21 15. Mr. Gaston is a public-school teacher employed by the Olympia School District,  
22 in a local bargaining unit affiliated with the Washington Education Association. He has  
23 taught in the Washington public schools for nearly 30 years. Mr. Gaston refuses to join  
24 the WEA or its affiliates because of their support for political candidates and issues that  
25 are contrary to his beliefs.

1 16. Mr. Kinney is a public-school teacher employed by the Burlington-Edison  
2 School District, in a local bargaining unit affiliated with the Washington Education As-  
3 sociation. He has taught in the Washington public schools for nearly 29 years. Mr. Kin-  
4 ney refuses to join the WEA or its affiliates because of their support for political causes  
5 that contravene his moral beliefs.

6 17. Mr. Sanborn is a public-school teacher employed by the Blaine School District,  
7 in a local bargaining unit affiliated with the Washington Education Association. He has  
8 taught in the Washington public schools for nearly 14 years. Mr. Sanborn refuses to join  
9 the WEA or its affiliates and believes that membership in any union should be voluntary.

10 18. Even though none of the representative plaintiffs are members of the Washing-  
11 ton Education Association or their local bargaining unit, each of them is compelled to  
12 pay an “agency fee” to the Washington Education Association as a condition of their  
13 employment. *See* RCW 41.59.060; RCW 41.59.100; RCW 28B.52.045 (attached as  
14 Exhibit 1); Letter from Armand L. Tiberio, Executive Director of WEA, to Agency Fee  
15 Payers (December 8, 2017) (attached as Exhibit 2).

16 19. The representative plaintiffs do not wish to pay this “agency fee” because they  
17 disapprove of the Washington Education Association’s activities and do not wish to sub-  
18 sidize them in any way. The compelled subsidy that the representative plaintiffs and their  
19 fellow class members must pay to the Washington Education Association as a condition  
20 of their employment violates their constitutional rights.

21 20. Although the Washington Education Association allows nonmembers to seek  
22 partial refunds of their compelled agency fees and allows them to insist that their contri-  
23 butions will be used only to support the union’s collective-bargaining activities, this does  
24 not alleviate the defendants’ constitutional violations. *See* Exhibit 2 at 2–4. A public-  
25 employee union’s collective-bargaining activities are no less political than its lobbying

1 and electioneering activities, as all of these actions are directed at the government and  
2 seek to influence government policy. *See Harris v. Quinn*, 134 S. Ct. 2618, 2632–33  
3 (2014). In addition, money is fungible, so when the representative plaintiffs and their  
4 fellow class members are forced to subsidize WEA’s collective-bargaining activities, they  
5 are freeing up resources for WEA to spend on political and ideological activities. Finally,  
6 the representative plaintiffs do not wish to subsidize *any* of WEA’s activities, and their  
7 compelled support of WEA’s collective-bargaining activities is no less an affront to the  
8 plaintiffs as their compelled support of WEA’s political and ideological advocacy.

9 21. The Washington Education Association, along with defendants Schumacher  
10 and Inslee, is acting under color of state law by imposing and collecting these unconsti-  
11 tutional agency fees. *See* RCW 41.59.060; RCW 41.59.100; RCW 28B.52.045 (at-  
12 tached as Exhibit 1).

13 22. The Supreme Court’s ruling in *Abood v. Detroit Bd. of Educ.*, 431 U.S. 209  
14 (1977), which upheld the constitutionality of public-employee union shops and the  
15 forced imposition of “agency fees” on non-union members, has been so undermined by  
16 subsequent Supreme Court rulings and doctrinal developments that it need not be re-  
17 garded as binding precedent, even though the Supreme Court has yet to explicitly over-  
18 rule that decision. *See, e.g., Harris v. Quinn*, 134 S. Ct. 2618, 2632–34 (2014) (criti-  
19 cizing *Abood*’s analysis as “questionable on several grounds” and claiming that *Abood*  
20 “seriously erred” and “fundamentally misunderstood” the earlier decisions of the  
21 Court). In the same-sex marriage litigation, the vast majority of federal district courts  
22 and federal appellate courts disregarded the holding of *Baker v. Nelson*, 409 U.S. 810  
23 (1972), and decided to recognize a constitutional right to same-sex marriage—even  
24 though the Supreme Court did not overrule *Baker* until its pronouncement in *Obergefell*  
25 *v. Hodges*, 135 S. Ct. 2584, 2605 (2015). *See, e.g., Bostic v. Schaefer*, 760 F.3d 352, 375

1 (4th Cir. 2014) (“[W]e decline to view *Baker* as binding precedent”); *Waters v. Ricketts*,  
2 48 F. Supp. 3d 1271, 1284 (D. Neb. 2015) (“Doctrinal developments since  
3 the *Baker* case indicate the Supreme Court’s summary ruling in *Baker* is no longer reli-  
4 able or binding.”); *Searcy v. Strange*, 81 F. Supp. 3d 1285, 1287 (S.D. Ala. 2015) (re-  
5 fusing to follow *Baker* because “Supreme Court decisions since *Baker* reflect significant  
6 ‘doctrinal developments’ concerning the constitutionality of prohibiting same-sex rela-  
7 tionships” (citation omitted)). There are other examples of lower courts that disregard  
8 Supreme Court precedent after concluding that a previous ruling no longer enjoys the  
9 support of five justices—and the Supreme Court has affirmed those rulings without crit-  
10 icizing the lower court for anticipating the Supreme Court’s repudiation of its earlier  
11 ruling. See *Simmons v. Roper*, 112 S.W.3d 397 (Mo. 2003) (declaring the juvenile death  
12 penalty unconstitutional and refusing to follow *Stanford v. Kentucky*, 492 U.S. 361  
13 (1989)), *aff’d by Roper v. Simmons*, 543 U.S. 551 (2005); *United States v. Booker*, 375  
14 F.3d 508, 513 (7th Cir. 2004) (Posner, J.) (declaring the federal sentencing guidelines  
15 unconstitutional even though this contradicted the Supreme Court’s holding in *Edwards*  
16 *v. United States*, 523 U.S. 511 (1998)), *aff’d and remanded by United States v. Booker*,  
17 543 U.S. 220 (2005).

18 23. The representative plaintiffs are bringing suit at this time to preserve the class  
19 members’ ability to seek retrospective relief against the defendants for as far back as the  
20 statute of limitations will allow.

### 21 CLASS ALLEGATIONS

22 24. The representative plaintiffs bring this class action under Fed. R. Civ. P.  
23 23(b)(1), (b)(2), and (b)(3). The class comprises all individuals who: (1) are or previ-  
24 ously were employed by the State of Washington or by any public school or school dis-  
25 trict located in the State of Washington; (2) have had any union agency fees deducted

1 from the money paid to them by their employer and remitted to WEA or its affiliates;  
2 and (3) have chosen not to become members of WEA by not signing membership cards  
3 or by choosing to become agency fee payers. The class includes everyone who comes  
4 within the class definition at any time until the conclusion of this action.

5 25. The number of persons in the class makes joinder of the individual class mem-  
6 bers impractical.

7 26. There are questions of fact and law common to all class members. Factually, all  
8 class members are public employees and union nonmembers compelled to pay agency  
9 fees to WEA as a condition of employment. Legally, the U.S. Constitution affords the  
10 same rights under the First Amendment to every member of the class.

11 27. The representative plaintiffs' claims are typical of other members of the class,  
12 because each member of the class has objected to WEA membership yet is forced by  
13 state law and contract provisions to financially support WEA and its inherently political  
14 activities.

15 28. The representative plaintiffs adequately represent the interests of the class, and  
16 they have no interests antagonistic to the class. Moreover, the undersigned counsel rep-  
17 resent the plaintiffs and the class pro bono and are employed by a long-established char-  
18 itable organization experienced in representing unionized public and partial-public em-  
19 ployees whose constitutional rights have been violated.

20 29. A class action can be maintained under Rule 23(b)(1)(A) because separate ac-  
21 tions by class members could risk inconsistent adjudications on the underlying legal is-  
22 sues.

23 30. A class action can be maintained under Rule 23(b)(1)(B) because an adjudica-  
24 tion determining the constitutionality of compulsory agency fees will, as a practical mat-  
25 ter, be dispositive of the interests of all class members.

1 31. A class action can be maintained under Rule 23(b)(3) because the common  
2 questions of law and fact identified in the complaint predominate over any questions  
3 affecting only individual class members. A class action is superior to other available meth-  
4 ods for the fair and efficient adjudication of the controversy because, among other  
5 things, all class members are subjected to the same violation of their constitutional rights,  
6 but the amount of money involved in each individual’s claim would make it burdensome  
7 for class members to maintain separate actions.

8 **CAUSES OF ACTION**

9 32. The representative plaintiffs and their fellow class members bring suit under 42  
10 U.S.C. § 1983 and the Declaratory Judgment Act, 28 U.S.C. § 2201, each of which  
11 supplies a cause of action for the relief that they are requesting.

12 **DEMAND FOR RELIEF**

13 33. The representative plaintiffs respectfully request that the court:

- 14 a. certify a class of all nonunion members in the State of Washington who  
15 have been forced to pay “agency fees” to the Washington Education As-  
16 sociation or its affiliates as a condition of their employment;
- 17 b. declare that the statutes, laws, and collective-bargaining agreements that  
18 compel the representative plaintiffs and their fellow class members to pay  
19 “agency fees” to the Washington Education Association or other collec-  
20 tive-bargaining entities as a condition of their employment, such as RCW  
21 41.59.060, RCW 41.59.100, and RCW 28B.52.045, violate the consti-  
22 tutional rights of the representative plaintiffs and their fellow class mem-  
23 bers;

- 1 c. certify a class of all nonunion members in the State of Washington who
- 2 have been forced to pay “agency fees” to the Washington Education As-
- 3 sociation or its affiliates as a condition of their employment;
- 4 d. order the Washington Education Association to disgorge and refund all
- 5 “agency fees” that were unlawfully collected from the representative
- 6 plaintiffs and their fellow class members, along with pre-judgment and
- 7 post-judgment interest;
- 8 e. permanently enjoin the Washington Education Association, along with
- 9 its officers, agents, servants, employees, attorneys, and any other person
- 10 or entity in active concert or participation with it, from collecting “agency
- 11 fees” or any other type of money from nonmembers without their con-
- 12 sent;
- 13 f. permanently enjoin defendants Schumacher and Inslee, along with their
- 14 officers, agents, servants, employees, attorneys, and any other person or
- 15 entity in active concert or participation with them, from enforcing RCW
- 16 41.59.060, RCW 41.59.100, RCW 28B.52.045, or any other law or col-
- 17 lective-bargaining agreement, to the extent that such law or collective-
- 18 bargaining agreement requires the payment of money to a labor union or
- 19 collective-bargaining entity as a condition of employment;
- 20 g. permanently enjoin the defendants, along with their officers, agents, serv-
- 21 ants, employees, attorneys, and any other person or entity in active con-
- 22 cert or participation with them, from enforcing any law, policy, or collec-
- 23 tive-bargaining agreement that prevents or deters employees from can-

- 1                   celing or revoking their membership in the Washington Education Asso-  
2                   ciation or their future provision of “agency fees” or any other type of  
3                   money to the Washington Education Association;  
4            h.       award costs and attorneys’ fees under 42 U.S.C. § 1988;  
5            i.       grant all other relief that the Court may deem just, proper, or equitable.

Respectfully submitted.

/s/ Jonathan F. Mitchell  
JONATHAN F. MITCHELL  
State Bar No. 52483  
559 Nathan Abbott Way  
Stanford, California 94305  
(650) 723-1397  
jfmitche@stanford.edu

/s/ David M.S. Dewhirst  
DAVID M.S. DEWHIRST  
State Bar No. 48229  
Freedom Foundation  
P.O. Box 552  
Olympia, Washington 98507  
(360) 956-3482  
ddewhirst@freedomfoundation.org

/s/ Hannah S. Sells  
HANNAH S. SELLS  
State Bar No. 52692  
Freedom Foundation  
P.O. Box 552  
Olympia, Washington 98507  
(360) 956-3482  
hsells@freedomfoundation.org

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*Counsel for Plaintiffs and  
the Proposed Class*