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7 **UNITED STATES DISTRICT COURT**  
8 **WESTERN DISTRICT OF WASHINGTON**  
9 **AT TACOMA**

10 MELISSA BELGAU, DONNA BYBEE,  
11 MICHAEL STONE, RICHARD OSTRANDER,  
12 MIRIAM TORRES, KATHERINE NEWMAN,  
13 GARY HONC, individuals,

14  
15 Plaintiffs,

16 v.

17 JAY INSLEE, in His Official Capacity as  
18 Governor of the State of Washington; DAVID  
19 SCHUMACHER, in His Official Capacity as  
20 Director of the Washington Office of Financial  
21 Management; JOHN WEISMAN, in His Official  
22 Capacity as Director of the Washington  
23 Department of Health; CHERYL STRANGE, in  
24 Her Official Capacity as Director of the  
Washington Department of Social and Health  
Services; ROGER MILLAR, in His Official  
Capacity as Director of the Washington  
Department of Transportation; JOEL SACKS, in  
His Official Capacity as Dir. of Washington  
Department of Labor and Industries;  
WASHINGTON FEDERATION OF STATE  
EMPLOYEES (AFSCME, COUNCIL 28), a labor  
corporation,

Defendants.

Case No. 3:18-cv-5620

**VERIFIED COMPLAINT FOR  
INJUNCTIVE RELIEF,  
DECLARATORY JUDGMENT, AND  
DAMAGES – CLASS ACTION**

COMPLAINT  
No.



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## INTRODUCTION

1. This class action case concerns whether union dues/fees deductions from State employees' wages since *Janus v. AFSCME, Council 31*, 138 S. Ct. 2448 (2018) are legal if the State employees have not clearly and affirmatively consented to the deductions by waiving their constitutional right to not fund union political advocacy ("union advocacy").

2. Plaintiffs Melissa Belgau, Michael Stone, Richard Ostrander, Miriam Torres, Katherine Newman, Donna Bybee, Gary Honc, and class members are Washington State employees from whose wages the State continues to deduct union dues/fees after the U.S. Supreme Court issued *Janus v. AFSCME, Council 31*, on June 27, 2018, despite the fact that Plaintiffs have not clearly and affirmatively consented to the deductions by waiving the constitutional right to not fund union advocacy. The State remits those deductions to the Washington Federation of State Employees ("WFSE").

3. The State of Washington and WFSE ("Defendants") claim the continued deductions are proper. They do so based on Plaintiffs' and class members' signatures on dues deduction agreements which allegedly authorize and bind Plaintiffs to continued deductions for a set period of time despite the fact that Plaintiffs' and class members' signed those agreements at a time when the relevant collective bargaining agreement included a compulsory agency fee provision, and the right to not fund union advocacy was not recognized by the U.S. Supreme Court in *Janus v. AFSCME, Council 31*, on June 27, 2019.

4. RCW 41.80.100 and Amended 2017-2019 CBA Art. 40.2, 40.3, and 40.6<sup>1</sup> authorize and compel the State to deduct union dues/fees ("dues") from Plaintiffs' and class members' wages and forward them to WFSE despite the fact that Plaintiffs have not clearly and

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<sup>1</sup> Available at [https://ofm.wa.gov/sites/default/files/public/legacy/labor/agreements/17-19/wfse\\_gg.pdf](https://ofm.wa.gov/sites/default/files/public/legacy/labor/agreements/17-19/wfse_gg.pdf) (last visited July 30, 2018).

1 affirmatively consented to the deductions by waiving the constitutional right to not fund union  
2 advocacy. The statute and CBA provisions and Defendants' actions taken pursuant to them,  
3 therefore, impermissibly infringe on Plaintiffs' and class members' First Amendment rights of  
4 free speech and free association.

5 5. This is a civil rights class action pursuant to 42 U.S.C. § 1983, seeking declaratory  
6 judgment, injunctive relief, as well as nominal, compensatory, and punitive damages and  
7 restitution of union dues illegally seized from Plaintiffs and the class members they seek to  
8 represent. Defendants are state actors acting under the color of state law—specifically RCW  
9 41.80.100 and the Amended 2017-2019 CBA Art. 40.2, 40.3, and 40.6.

## 10 II. JURISDICTION AND VENUE

11 6. This Court has jurisdiction over this case pursuant to 28 U.S.C. § 1331, because it  
12 arises under the First and Fourteenth Amendments to the U.S. Constitution and 42 U.S.C § 1983.  
13 This Court has authority under 28 U.S.C. §§ 2201 and 2202 to grant declaratory relief and other  
14 relief, including preliminary and permanent injunctive relief, pursuant to Rule 65 of the Federal  
15 Rules of Civil Pcedure.

16 7. Under 28 U.S.C. § 1367 this Court has supplemental jurisdiction over claims stated  
17 in this Complaint that do not arise under federal law but are so related to the federal claims as to  
18 form part of the same case or controversy.

19 8. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 and intra-district  
20 assignment to the Tacoma Division is proper because the claims arise in this judicial district and  
21 division and Defendants do business and operate in this judicial district and division.

### III. PARTIES

9. Plaintiff **Melissa Belgau** works for the State of Washington in the Department of Health as a Washington Emergency Medical Services Information System Administrator. **Michael Stone** works for the State of Washington in the Department of Social and Health Services as a Support Enforcement Officer. **Richard Ostrander** works for the State of Washington in the Department of Transportation as a Maintenance Technician. **Miriam Torres** is a Workfirst Program Specialist at the Washington State Department of Social and Health Services. **Katherine Newman** works for the State of Washington at the Health Care Authority as an Information Technology Specialist. **Donna Bybee** works for the State of Washington in the Department of Health as a Trauma Registry Administrator. **Gary Honc** works for the Washington Department of Labor and Industries as an Insurance Underwriter. Plaintiffs Belgau, Stone, Ostrander, Torres, Newman, Bybee, and Honc signed dues deduction agreements before June 27, 2018. Named Plaintiffs and class members are Washington State employees whose exclusive representative is WFSE. The state of Washington has deducted union dues from Plaintiffs and class members since *Janus v. AFSCME, Council 31* issued on June 27, 2018 despite the fact that Plaintiffs and class members have not clearly and affirmatively consented to the deductions by waiving the constitutional right to not fund union advocacy.

10. Defendant Jay Inslee is Governor of Washington and is sued in his official capacity. As Governor, Defendant Inslee is Washington's chief executive officer and represents the State in collective bargaining with WFSE. See RCW 41.80.101(1).

11. Defendant David Schumacher is Director of the Washington State Office of Financial Management ("OFM"), the agency designated by the governor to collectively bargain with WFSE, and is sued in his official capacity. Defendant David Schumacher by and through

1 OFM is charged with the responsibility of overseeing OFM, which is responsible for  
 2 administering Plaintiffs' and class members' wages, as well as deducting from those wages union  
 3 dues/fees and remitting them to WFSE pursuant to RCW 41.80.100 and Amended 2017-2019  
 4 CBA Art. 40.2, 40.3, and 40.6.

5 12. Defendant John Weisman is the Director of the Washington State Department of  
 6 Health and is sued in his official capacity.

7 13. Defendant Cheryl Strange is the Director of the Washington State Department of  
 8 Social and Health Services and is sued in her official capacity.

9 14. Roger Millar is Director of the Washington State Department of Transportation and  
 10 is sued in his official capacity. Joel Sacks is Director of the Washington State Department of  
 11 Labor and Industries and is sued in his official capacity.

12 15. Defendant Washington Federation of State Employees, American Federation of  
 13 State, County, Municipal, Employees, Council 28 ("WFSE") is a labor union that represents over  
 14 35,000 public employees in Washington, and is headquartered at 1212 Jefferson Street, Suite 300,  
 15 Olympia, WA 98501. WFSE is the State-recognized exclusive representative of Plaintiffs and  
 16 class members. WFSE represents Plaintiffs and other Washington State employees throughout 36  
 17 State agencies, and the CBA applicable to Plaintiffs also applies to those Washington State  
 18 employees and agencies.

#### 19 IV. STATEMENT OF FACTS

20 16. Plaintiffs and class members are Washington State employees exclusively  
 21 represented by WFSE and are subject to a single collective bargaining agreement applicable to  
 22 Washington State employees in bargaining units represented by WFSE. WFSE represents  
 23 Washington State employees in bargaining units in 36 different Washington State agencies.  
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1           17. At all times during their employment prior to July 6, 2018, Defendants subjected  
2 Plaintiffs and class members to CBA provisions which required the deduction of union dues or  
3 dues equivalent fees from their wages as a condition of employment. *See* Pre-amended 2017-19  
4 CBA art. 40.

5           18. Employees who objected to union membership and the payment of any union  
6 dues/fees were still required to pay a “representation fee equal to the pro rata share of the full  
7 membership fee that is related to collective bargaining...”, i.e., an agency fee the amount of which  
8 WFSE determined. Pre-amended 2017-19 CBA art. 40.3(C).

9           19. RCW 41.80.100 required Plaintiffs and class members to pay at least an agency fee  
10 to WFSE as a condition of employment. Before June 27, 2018, absent at least this minimum  
11 payment, Plaintiffs’ and class members’ employment would be terminated. Pre-amended CBA  
12 art. 40.3(D), 40.5. According to WFSE’s 2017 accounting, the agency fee assessed to objecting  
13 nonunion employees was 77.8% of full union dues.

14           20. On June 27, 2018, the U.S. Supreme Court in *Janus v. AFSCME, Council 31*, held  
15 that “[n]either an agency fee nor any other payment to the union may be deducted from a  
16 nonmember’s wages, nor may any other attempt be made to collect such a payment, unless the  
17 employee affirmatively consents to pay.” 138 S. Ct. at 2486. The Supreme Court also held that  
18 agreeing to make any payments to a union constitutes a waiver of a constitutional right and that  
19 “such a waiver cannot be presumed” and “must be freely given and shown by clear and convincing  
20 evidence.” *Id.*

21           21. On July 6, 2018, the State and WFSE executed an Amended CBA with a  
22 Memorandum of Understanding (“MOU”) which removed the CBA’s compulsory agency fee  
23 provision but still required the continued deduction of full union dues from the wages of Plaintiffs  
24

1 and class members.

2 22. Since June 27, 2018, Plaintiffs have communicated in writing to the State and  
3 WFSE that they object to union membership and the payment of any union dues/fees.

4 23. Despite the Supreme Court's ruling in *Janus v. AFSCME, Council 31* and Plaintiffs'  
5 objections, the State continues to deduct union dues/fees from Plaintiffs' wages and remit them  
6 to WFSE pursuant to RCW 41.80.100 and the MOU.

7 24. WFSE has informed Plaintiffs that it has instructed the State to continue deducting  
8 union dues/fees from Plaintiffs' wages.

9 25. Plaintiffs' State employers have indicated to Plaintiffs that it will continue to deduct  
10 union dues/fees from Plaintiffs' wages pursuant to WFSE's wishes and, in fact, have continued  
11 to do so.

12 26. Moreover, it is the official opinion of the Washington Attorney General that  
13 Plaintiffs' dues deduction agreements are not impacted by *Janus v. AFSCME, Council 31*, because  
14 he alleges Plaintiffs dues deduction agreements, signed before *Janus*, are "agreements between a  
15 union and its members to pay union dues." The Washington Attorney General states,

16 The *Janus* decision does not impact any agreements between a union and its  
17 members to pay union dues, and existing membership cards or other agreements by  
18 union members to pay dues should continue to be honored. The opinion only  
impacts the payment of an agency service fee by individuals who decline union  
membership.<sup>2</sup>

19 27. Plaintiffs' Washington State employers take the same position as the Washington  
20 Attorney General, as do all of Washington's State employers (Washington State agencies).

21 28. Defendants contend the continued dues/fee deductions are lawful because of dues  
22 deduction agreements signed by Plaintiffs before June 27, 2018 which purport to authorize union

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24 <sup>2</sup> Available at <https://www.atg.wa.gov/news/news-releases/attorney-general-ferguson-issues-advisory-affirming-labor-rights-and-obligations> (last visited August 1, 2018).

1 dues deductions from Plaintiffs' wages. The agreement stated, "Effective immediately, I hereby  
2 voluntarily authorize and direct my Employer to deduct from my pay each pay period, the amount  
3 of dues as set in accordance with the WFSE Constitution and By-Laws and authorize my  
4 Employer to remit such amounts semi-monthly to the Union (currently 1.5% of my salary per pay  
5 period not to exceed the maximum)."

6 29. The dues deduction cards purport to authorize the State to deduct union dues from  
7 Plaintiffs' wages and remit them to WFSE. The cards state that authorization for the deductions  
8 will automatically renew annually unless the employee revokes the authorization between 10 and  
9 20 days prior to the anniversary of the day Plaintiffs' signed the authorization. WFSE claims each  
10 plaintiff signed an identical card.

11 30. WFSE will require Plaintiffs to continue paying union dues/fees until Plaintiffs  
12 object again within the aforementioned limited ten day period. In the meantime, WFSE is  
13 preventing Plaintiffs from cancelling union membership and the deduction of union dues/fees  
14 from Plaintiffs' wages.

15 31. Amended CBA art. 40.2 requires State Defendants to "honor the terms and  
16 conditions of each employee's sign membership card." Amended CBA art. 40.2.

17 32. Amended CBA art. 40.6 only allows employees to revoke the card's purported  
18 authorization for a payroll deduction "in accordance with the terms and conditions of their signed  
19 membership card."

20 33. Plaintiffs signed the dues deduction cards at a time when the CBA included a  
21 compulsory agency fee provision, and the right to not fund union advocacy was not recognized  
22 by the U.S. Supreme Court in *Janus v. AFSCME, Council 31* on June 27, 2019.

23 34. At the time Plaintiffs signed the cards, they had not previously clearly and  
24



1 affirmatively consented to the payment of union dues/fees by waiving their constitutional right to  
2 not fund union advocacy.

3 35. The dues deduction cards contain no language indicating that a First Amendment  
4 right was being, or potentially being, waived.

5 36. The dues deduction cards contain no language indicating that they operated as a  
6 waiver, or potential waiver, of a First Amendment right.

7 37. Plaintiffs and class members are paid on the 10th and the 25th day of each month.  
8 Absent injunctive relief, the State will continue deducting union dues/fees from Plaintiffs' and  
9 class members' wages on this schedule.

10 38. WFSE drafted the dues deduction agreements, WFSE proposed the agreements as  
11 take-it-or-leave-it form contracts, Plaintiffs could not bargain over the terms of the dues deduction  
12 authorizations, and Plaintiffs did not seek counsel and were not advised to seek counsel. Plaintiffs  
13 were not made aware, either by the language of the agreements or by WFSE or State  
14 representatives, of their constitutional right to not fund union advocacy or the significance of the  
15 agreement as a waiver of this right.

16 39. Plaintiffs cannot post a substantial bond to cover the amount of union dues that  
17 would be deducted from employees' wages through the duration of preliminary injunctive relief.

18 40. RCW 41.80.100 and Amended 2017-2019 CBA Art. 40.2, 40.3, and 40.6 authorize  
19 and compel the State to deduct union dues/fees from Plaintiffs' and class members' wages and  
20 forward them to WFSE despite the fact that Plaintiffs have not clearly and affirmatively consented  
21 to the deductions by waiving the constitutional right to not fund union advocacy. The statute and  
22 CBA provisions and Defendants' actions taken pursuant to them, therefore, impermissibly  
23 infringe Plaintiffs' and class members' First Amendment rights of free speech and free  
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1 association, as secured against state infringement by the Fourteenth Amendment to the U.S.  
2 Constitution.

### 3 V. CLASS ALLEGATIONS

4 41. Plaintiffs bring this case as a class action pursuant to Federal Rules of Civil  
5 Procedure 23(b)(1)(A) and (b)(2), and, alternatively, 23(b)(3), for themselves and for all others  
6 similarly situated, and any subclasses deemed appropriate by this Court. The class consists of all  
7 individuals: 1) who are Washington State employees exclusively represented by WFSE as  
8 described in paragraph 9 above; 2) from whom the State continues to deduct union dues/fees on  
9 behalf of WFSE since the U.S. Supreme Court issued *Janus v. AFSCME* on June 27, 2018; and  
10 3) who have not clearly and affirmatively consented to dues/fees deductions by waiving the  
11 constitutional right to not fund union advocacy on or after June 27, 2018. The class includes  
12 everyone who comes within the class definition at any time from three years prior to the  
13 commencement of this action until the conclusion of this action.

14 42. Upon information and belief, there are hundreds, and likely thousands, of class  
15 members. Their number is so numerous and in varying locations and jurisdictions across  
16 Washington that joinder is impractical.

17 43. There are questions of law and fact common to all class members, including  
18 Plaintiffs. Factually, the State of Washington has continued to deduct union dues/fees from all  
19 class members after *Janus v. AFSCME, Council 31* issued on June 27, 2018, and each Plaintiff  
20 and class member either never signed union membership or dues deduction agreement or signed  
21 a union membership or dues deduction agreement at a time when the relevant collective  
22 bargaining agreement included a compulsory agency fee provision, and the right to not fund union  
23 advocacy was yet to be recognized by the U.S. Supreme Court in *Janus v. AFSCME, Council 31*  
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1 on June 27, 2019. The State of Washington continues to deduct union dues/fees from Plaintiffs'  
2 and class members' wages. The question of law is the same for all class members: Do these  
3 deductions violate Plaintiffs' and class members' First Amendment rights?

4 44. Plaintiffs' claims and defenses are typical of other members of the class because  
5 the State is seizing union dues/fees from class members since the issuance of *Janus v. AFSCME*,  
6 *Council 31* on June 27, 2018, even though they have not clearly and affirmatively consented to  
7 the deductions by waiving the constitutional right to not fund union advocacy because they either  
8 never signed dues deduction agreements or signed signed dues deduction agreements at a time  
9 when the relevant collective bargaining agreement included a compulsory agency fee provision,  
10 and the right to not fund union advocacy was yet to be recognized by the U.S. Supreme Court in  
11 *Janus v. AFSCME, Council 31* on June 27, 2018. The State and SEIU have an identical duty to  
12 Plaintiffs and all other class members regarding these claims.

13 45. Plaintiffs can fairly and adequately represent the interests of the class and have no  
14 conflict with other, similarly situated class members. Plaintiffs also have no interest antagonistic  
15 to others who have been subjected by the State and SEIU to the aforementioned union dues/fee  
16 deductions.

17 46. Defendants' duty to cease the aforementioned union dues/fee deductions and pay  
18 back all monies deducted at least since *Janus v. AFSCME, Council 31* issued on June 27, 2018  
19 and, at most since each employee's employment began, applies equally to all in the respective  
20 class, and the prosecution of separate actions by individual class members would create a risk of  
21 inconsistent or varying adjudications which would establish incompatible standards of conduct  
22 for Defendants.

23 47. Defendants have acted to deprive Plaintiffs and each member of the class of their  
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1 constitutional rights on grounds generally applicable to all, thereby making appropriate  
2 declaratory, injunctive, and other equitable relief with regard to the class as a whole.

3 48. The Plaintiffs and class are represented by the undersigned counsel pro bono.  
4 Counsel is employed by a long-established charitable organization experienced in furnishing  
5 representation to unionized public and partial-public employees whose constitutional rights have  
6 been violated.

7 49. A class action can be maintained under Rule 23(b)(3) because questions of law or  
8 fact common to the members of the class predominate over any questions affecting only  
9 individual members, in that the important and controlling questions of law and fact are common  
10 to all members of the class, i.e., whether the aforementioned dues deductions violate their First  
11 Amendment rights and whether certain dues deduction agreements constitute a valid waiver of a  
12 constitutional right if they are signed when the relevant collective bargaining agreement included  
13 a compulsory agency fee provision and before the right to not fund union advocacy was  
14 recognized by the U.S. Supreme Court in *Janus v. AFSCME, Council 31* on June 27, 2019. A  
15 class action is superior to other available methods for the fair and efficient adjudication of the  
16 controversy, in as much as the individual class members are deprived of the same rights by  
17 Defendants' actions, differing only in the amount of money deducted which is, for legal purposes,  
18 immaterial. This fact is known to the Defendants and easily calculated from Defendants' business  
19 records. The limited amount of money involved in the case of each individual's claim (union  
20 dues/fee deductions at least since *Janus v. AFSCME, Council 31* issued on June 27, 2018 or at  
21 most since each employee's employment began) would make it burdensome for the class  
22 members to maintain separate actions.

23 50. A class action can be maintained under Rule 23(b)(1)(A) because separate actions  
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1 by class members could risk inconsistent adjudications on the underlying legal issues.

2 51. A class action can be maintained under Rule 23(b)(1)(B) because an adjudication  
3 determining the constitutionality of union dues/fees deductions in the aforementioned  
4 circumstances, as a practical matter, will be dispositive of the interests of all class members.

5 52. The illegal actions taken by Defendants were taken pursuant to the same statutes  
6 and collective bargaining agreements, and constitute a concerted scheme resulting in the violation  
7 of Plaintiffs' and class members' rights. Additionally, the affiliation among the Defendants  
8 presents an organizational structure which makes it expedient for the named Plaintiffs and  
9 members of the of the class to proceed against all named Defendants.

## 10 VI. CLAIMS FOR RELIEF

### 11 CLAIM 1

#### 12 First Amendment, through 42 U.S.C. § 1983

13 *Deducting union dues/fees from Plaintiffs' wages pursuant to RCW 41.80.100 violates*  
14 *the First Amendment to the United States Constitution.*

15 53. Plaintiffs incorporate by reference and re-allege herein all Paragraphs above.

16 54. RCW 41.80.100, on its face and as applied, violates the Plaintiffs' First Amendment  
17 rights, as secured against state infringement by the Fourteenth Amendment and 42 U.S.C. § 1983,  
18 to not associate with a mandatory representative, and to not support, financially or otherwise,  
19 petitioning and speech, and against compelled speech, because it authorizes and compels the State  
20 to deduct union dues/fees from Plaintiffs' and class members' wages even though they have not  
21 clearly and affirmatively consented to the deductions by waiving their constitutional right to not  
22 fund union advocacy; and because it forces Plaintiffs and class members to maintain union  
23 membership over their objection.

24 55. Consent to fund union advocacy cannot be presumed and neither Plaintiffs nor class  
members waived their constitutional right to not fund union advocacy.

56. No compelling state interest justifies this infringement on Plaintiffs' First Amendment rights.

57. RCW 41.80.100 is significantly broader than necessary to serve any possible alleged government interest.

58. RCW 41.80.100 is not carefully or narrowly tailored to minimize the infringement of free speech rights.

## CLAIM 2

### **First Amendment, through 42 U.S.C. § 1983**

*Amended 2017-2019 CBA Art. 40.2, 40.3, and 40.6 and other cited provisions of the CBA and the deductions of union dues/fees from Plaintiffs' and class members' wages pursuant thereto violate the First Amendment to the United States Constitution.*

59. Plaintiffs incorporate by reference and re-allege herein all Paragraphs above.

60. Amended 2017-2019 CBA Art. 40.2, 40.3, and 40.6 and other cited provisions of the CBA and any action thereto, on their face and as applied, violate Plaintiffs' First Amendment rights, as secured against state infringement by the Fourteenth Amendment and 42 U.S.C. § 1983, to not associate with a mandatory representative, and to not support, financially or otherwise, petitioning and speech, and against compelled speech, because they compel the State to deduct union dues/fees from Plaintiffs' and class members' wages and remit them to WFSE even though they have not clearly and affirmatively consented to the deductions by waiving their constitutional right to not fund union advocacy; and because they force Plaintiffs and class members to maintain union membership over their objection.

61. Consent to fund union advocacy cannot be presumed and neither Plaintiffs nor class members waived their constitutional right to not fund union advocacy.

62. No compelling state interest justifies this infringement on Plaintiffs' First Amendment rights.

63. Amended 2017-2019 CBA Art. 40.2, 40.3, and 40.6 are significantly broader than necessary to serve any possible alleged government interest.

64. Amended 2017-2019 CBA Art. 40.2, 40.3, and 40.6 are not carefully or narrowly tailored to minimize the infringement of free speech rights.

### CLAIM 3

#### **First Amendment, through 42 U.S.C. § 1983**

***Deducting union dues/ fees from Plaintiffs' and class members' wages violates Plaintiffs' freedom of association.***

65. Plaintiffs incorporate by reference and re-allege herein all Paragraphs above.

66. RCW 41.80.100, Amended 2017-2019 CBA Art. 40.2, 40.3, and/or 40.6, other cited provisions of the CBA, and Defendants' actions pursuant thereto violate Plaintiffs' and class members' First Amendment right to the freedom of association, as secured against state infringement by the Fourteenth Amendment and 42 U.S.C. § 1983.

67. Consent to fund union advocacy cannot be presumed and neither Plaintiffs nor class members waived their constitutional right to not fund union advocacy.

68. No compelling state interest justifies this infringement on Plaintiffs' and class members' First Amendment right to freedom of association.

69. RCW 41.80.100, Amended 2017-2019 CBA Art. 40.2, 40.3, and/or 40.6 are significantly broader than necessary to serve any possible alleged government interest.

70. RCW 41.80.100, Amended 2017-2019 CBA Art. 40.2, 40.3, and/or 40.6 are not carefully or narrowly tailored to minimize the infringement of free speech rights

### CLAIM 4

#### **First Amendment, through 42 U.S.C. § 1983**

***Defendants have illegally conspired to knowingly deprive Plaintiffs and class members of their constitutional rights.***

71. Plaintiffs incorporate by reference and re-allege herein all Paragraphs above.

72. Defendants conspired to deprive Plaintiffs and class members of their First Amendment rights by unlawfully deducting union dues/fees from Plaintiffs' and class members' wages. There was an agreement to do so and a meeting of the minds to pursue this objective and Defendants took several overt acts, described above, to accomplish this objective.

73. By deducting union/dues fees from Plaintiffs' and class members' wages in the manner described herein, Defendants acted with malice and showed a reckless and outrageous indifference to a highly unreasonable risk of harm and acted with a conscious indifference to the rights and welfare of others, including Plaintiffs.

**CLAIM 5**  
**Unjust Enrichment**  
*Defendants' scheme unjustly enriched Defendant WFSE.*

74. Plaintiffs incorporate by reference and re-allege herein all Paragraphs above.

75. WFSE received a benefit in the form of 1.5% of Plaintiffs' and class members' wages pursuant to the dues exaction scheme imposed by Defendants on Plaintiffs.

76. WFSE benefited at Plaintiffs' and class members' expense because State Defendants deducted 1.5% of their wages and remitted the money to WFSE, and WFSE knew it benefited from receiving Plaintiffs' and class members' money.

77. The circumstances of Defendants' scheme make it unjust for WFSE to retain the benefit.

**CLAIM 6**  
**First Amendment, through 42 U.S.C. § 1983**  
*Deducting union dues/fees from Plaintiffs' pursuant to RCW 41.80.100 and the Pre-amended CBA art. 40 violated the First Amendment to the United States Constitution.*

78. Plaintiffs incorporate by reference and re-allege herein Paragraphs above.

79. RCW 41.80.100 and Pre-amended 2017-2019 CBA Art. 40, as well as the 2015-2017 CBA Art. 40 and other cited provisions of the CBAs and any action thereto, on their face



and as applied, violate Plaintiffs' First Amendment rights, as secured against state infringement by the Fourteenth Amendment and 42 U.S.C. § 1983, to not associate with a mandatory representative, and to not support, financially or otherwise, petitioning and speech, and against compelled speech, because they compelled the State to deduct union dues/fees from Plaintiffs' and class members' wages and remit them to WFSE even though they had not clearly and affirmatively consented to the deductions by waiving their constitutional right to not fund union advocacy; and because they forced Plaintiffs and class members to maintain union membership over their objection.

80. Consent to fund union advocacy cannot be presumed and neither Plaintiffs nor class members waived their constitutional right to not fund union advocacy.

81. No compelling state interest justifies this infringement on Plaintiffs' First Amendment rights.

82. RCW 41.80.100 and Pre-amended 2017-2019 CBA Art. 40, as well as the 2015-2017 CBA Art. 40 are significantly broader than necessary to serve any possible alleged government interest.

83. RCW 41.80.100 and Pre-amended 2017-2019 CBA Art. 40, as well as the 2015-2017 CBA Art. 40 are not carefully or narrowly tailored to minimize the infringement of free speech rights.

## VI. PRAYER FOR RELIEF

84. Plaintiffs incorporate by reference and re-allege herein all Paragraphs above.

85. Plaintiffs and class members have been injured as a result of Defendants' conduct as described above by deducting union dues/fees even though Plaintiffs and class members have not clearly and affirmatively consented to the deductions by waiving the constitutional right to

not fund union advocacy. Accordingly, Plaintiffs pray for the following relief:

86. **Declaratory Judgment:** enter a Declaratory Judgment that RCW 41.80.100, Amended 2017-2019 CBA Art. 40.2, 40.3, and 40.6, and other cited provisions of the CBA on their face and as applied violates the First Amendment to the United States Constitution, as secured against state infringement by the Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983, because they permits and compels the State to deduct union dues/fees from Plaintiffs' and class members' wages even though they have not clearly and affirmatively consented to the deductions by waiving the constitutional right to not fund union advocacy, and/or because it forces Plaintiffs and class members to maintain union membership over their objection, and are unconstitutional and of no effect;

87. **Declaratory Judgment:** enter a Declaratory Judgment that the Washington AG's policy related to the application of *Janus v. AFSCME, Council 31*, to WFSE-represented State employees, cited herein, is unconstitutional and of no effect;

88. **Declaratory Judgment:** enter a Declaratory Judgment that Defendants conspired to deprive Plaintiffs and class members of their First Amendment rights by deducting union dues/fees from their wages even though they have not clearly and affirmatively consented to the deductions by waiving the constitutional right to not fund union advocacy, and/or because by forcing Plaintiffs and class members to maintain union membership over their objection;

89. **Declaratory Judgment:** enter a Declaratory Judgment that Defendants' deduction of monies from Plaintiffs' and class members' wages even though they have not clearly and affirmatively consented to the deductions by waiving the constitutional right to not fund union advocacy has been illegal and unconstitutional;

90. **Declaratory Judgment:** enter a Declaratory Judgment that RCW 41.80.100, Pre-

1 amended 2017-2019 CBA art. 40, and the 2015-2017 CBA art. 40, and other cited provisions of  
 2 the CBAs, and actions pursuant thereto, on their face and as applied, violate the First Amendment  
 3 to the United States Constitution, as secured against state infringement by the Fourteenth  
 4 Amendment to the United States Constitution and 42 U.S.C. § 1983, because they permit and  
 5 compel the State to deduct union dues/fees from Plaintiffs' and class members' wages even  
 6 though they have not clearly and affirmatively consented to the deductions by waiving the  
 7 constitutional right to not fund union advocacy, and/or because they force Plaintiffs and class  
 8 members to maintain union membership over their objection, and are unconstitutional and of no  
 9 effect

10       **91. Preliminary injunction and/or Temporary Restraining Order:** issue a  
 11 preliminary injunction and/or temporary restraining order enjoining Defendants from engaging in  
 12 any activity this Court declares is illegal or likely illegal. Plaintiffs and class members are likely  
 13 to prevail on the merits, likely to suffer irreparable harm in the absence of preliminary injunctive  
 14 relief, the balance of equities tips in Plaintiffs' and class members' favor, and an injunction is in  
 15 the public interest.

16       **92. Permanent injunction:** issue a permanent injunction enjoining Defendants from  
 17 engaging in any activity this Court declares illegal, including but not limited to, the deduction of  
 18 union dues/fees from Plaintiffs' and class members' wages, and the continuation and enforcement  
 19 of RCW 41.80.100, Amended 2017-2019 CBA Art. 40.2, 40.3, and 40.6, and other cited  
 20 provisions of the CBA, insofar as doing so is unconstitutional and of no effect.

21       **93. Compensatory Damages:** enter a judgment against Defendants awarding Plaintiffs  
 22 and class members compensatory damages under Claims 1-6 in an amount equal to all union  
 23 dues/fees deducted from Plaintiffs' and class members' wages going back to the extent of the  
 24

relevant statute of limitations or the date each Plaintiff or class member began employment, whichever is more recent, as well as mental anguish damages and restitution;

94. **Compensatory Damages:** alternatively, enter a judgment against Defendants awarding Plaintiffs and class members compensatory damages under Claims 1-5 in an amount equal to the union dues/fees deducted from Plaintiffs' and class members' wages since *Janus v. AFSCME, Council 31*, issued on June 27, 2018, as well as mental anguish damages and restitution;

95. **Punitive Damages:** enter a judgment awarding Plaintiffs and class members punitive damages against Defendants based on Claims 1-6 because their conduct, described above, was and is motivated by evil motive or intent, or involves reckless or callous indifference to the federal and state rights of Plaintiffs and class members.

96. **Costs and attorneys' fees:** award Plaintiffs their costs and reasonable attorneys' fees pursuant to the Civil Rights Attorney's Fees Award Act of 1976, 42 U.S.C. § 1988; and

97. **Other relief:** grant Plaintiffs such other and additional relief as the Court may deem just and proper.

Dated: August 2, 2018

By: s/ James G. Abernathy

James G. Abernathy, WSBA #48801  
c/o Freedom Foundation  
P.O. Box 552  
Olympia, WA 98507  
p. 360.956.3482  
f. 360.352.1874  
[jabernathy@freedomfoundation.com](mailto:jabernathy@freedomfoundation.com)  
*Attorney for Plaintiffs*

1 By: s/ Hannah Sells

2 Hannah Sells, WSBA #52692  
3 c/o Freedom Foundation  
4 P.O. Box 552  
5 Olympia, WA 98507  
6 p. 360.956.3482  
7 f. 360.352.1874  
8 [hsells@freedomfoundation.com](mailto:hsells@freedomfoundation.com)  
9 *Attorney for Plaintiffs*

10 By: s/ Christi C. Goeller

11 Christi C. Goeller, WSBA #33625  
12 c/o Freedom Foundation  
13 P.O. Box 552  
14 Olympia, WA 98507  
15 p. 360.956.3482  
16 f. 360.352.1874  
17 [cgoeller@freedomfoundation.com](mailto:cgoeller@freedomfoundation.com)  
18 *Attorney for Plaintiffs*

19 By: s/ Caleb Jon Vandebos

20 Caleb Jon Vandebos, WSBA #50231  
21 c/o Freedom Foundation  
22 P.O. Box 552  
23 Olympia, WA 98507  
24 p. 360.956.3482  
f. 360.352.1874  
[cvandebos@freedomfoundation.com](mailto:cvandebos@freedomfoundation.com)  
*Attorney for Plaintiffs*

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7 **UNITED STATES DISTRICT COURT**  
8 **WESTERN DISTRICT OF WASHINGTON**  
9 **AT TACOMA**

10 MELISSA BELGAU, et al., individuals,

11 Plaintiffs,

12 v.

13 INSLEE, et al.,

14 Defendants.

Case No. 3:18-cv-5620

**DECLARATION OF MELISSA  
BELGAU VERIFYING COMPLAINT  
FOR INJUNCTIVE RELIEF,  
DECLARATORY JUDGMENT, AND  
DAMAGES – CLASS ACTION**

15  
16 **DECLARATION OF MELISSA BELGAU**  
17 **VERIFYING THE FOREGOING COMPLAINT**

18 I, Melissa Belgau, pursuant to Section 1746 of the Judicial Code, 28 U.S.C. § 1746, declare  
19 as follows:

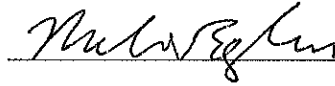
- 20 1. I am a Plaintiff in the above-captioned case. I am over the age of eighteen (18) and am  
21 competent to testify to the following facts based on my personal knowledge, to which I  
22 could and would competently testify if called as a witness in this matter.  
23 2. I have personal knowledge of myself, my activities, and my intentions, including those set  
24 out in the foregoing *Verified Complaint for Injunctive Relief, Declaratory Judgment, and*

1 *Damages*, and if called upon to testify I would competently testify as to the matters stated  
2 herein.

- 3 3. I verify under penalty of perjury under the laws of the United States of America that the  
4 factual statements in this foregoing Complaint concerning myself, my activities, and my  
5 intentions are true and correct, and are factual statements concerning my employer, its  
6 activities, and its intentions.

7 I declare under penalty of perjury that the foregoing is true and correct.

8 Executed on: 7/29/18, 2018.

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11 Melissa Belgau  
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**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA**

MELISSA BELGAU, et al., in individuals,

Plaintiffs,

v.

INSLEE, et al.,

Defendants.

Case No. 3:18-cv-5620

**DECLARATION OF DONNA BYBEE  
VERIFYING COMPLAINT FOR  
INJUNCTIVE RELIEF,  
DECLARATORY JUDGMENT, AND  
DAMAGES - CLASS ACTION**

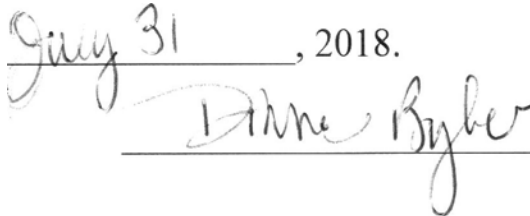
**DECLARATION OF DONNA BYBEE  
VERIFYING THE FOREGOING COMPLAINT**

I, Donna Bybee, pursuant to Section 1746 of the Judicial Code, 28 U.S.C. § 1746, declare as follows:

1. I am a Plaintiff in the above-captioned case. I am over the age of eighteen (18) and am competent to testify to the following facts based on my personal knowledge, to which I could and would competently testify if called as a witness in this matter.
2. I have personal knowledge of myself, my activities, and my intentions, including those set out in the foregoing *Verified Complaint for Injunctive Relief, Declaratory Judgment, and Damages*, and if called upon to testify I would competently testify as to the matters stated herein.
3. I verify under penalty of perjury under the laws of the United States of America that the factual statements in this foregoing Complaint concerning myself, my activities, and my intentions are true and correct, and are factual statements concerning my employer, its activities, and its intentions.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: July 31, 2018.



Donna Bybee

DECLARATION VERIFYING COMPLAINT

PO. Box 552, Olympia, WA 98507  
P: 360.956.3482 F: 360.352.1874



UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

MELISSA BELGAU, et al., individuals,

Plaintiffs,

v.

INSLEE, et al.,

Defendants.

Case No. 3:18-cv-5620

**DECLARATION OF GARY HONC  
VERIFYING COMPLAINT FOR  
INJUNCTIVE RELIEF,  
DECLARATORY JUDGMENT, AND  
DAMAGES – CLASS ACTION**

**DECLARATION OF GARY HONC  
VERIFYING THE FOREGOING COMPLAINT**

I, Gary Honc, pursuant to Section 1746 of the Judicial Code, 28 U.S.C. § 1746, declare as follows:

1. I am a Plaintiff in the above-captioned case. I am over the age of eighteen (18) and am competent to testify to the following facts based on my personal knowledge, to which I could and would competently testify if called as a witness in this matter.
2. I have personal knowledge of myself, my activities, and my intentions, including those set out in the foregoing *Verified Complaint for Injunctive Relief, Declaratory Judgment, and*

DECLARATION VERIFYING COMPLAINT

3:18-cv-5620

**FREEDOM**  
FOUNDATION

P.O. Box 552, Olympia, WA 98507  
P: 360.956.3482 | F: 360.352.1874

Case 3:18-cv-05620 Document 1 Filed 08/02/18 Page 26 of 35  
1 Damages, and if called upon to testify, I would competently testify about the matters stated  
2 herein.

- 3 3. I verify under penalty of perjury under the laws of the United States of America that the  
4 factual statements in this foregoing Complaint concerning myself, my activities, and my  
5 intentions are true and correct, and are factual statements concerning my employer, its  
6 activities, and its intentions.

7 I declare under penalty of perjury that the foregoing is true and correct.

8 Executed on: AUGUST 1, 2018.

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11 Gary Honc

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7 **UNITED STATES DISTRICT COURT**  
8 **WESTERN DISTRICT OF WASHINGTON**  
9 **AT TACOMA**

10 MELISSA BELGAU, et al., individuals,

11 Plaintiffs,

12 v.

13 INSLEE, et al.,

14 Defendants.

Case No. 3:18-cv-5620

**DECLARATION OF KATHERINE  
NEWMAN VERIFYING COMPLAINT  
FOR INJUNCTIVE RELIEF,  
DECLARATORY JUDGMENT, AND  
DAMAGES – CLASS ACTION**

15  
16 **DECLARATION OF KATHERINE NEWMAN**  
17 **VERIFYING THE FOREGOING COMPLAINT**

18 I, Katherine Newman, pursuant to Section 1746 of the Judicial Code, 28 U.S.C. § 1746,  
19 declare as follows:

- 20 1. I am a Plaintiff in the above-captioned case. I am over the age of eighteen (18) and am  
21 competent to testify to the following facts based on my personal knowledge, to which I  
22 could and would competently testify if called as a witness in this matter.
- 23 2. I have personal knowledge of myself, my activities, and my intentions, including those set  
24 out in the foregoing *Verified Complaint for Injunctive Relief, Declaratory Judgment, and*

1 *Damages*, and if called upon to testify I would competently testify as to the matters stated  
2 herein.

3 3. I verify under penalty of perjury under the laws of the United States of America that the  
4 factual statements in this foregoing Complaint concerning myself, my activities, and my  
5 intentions are true and correct, and are factual statements concerning my employer, its  
6 activities, and its intentions.

7 I declare under penalty of perjury that the foregoing is true and correct.

8 Executed on: 7/26, 2018.

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11 Katherine Newman

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7 **UNITED STATES DISTRICT COURT**  
8 **WESTERN DISTRICT OF WASHINGTON**  
9 **AT TACOMA**

10 MELISSA BELGAU, et al., individuals,

11 Plaintiffs,

12 v.

13 INSLEE, et al.,

14 Defendants.

Case No. 3:18-cv-5620

**DECLARATION OF RICHARD  
OSTRANDER VERIFYING  
COMPLAINT FOR INJUNCTIVE  
RELIEF, DECLARATORY  
JUDGMENT, AND DAMAGES –  
CLASS ACTION**

15  
16 **DECLARATION OF RICHARD OSTRANDER**  
17 **VERIFYING THE FOREGOING COMPLAINT**

18 I, Richard Ostrander, pursuant to Section 1746 of the Judicial Code, 28 U.S.C. § 1746,  
19 declare as follows:

- 20 1. I am a Plaintiff in the above-captioned case. I am over the age of eighteen (18) and am  
21 competent to testify to the following facts based on my personal knowledge, to which I  
22 could and would competently testify if called as a witness in this matter.
- 23 2. I have personal knowledge of myself, my activities, and my intentions, including those set  
24 out in the foregoing *Verified Complaint for Injunctive Relief, Declaratory Judgment, and*

3. I verify under penalty of perjury under the laws of the United States of America that the factual statements in this foregoing Complaint concerning myself, my activities, and my intentions are true and correct, and are factual statements concerning my employer, its activities, and its intentions.

Executed on: July 26, 2018.

DECLARATION VERIFYING COMPLAINT  
3:18-cv-5620

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA**

MELISSA BELGAU, et al., individuals

*Plaintiffs,*

v.

INSLEE, et al.,

*Defendants.*

No. 3:18-cv-5620

**DECLARATION OF MICHAEL STONE  
VERIFYING COMPLAINT FOR  
INJUNCTIVE RELIEF,  
DECLARATORY JUDGEMENT, AND  
DAMAGES – CLASS ACTION**

**DECLARATION OF MICHAEL STONE**

I, Michael Stone, pursuant to Section 1746 of the Judicial Code, 28 U.S.C. § 1746,  
declare as follows:

1. I am a Plaintiff in the above-captioned case. I am over the age of eighteen (18) and am competent to testify to the following facts based on my personal knowledge, to which I could and would competently testify if called as a witness in this matter.
2. I have personal knowledge of myself, my activities, and my intentions, including

those set out in the foregoing Verified Complaint for Injunctive Relief, Declaratory Judgment, and Damages, and if called upon to testify I would competently testify as to the matters stated herein.

I verify under penalty of perjury under the laws of the United States of America that the factual statements in this foregoing Complaint concerning myself, my activities, and my intentions are true and correct, and are factual statements concerning my employer, its activities, and its intentions.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: July 30<sup>th</sup>, 2018.



Michael Stone



**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA**

MELISSA BELGAU, et al., individuals,

Plaintiffs,

v.

INSLEE, et al.,

Defendants.

Case No. 3:18-cv-5620

**DECLARATION OF MIRIAM TORRES  
VERIFYING COMPLAINT FOR  
INJUNCTIVE RELIEF,  
DECLARATORY JUDGMENT, AND  
DAMAGES – CLASS ACTION**

**DECLARATION OF MIRIAM TORRES  
VERIFYING THE FOREGOING COMPLAINT**

I, Miriam Torres, pursuant to Section 1746 of the Judicial Code, 28 U.S.C. § 1746, declare  
as follows:

1. I am a Plaintiff in the above-captioned case. I am over the age of eighteen (18) and am competent to testify to the following facts based on my personal knowledge, to which I could and would competently testify if called as a witness in this matter.
2. I have personal knowledge of myself, my activities, and my intentions, including those set out in the foregoing *Verified Complaint for Injunctive Relief, Declaratory Judgment, and*

1 *Damages*, and if called upon to testify I would competently testify as to the matters stated  
2 herein.

3 3. I verify under penalty of perjury under the laws of the United States of America that the  
4 factual statements in this foregoing Complaint concerning myself, my activities, and my  
5 intentions are true and correct, and are factual statements concerning my employer, its  
6 activities, and its intentions.

7 I declare under penalty of perjury that the foregoing is true and correct.

8 Executed on: July 31, 2018.

10 s/ Miriam Torres

Miriam Torres

**CERTIFICATE OF SERVICE**

I hereby certify that on August 2, 2018, I caused this foregoing Complaint to be served via process server on the following:

Governor Jay Inslee, Office of the Governor, 416 14th Ave. SW, Olympia, WA, 98504;

David Schumacher, Director, Washington State Office of Financial Management, 302 Sid Snyder Ave. SW, Olympia, WA, 98501;

John Weisman, Dir. of the Washington Department of Health; Cheryl Strange, Dir. of the Washington Department of Social and Health Services; Roger Millar, Dir. of the Washington Department of Transportation; Joel Sacks, Director of the Washington State Department of Labor and Industries; c/o Attorney General Bob Ferguson, Office of the Attorney General, 7141 Cleanwater Dr. SW, PO Box 40145, Olympia, WA 98504-0145; Phone: (360) 664-4173, Fax: (360) 664-4170;

Washington Federation of Service Employees, American Federation of State, County, and Municipal Employees Council 28, AFL-CIO , 1212 Jefferson St. SE #300 Olympia, WA, 98501.

Dated: August 2, 2018

By: s/James Abernathy  
James Abernathy, WSBA #48801