No. 23-____

IN THE

Supreme Court of the United States

RYAN CRAM, *et al*.,
Petitioners,
v.
SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 503, *et al*.,
Respondents.

ROBERT ESPINOZA,
Petitioner,
v.
UNION OF AMERICAN PHYSICIANS AND DENTISTS, AFSCME LOCAL 206, *et al*.,
Respondents.

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

JOINT PETITION FOR WRIT OF CERTIORARI

REBEKAH SCHULTHEISS
Counsel of Record
TIMOTHY R. SNOWBALL
JAMES G. ABERNATHY
FREEDOM FOUNDATION
P.O. Box 552
Olympia, WA 98507
(360) 956-3482
rschultheiss@freedomfoundation.com

Counsel for Petitioners

April 10, 2024

WILSON-EPES PRINTING CO., INC. – (202) 789-0096 – WASHINGTON, D.C. 20002

QUESTIONS PRESENTED

For nearly fifty years, this Court has held that public sector labor unions can fund political speech only through "charges, dues, or assessments paid by employees who do not object to advancing those ideas." *Abood v. Detroit Bd. of Ed.*, 431 U.S. 209, 235-36 (1977); *Knox v. SEIU, Loc. 1000*, 567 U.S. 298, 322 (2012); *Janus v. American Federation of State, County, and Mun. Employees, Council 31*, 585 U.S. 878, 884-886 (2018).

However, unions in California and Oregon use their statutory authority to force objecting non-union public employees to contribute to political campaign funds—the exact type of political spending that could not be forced upon nonmembers even prior to *Janus*. The Ninth Circuit upheld this result below, reasoning that this compelled funding fails to even implicate the First Amendment because the employees previously joined the union.

The questions presented are:

1. Do public employees who are former union members possess the First Amendment right to refuse to contribute to union political campaign funds?

2. Does a union act under color of law when, pursuant to state statutory authority, it takes political campaign contributions from objecting public employees' wages?

PARTIES TO THE PROCEEDINGS AND RULE 29.6 STATEMENT

Petitioners Ryan Cram, Erica Drake, Laura Bailey, Richard Campbell, Katherine Manglona, Deanne Murfin, Cori Stephens, Kathleen Tryon, and Robert Espinoza were each Plaintiff-Appellants in the court below.

Respondents Service Employees International Union, Local 503, Oregon Public Employees Union; Katy Coba, Director of the Oregon Department of Administrative Services; the Union of American Physicians and Dentists, AFSCME Local 206; California Correctional Healthcare Services; Betty T. Yee, California State Controller; and Rob Bonta, California Attorney General were Defendant-Appellees in the court below.

Because Petitioners are not corporations, a corporate disclosure statement is not required under Supreme Court Rule 29.6.

STATEMENT OF RELATED PROCEEDINGS

This petition arises from and is directly related to the following proceedings:

1. *Cram, et al. v. Service Employees International Union, Local 503, et al*., No. 22-35321, United States Court of Appeals for the Ninth Circuit. Judgment entered October 23, 2023.

2. *Espinoza v. Union of American Physicians and Dentists, et al.*, No.22-55331, United States Court of Appeals for the Ninth Circuit. Judgment entered October 23, 2023.

3. *Cram, et al. v. Service Employees International Union Local 503 et al.,* No. 6:20-cv-00544. United States District Court for the District of Oregon. Judgment entered March 11, 2022.

4. *Espinoza v. Union of American Physicians and Dentists, et al*., No. 8:21-cv-21-01898. United States District Court for the Central District of California. Judgment entered March 16, 2022.

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED	i
PARTIES TO THE PROCEEDINGS AND RULE 29.6 STATEMENT	ii
STATEMENT OF RELATED PROCEEDINGS.	iii
TABLE OF AUTHORITIES	vii
OPINIONS BELOW	1
JURISDICTION	1
CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED	1
STATEMENT OF THE CASE	2
A. Petitioners Cram, *et al.*	2
1. Factual Background	2
2. Proceedings Below	4
B. Petitioner Espinoza	5
1. Factual Background	5
2. Proceedings Below	7
REASONS FOR GRANTING THE PETITION	8
I. THE NINTH CIRCUIT'S DECISIONS CONFLICT WITH THIS COURT AND OTHER CIRCUITS BY DENYING EMPLOYEES THE RIGHT NOT TO FUND UNION POLITICAL CAMPAIGNS	10
A. The Ninth Circuit's decisions regarding previous union membership conflict with this Court's precedent	10

TABLE OF CONTENTS—Continued

Page

B. The Ninth Circuit's decisions regarding previous union membership conflict with the decisions of the Third and Sixth Circuits 12

II. THE NINTH CIRCUIT'S REFUSAL TO RECOGNIZE STATE ACTION CONFLICTS WITH THE HOLDINGS OF THIS COURT AND THREE OTHER CIRCUITS 14

A. The Ninth Circuit's refusal to treat a union as a state actor conflicts with this Court's precedent 14

B. The Ninth Circuit's decision highlights the division among the Circuit Courts over union activities that qualify as actions "under color of law." 15

III. THE NINTH CIRCUIT'S DECISIONS PRESENT AN EXCEPTIONALLY IMPORTANT ISSUE — COMPELLED FUNDING OF PARTISAN POLITICAL SPEECH 18

CONCLUSION 21

APPENDIX

TABLE OF AUTHORITIES

CASES Page(s)

Abood v. Detroit Bd. of Educ.,
431 U.S. 209 (1977)..... 5, 8-11, 14, 18-20

Belgau v. Inslee,
975 F.3d 940 (9th Cir. 2020),
cert. denied, 141 S. Ct. 2795 (2021)..... 4, 7, 9

Chicago Tchrs. Union, Loc. No. 1, AFT, AFL-CIO v. Hudson,
475 U.S. 292 (1986)..... 5, 8, 10, 11, 14, 15

Cram v. Service Employees International Union, 590 F.Supp.3d 1330 (Dist. Or. 2022)..... 1, 4

Cram v. Service Employees International Union, No. 22-35321 (9th Cir., Oct. 23, 2023)..... 1, 17

Curtis Publishing Co. v. Butts,
388 U.S. 130 (1967)..... 12

Elrod v. Burns,
427 U.S. 347 (1976)..... 20

Espinoza v. UAPD et al,
562 F.Supp.3d 904 (C.D. Cal. 2022)..... 1

Espinoza v. UAPD et al,
No. 22-55331 (9th Cir., Oct. 23, 2023) 1, 20

Harris v. Quinn,
573 U.S. 616 (2014)..... 8, 10, 14

Hoekman v. Education Minnesota,
41 F.4th 969 (8th Cir. 2022)..... 9, 17

TABLE OF AUTHORITIES—Continued

Page(s)

Janus v. Am. Fed'n of State, Cnty., Mun. Emps. Council 31, 585 U.S. 878 (2018)..... 8, 10-12, 15, 18, 20

Janus v. Am. Fed'n of State, Cnty. & Mun. Emps., Council 31, 942 F.3d 352 (7th Cir. 2019)..... 9, 13, 16

Johnson v. Zerbst, 304 U.S. 458 (1938)..... 12

Knox v. Service Employees International Union, Local 1000, 567 U.S. 298 (2012)..... 5, 8, 10, 11, 14, 15, 18

Lindke v. Freed, 601 U.S. ----,144 S. Ct. 756 (2024)..... 9, 17, 20

Littler v. Ohio Assoc. of Pub. School Employees, 88 F.4th 1176 (6th Cir. 2023) 9, 13, 16

Lugar v. Edmondson Oil Co., 457 U.S. 922 (1982)..... 16

Lutter v. JNESO, 86 F.4th 111 (3d Cir. 2023)..... 9, 13, 16

Tulsa Pro. Collection Servs., Inc. v. Pope, 485 U.S. 478 (1988)..... 16

United States v. Classic, 313 U.S. 299 (1941)..... 17

Wright v. Serv. Emps. Int'l Union Loc. 503, 48 F.4th 1112 (9th Cir. 2022), *cert. denied*, 143 S. Ct. 749 (2023)..... 7, 9

TABLE OF AUTHORITIES—Continued

CONSTITUTION Page(s)

U.S. Const. amend. I 1, 4, 5, 8-16, 19, 20

STATUTES

28 U.S.C. § 1254 1

42 U.S.C. § 1983 ..... 4, 7-9, 15

Cal. Gov't Code § 1153 ..... 6, 15

Cal. Gov't Code § 1157.12..... 2

Cal. Gov't Code § 3512 2

Cal. Gov't Code § 3517.5 2

Cal. Gov't Code § 3520.5 2

Or. Rev. Stat. § 243.806 ..... 2, 15

Or. Rev. Stat. § 243.806(7) 3

OTHER AUTHORITIES

The Writings of James Madison (G. Hunt ed. 1901) 19

OPINIONS BELOW

The district court's order granting the State and union's motion for summary judgment in *Cram v. Service Employees International Union*, is reported at 590 F.Supp.3d 1330 (Dist. Or. 2022), and reproduced at Appendix E, Pet.App. 11a. The Ninth Circuit's memorandum opinion affirming that order is unreported and is reproduced at Appendix A, Pet.App. 1a. The Ninth Circuit order denying rehearing en banc is reproduced at Appendix C, Pet.App. 9a.

The district court's order dismissing the complaint in *Espinoza v. UAPD et al*, is reported at 562 F.Supp.3d 904 (C.D. Cal. 2022), and is reproduced at Appendix F, Pet.App. 47a. The Ninth Circuit's memorandum opinion affirming that order is unreported and is reproduced at Appendix B, Pet.App. 4a. The Ninth Circuit order denying rehearing en banc is reproduced at Appendix D, Pet.App. 10a.

JURISDICTION

The Ninth Circuit issued its memorandum decisions in both of the cases below on October 23, 2023. Pet.App. 1a, Pet.App 4a. The Ninth Circuit denied petitions for rehearing en banc each case on December 12, 2023, Pet.App. 9a, Pet.App. 10a.

This Court has jurisdiction pursuant to 28 U.S.C. § 1254.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The First Amendment to the United States Constitution is reproduced at Appendix K, Pet.App. 69a.

Oregon Revised Statute § 243.806 is reproduced at Appendix I, Pet.App. 63a.

California Government Code §§ 1157.12, 3512, 3517.5, 3520.5 are reproduced at Appendix J, Pet.App. 66a.

STATEMENT OF THE CASE

Public sector labor unions in Oregon and California take advantage of the payroll deductions provided by government employers to collect designated political assessments in addition to union dues.

A. Petitioners Cram, *et al.*

1. Factual Background

Petitioners Cram, Drake, Bailey, Campbell, Manglona, Murfin, Stephens, and Tryon (collectively, "Employees") work for the State of Oregon. They each signed union membership applications that authorized their government employers to deduct union dues and assessments from their wages on behalf of Service Employees International Union, Local 503 ("SEIU"). Pet.App. 13a. The assessment money was listed on the employee paystubs simply as "SEIU ISSUES." Pet.App. 15a. No part of this political assessment is used for SEIU's representational activities in collective bargaining or related matters. Pet.App. 14a. Rather, the campaign fund assessment is designated for SEIU's political efforts in support of, or in opposition to, public issue campaigns and state ballot initiatives. *Id*. But SEIU never informed Employees that the assessment was for a political campaign fund, or that it would be used for state ballot initiative campaigns with no part of the assessment money being allocated for representational

activities.[1] Pet.App. 16a, 18a, 22a, 24a, 27a, 29a, 30a, 32a, 34a.

Employees each subsequently decided to opt out of union membership and objected to further payment of any money to SEIU. Pet.App. 16a, 19a-20a, 22a, 25a, 27a, 29a, 32a, 34a. SEIU acknowledged Employees' resignations, and informed Employees that they were no longer union members. Nonetheless, SEIU instructed the state's payroll office to continue to deduct dues and assessments, including the $2.75 per month political campaign fund assessment.[2] Pet.App. 17a, 20a, 23a 25a, 28a, 30a, 33a. The union claimed the continued deductions were based on language in the Employees' membership applications stating that dues and assessments would continue irrespective of membership status until a designated time (usually the anniversary of the date the membership application was signed). Pet.App. 17a, 20a, 23a, 25a, 27-28a, 30a, 32a.

The State deducted the assessment until SEIU instructed it to stop at the expiration of the time specified in each membership application, up to a year after each employee resigned. Pet.App. 17a, 20-21a, 23a, 26a, 28a, 30-31a, 32-33a. Pursuant to Oregon's Public Employee Collective Bargaining Act, Or. Rev. Stat. § 243.806(7), the State of Oregon deducts union dues and "assessments" from members' wages as directed by the union. Pet.App. 64a.

---

[1] The membership applications appear substantially as in Appendix G, Pet.App. 59a. SEIU's membership application refers to deduction of "dues and other fees or assessments" but does not include or even suggest that the assessments are political in nature.

[2] Petitioner Ryan Cram was an exception: SEIU stopped deductions from the time he ended his membership. Pet.App. 35a.

2. Proceedings Below

The Petitioners filed suit pursuant to 42 U.S.C. § 1983, seeking damages and injunctive and declaratory relief for the political campaign fund deductions. In *Cram v. Service Employees International Union, Local 503,* the district court granted defendants' motions for summary judgment. Pet.App. 12a. Petitioners appealed, and the Ninth Circuit affirmed in an unpublished memorandum opinion. Pet.App. 1-3a.

The Ninth Circuit reasoned that an employee's decision to sign a union membership application deprives the employee of First Amendment protections even after the employee has ended his union membership. Pet.App. 2-3a. In so holding, the Ninth Circuit relied on its decision in *Belgau v. Inslee*, which held that employees could be held to the terms of membership applications, since they were agreements to pay, even if they did not constitute a knowing, voluntary and intelligent waiver of First Amendment rights because the state had no role in drafting the language of the membership application. *Belgau*, 975 F.3d 940, 946-49 (9th Cir. 2020), *cert. denied*, 141 S. Ct. 2795 (2021). Thus, according to the Ninth Circuit, it does not matter if an employee ended his or her union membership and objected to continued payment of a political assessment—an assessment the political purpose of which was not indicated to the employee. Pet.App. 3a. As long as the employee had, at one time, agreed to be a union member, he or she was entitled to *no* constitutional safeguards: "the 'procedural safeguards' that protect nonmembers from the risk of compelled political speech do not apply here since Plaintiffs were voluntary union members." Pet.App. 2-3a. The Ninth Circuit did not explain how the Employees could have affirmatively consented to the assessment

if the Employees had no knowledge that the money would be used exclusively for the union's political campaign funds. Indeed, the court found there was no need to do so since it determined that becoming a member ends the First Amendment analysis. Thus, the Ninth Circuit upheld the deduction of political assessments from nonconsenting employees that would have been prohibited even under *Abood*,[3] and ruled that *it does not matter* whether the Employees had knowledge or an informed choice about the assessment.[4] Pet.App. 2a.

Petitioners filed a petition for en banc review which was denied on December 12, 2023.

B. Petitioner Espinoza

1. Factual Background

Petitioner, Dr. Robert Espinoza, works as a physician at the California Chino Institution for Men, operated by the State of California Correctional Healthcare Services ("CCHCS"). Pet.App. 48a. When he began his employment in 2018, he signed a union membership application with the Union of American Physicians and Dentists, AFSCME Local 206 ("AFSCME"). *Id*. The application authorized deduction of union dues and "the amount for the [] Political Action Program" (the amount was not specified in the card, but amounted to $16/month). Appendix H, Pet.App. 61a; Pet.App. 48a. The Political Action Program's purpose (which was not stated in the membership application) is "to

---

[3] *Abood v. Detroit Bd. of Ed.*, 431 U.S. 209, 235-36 (1977).

[4] *Chicago Teachers Union v. Hudson*, 475 U.S. 292, 303-4 (1986), *Knox v. SEIU, Loc. 1000*, 567 U.S. 298, 314-15 (2012) ("nonmembers should not be required to fund a union's political and ideological projects unless they choose to do so after having 'a fair opportunity' to assess the impact of paying for nonchargeable union activities.")

support candidates and issues that further the interest" of AFSCME. The union president assured Dr. Espinoza that he could opt out of the political campaign fund assessment anytime so long as he notified AFSCME. Pet.App. 48a.

Dr. Espinoza inquired to find out how AFSCME spent contributions to the Political Action Program. Pet.App. 48-49a. AFSCME never responded to Dr. Espinoza's inquiries. Frustrated, Dr. Espinoza sent a letter opting out of the union in December 2020.[5] *Id*.

Six months later, AFSCME was still directing CCHCS to deduct dues and the political campaign fund assessment from Dr. Espinoza's wages. *Id*. With the payroll deductions continuing, Dr. Espinoza retained counsel and sent a cease and desist letter to AFSCME. *Id*. The union responded that it would continue the dues deductions until the expiration of the current Collective Bargaining Agreement in July 2021. *Id*. AFSCME did nothing regarding the separate political campaign assessment. When July rolled around, the deductions from Dr. Espinoza's wages continued. *Id.* California Government Code § 1153 ("Section 1153") grants public sector unions in California the authority to direct public employers in making payroll deductions for union dues and assessments. Pet.App. 48a. This includes assessments for political campaign funds that are spent on direct electioneering. Pet.App. 66-68a.[6]

---

[5] Dr. Espinoza called, emailed, and otherwise contacted UAPD a dozen times in attempting to find out information regarding the union's spending and how he could opt out.

[6] AFSCME's political action spending from this fund included, *inter alia,* funding Democrat candidates for California State Senate, Democrat candidates for State Assembly, Democrat candidates for State Controller, State Treasurer, and Lieutenant

2. Proceedings Below

With the deductions continuing, Dr. Espinoza filed suit, seeking a temporary restraining order (TRO) to end the union deductions in December 2021. Pet.App. 49a. The district court refused to grant the TRO. *Id*. AFSCME's deductions continued. Dr. Espinoza again sought a TRO. *Id*. The district court again denied, based on assurances that the continued deductions were a mere administrative error. *Id*. In all, AFSCME deducted union dues from Dr. Espinoza's wages for six months past the expiration of the CBA when dues should have ended, and AFSCME deducted assessments for the political campaign fund from Dr. Espinoza's wages for a full year past the time he withdrew consent. *Id*.

The district court ultimately granted defendants' motions to dismiss. Pet.App. 58a. On appeal, the Ninth Circuit issued a summary unpublished memorandum opinion affirming the district court. Pet.App. 4a. Relying again on *Belgau*, and its decision in *Wright v. Serv. Emps. Int'l Union Loc. 503*, 48 F.4th 1112 (9th Cir. 2022), *cert. denied*, 143 S. Ct. 749 (2023), the Ninth Circuit held that a public sector union does not act under "color of law" for purposes of 42 U.S.C. § 1983 when it directs a government employer to deduct union dues. Pet.App 6-7a. The court did not address the political assessments AFSCME took from Dr. Espinoza. Thus, according to the Ninth Circuit, unions may take political assessments from public employees,

---

Governor, State-wide healthcare initiatives, and opposition to the recall of Democrat Governor Gavin Newsom.

even after they resign membership, because they previously agreed to be union members.[7] *Id*.

Dr. Espinoza subsequently filed a petition for en banc review, which was denied on December 12, 2023. Pet.App. 10a.

REASONS FOR GRANTING THE PETITION

The Ninth Circuit's refusal to apply the First Amendment to the actions of the unions conflict with this Court's decisions that repeatedly affirm the rights of public employees. This Court has never held that a public employee's First Amendment rights are contingent upon having never previously joined a union. Indeed, this Court has recognized that political views and opinions change. *Knox*, 567 U.S. at 315. This makes the right to disassociate from a union especially important. The Ninth Circuit's refusal to extend First Amendment protections to employees who were previously union members also conflicts with holdings of the Third and Sixth Circuits, creating a circuit split.

The Ninth Circuit's finding that the unions did not act under "color of law" for purposes of 42 U.S.C. § 1983, also conflicts with this Court's precedents. Pet.App. 3a, 5a. This Court has consistently applied the First Amendment directly to union activities that involve deductions from employee wages. *Abood*, 431 U.S. 209; *Hudson*, 475 U.S. 292; *Knox*, 567 U.S. 298; *Harris v. Quinn,* 573 U.S. 616 (2014); *Janus v. American Federation of State, County, and Mun. Employees, Council 31*, 585 U.S. 878 (2018). The Court has not limited actions "under color of law" for purposes of 42 U.S.C. § 1983 when the union acts upon the authority it has been

[7] The Ninth Circuit did not distinguish between the union dues deducted and the political campaign assessments. Dr. Espinoza challenges both deductions.

granted by state law. *See also, Lindke v. Freed*, 601 U.S. ----,144 S. Ct. 756, 768 (2024).

Further, the Ninth Circuit's decision highlights the division among the Circuit Courts of Appeals over union activities that qualify as actions "under color of law" for purposes of 42 U.S.C. § 1983. The Seventh, Third and Sixth Circuits have indicated there would be state action through union activities in circumstances such as those presented here. *Janus v. AFSCME*, 942 F.3d 352, 361 (7th Cir. 2019) ("*Janus II*"); *Lutter v. JNESO*, 86 F.4th 111 (3rd Cir. 2023); *Littler v. Ohio Assoc. of Pub. School Employees*, 88 F.4th 1176, 1182 (6th Cir. 2023). The Eighth and Ninth Circuits have refused to apply the First Amendment to unions' continued deductions relying on union membership applications as the source of the harm. *Belgau*, 975 F.3d at 946-49; *Wright*, 48 F.4th 1112; *Hoekman v. Education Minnesota*, 41 F.4th 969 (8th Cir. 2022). This Court's intervention is needed to resolve the split among the Circuits.

Finally, in its decisions below, the Ninth Circuit implies that employees can be compelled by a union, under the authority of the State, to support political speech that would have been prohibited even under *Abood*. Pet.App. 2a. The practical result of the decisions below is that public employees now have even less protection from compelled political speech than they did prior to *Janus*. This result not only does not make sense, but it also presents an important federal question that has led to a split of authority in the Circuits warranting an exercise of this Court's oversight power.

I. THE NINTH CIRCUIT'S DECISIONS CONFLICT WITH THIS COURT AND OTHER CIRCUITS BY DENYING EMPLOYEES THE RIGHT NOT TO FUND UNION POLITICAL CAMPAIGNS.

A. The Ninth Circuit's decisions regarding previous union membership conflict with this Court's precedent.

The Ninth Circuit's decision conflicts with the requirement that union expenditures for expression of political views "be financed from charges, dues, or assessments paid by employees who do not object to advancing those ideas." *Abood*, 431 U.S. at 235-36. That this issue has been firmly decided, and that it is an issue of continuing importance, is amply illustrated by the long line of cases over the last fifty years that have affirmed the principle: an employee who objects to advancing a union's political speech cannot be forced to contribute financially to that speech. *Abood*, 431 U.S. at 235-36; *Hudson*, 475 U.S. 292; *Knox*, 567 U.S. 298; *Harris*, 573 U.S. 616; *Janus*, 585 U.S. 878. For the millions of public employees within the Ninth Circuit who have, at one time or another, been members of a labor union, the ability to assert First Amendment protections upon resignation of union membership remains of utmost importance.

This Court's decision in *Janus* changed the options available to public employees by making it possible to pay nothing to public sector labor unions. *Janus*, 585 U.S. 878. Previous to *Janus*, objecting public employees had to pay agency fees to their union. This often resulted in payments of the same or nearly the same amount as an employee would pay for membership. However, a union could not charge an objecting employee for union political spending, even when

unions could command agency fees. *Abood,* 431 U.S. 209; *Hudson*, 475 U.S. 292; *Knox*, 567 U.S. 298. *Janus* frees employees from union agency fee deductions or "any other payment" to the union absent affirmative consent. *Janus*, 585 U.S. at 930. This change opened the door for many employees to end union membership and therefore end all payments to the union. *Id.*

In none of these cases has this Court intimated that an employee's one-time decision to become a union member nullifies an Employee's First Amendment rights should the employee end that union membership. This is especially true when the original membership agreement did not notify the employee that part of the payments assessed would be for political campaign funds. Indeed, the Court has recognized that political opinions change. In *Knox,* this Court acknowledged that the circumstances that influence an individual's beliefs or opinions may change and cause the individual to rethink a previous waiver. 567 U.S. at 315 (noting that the choice to support a union's political activities may change "as a result of unexpected developments" in the union's political advocacy). The facts in *Knox*, resemble those presented here. SEIU charged a special assessment to objecting nonmembers for the "purpose of financing the union's political and ideological activities." 567 U.S. at 302. This Court applied the First Amendment to this union policy, requiring the union to supply adequate notice and the right to object before making the political assessment. *Id*. at 314-15. Of course, in *Janus*, this Court went even further, holding that a union cannot charge non-members even "representational" costs originally upheld in *Abood*. *Janus*, 585 U.S. at 929-30. In *Janus*, this Court also specified that an employee must waive his or her rights before the deductions occur. *Id*. A waiver of constitutional rights must be one of a "known right or

privilege." *Curtis Publishing Co. v. Butts,* 388 U.S. 130, 143 (1967), citing *Johnson v. Zerbst*, 304 U.S. 458, 464 (1938). Because SEIU never informed Employees that the political campaign assessment was, in fact, for political campaigns, any so-called "agreement" to pay was illusory.

The Ninth Circuit reasoned that none of this Court's precedents apply because the Petitioners had, previous to their objection, joined the union as members. This reasoning leads to the conclusion that once an employee agrees to be a union member, all the First Amendment protections become effectively waived. In other words, the employee is not entitled, even when joining the union in the first place, to constitutional protections. Pet.App. 2-3a. This result is clearly at odds with this Court's requirement that an employee waive his or her rights before "an agency fee []or any other payment to the union may be deducted..." *Janus*, 585 U.S. at 930.

Because the Ninth Circuit has decided an important question of federal law in a way that conflicts with relevant decisions of this Court, this petition for review should be granted.

B. The Ninth Circuit's decisions regarding previous union membership conflict with the decisions of the Third and Sixth Circuits.

The Ninth Circuit refused to apply the protections afforded by the First Amendment against an employee who had previously been a union member, even if the employee opted out of membership. Pet.App. 2-3a. In so holding, the Ninth Circuit departs from the decision of the Third and Sixth Circuits, each of which apply the First Amendment to protect the rights of public

employees even if they may have been previous union members.

In *Lutter v. JNESO*, 86 F.4th 111 (3rd Cir. 2023), a public employee who had previously agreed to be a union member attempted to opt out of the union and end dues deductions. *Id*. at 120. However, a New Jersey statute forced her to continue to pay until a 10-day window tied to the anniversary of when she became a member. *Id.* She was forced to pay dues for an additional ten months. *Id.* at 127. The Third Circuit held that Lutter had adequately alleged a compelled speech claim. *Id.* at 127. Although Lutter had previously agreed to union deductions, this agreement did not bar her from challenging the continued deduction of dues once she ended her membership. It certainly did not mean that the court would not apply the First Amendment *at all* (which was the Ninth Circuit's conclusion here).

In *Littler v. Ohio Assoc. of Pub. School Employees*, the plaintiff challenged a provision in the membership application that required her to remain a union member and pay dues. 88 F.4th 1176. While the Sixth Circuit affirmed the district court granting summary judgment to the union, it reasoned that "[h]ad Littler challenged the constitutionality of a statute pursuant to which the state withheld dues," there may have been a claim (there would be state action such as would support a claim) *Id.* at 1182 (citing *Janus II*, 942 F.3d at 361).[8] Thus, where, as here, Petitioners challenge the statutes pursuant to which the political assessments were withheld, the result would have been different had the claim been brought in the Sixth Circuit rather than in the Ninth Circuit.

---

[8] See further discussion of state action at Section II.B., *infra*.

While the Third and Sixth Circuits have applied First Amendment principles to the determination of an employee's ability to end union deductions once union membership ends, the Ninth Circuit refused to apply the First Amendment against continued deductions for union political campaign funds. Further, the facts at the Ninth Circuit indicated that the employees did not know the money was for political funds at the time they became members, and that the union refused to stop the deductions even when the employees specifically objected.

This Court's intervention is needed because the Circuits are split on the important question of whether a former union member can bring a challenge to a continued union payment that is deducted pursuant to state law.

II. THE NINTH CIRCUIT'S REFUSAL TO RECOGNIZE STATE ACTION CONFLICTS WITH THE HOLDINGS OF THIS COURT AND THREE OTHER CIRCUITS.

A. The Ninth Circuit's refusal to treat a union as a state actor conflicts with this Court's precedent.

This Court has consistently applied the First Amendment to *union* actions where the union accepts a state-designated role as exclusive representative. *See Abood,* 431 U.S. at 225-26; 235-36 (the First Amendment protects objecting employees from being forced to pay for union political spending); *Hudson*, 475 U.S. at 303 (First Amendment requires *union* procedures to be carefully tailored to protect the employees' First Amendment rights.) *Knox*, 567 U.S. at 310, 314-15 (First Amendment applies to the *union*'s political assessment policy); *Harris*, 573 U.S. 616

and *Janus*, 585 U.S. at 930 (union cannot deduct "representational" costs from objecting employees). In each of these 42 U.S.C. § 1983 actions, this Court could not have reached a First Amendment analysis had the union not been acting "under color of law" in directing the state to deduct employee wages. In both *Hudson* and *Knox*, this Court looked at internal union procedures when making its First Amendment analysis—the states had little involvement in those cases other than taking the money on behalf of the unions. This Court's approach makes sense in light of this Court's acknowledgment that "having [union] dues and fees deducted directly from employees' wages" is a "special privilege[]" granted to unions by state law. *Janus*, 585 U.S. at 899.

Here, state law grants the unions the privilege of designating from which employees to deduct union dues and assessments—including political assessments, and their amount. Ore. Rev. Stat. § 243.806; Cal. Gov't Code § 1153. The Ninth Circuit refused to consider that, were it not for state law, the state employers would not have deducted the political assessments and the unions would not have received that money. Because the Ninth Circuit's decision conflicts with nearly five decades of this Court's precedent applying the First Amendment to union actions authorized by and taken pursuant to state statute, review is warranted.

B. The Ninth Circuit's decision highlights the division among the Circuit Courts over union activities that qualify as actions "under color of law."

The Ninth Circuit's decisions below highlight a circuit split on application of the "under color of law" requirement as applied to union dues deductions. The Eighth and Ninth Circuits have determined that there

is no state action when a union utilizes state authority to deduct union dues and assessments. The Seventh, Sixth, and Third Circuits have indicated that there are, at least times, when the union will qualify as a state actor.

The Seventh Circuit explicitly stated the rationale that underlies this Court's decision in *Janus* when, on remand, it applied the First Amendment to deduction of fair-share fees. *Janus II*, 942 F.3d 361. It held that the union's acts were "attributable to the state." (quoting *Tulsa Pro. Collection Servs., Inc. v. Pope*, 485 U.S. 478, 486 (1988)). AFSCME was a "joint participant with the state" when the state employer deducted the fees and AFSCME received them to spend on political speech. *Janus II*, 942 F.3d at 361

The Third Circuit recognized that the use of state law to compel union dues payments from public employees may create a claim for relief against the union. *Lutter*, 86 F.4th 111. The union relied on New Jersey law to continue to deduct union dues after the employee resigned from the union. *Id*. 127-28 (citing *Lugar v. Edmondson Oil Co.*, 457 U.S. 922, 933 (1982).

Similarly, the Sixth Circuit explained that while the challenge to a union membership card failed for lack of state action, had the plaintiff "challenged the constitutionality of a statute pursuant to which the state withheld dues, the 'specific conduct' challenged would be the state's withholdings, which would be state action taken pursuant to the challenged law." *Littler*, 88 F.4th at 1182. Thus, according to the Sixth Circuit, a challenge to the union's exercise of statutory authority, such as was brought by Petitioners below, would not have failed for lack of state action.

The Eighth and Ninth Circuits have, however, departed from the Sixth and Third Circuits. Here, the Ninth Circuit determined that no state action was present in *Cram* because the Petitioners previously signed membership applications. The court held that SEIU's membership applications were the source of the harm – whether the employee understood or gave adequate consent to the terms on the card did not matter, nor did it matter whether the union gave notice that the money would be used for explicit political campaign funds. Pet.App. 2-3a. The court refused to acknowledge the role of Oregon's statute in enabling SEIU to continue the deductions over the Petitioners' objections.

In Dr. Espinoza's case, AFSCME did not instruct the state to end the dues deduction when Dr. Espinoza withdrew his consent. The Ninth Circuit considered this failure to be a "private misuse of state statute" and "contrary to the relevant policy articulated by the State." Thus, the Ninth Circuit concluded AFSCME's conduct could not be "attributed to the state." Pet.App. 5-7a.[9]

Similarly, in *Hoekman*, 41 F.4th 969, the Eighth Circuit ruled that claims brought by two of the plaintiffs lacked a showing of state action since the plaintiffs previously agreed to be union members. Thus, their injury, being forced to pay dues after they resigned union membership, had its source in the private membership agreement, according to the Eighth Circuit.

---

[9] In holding that a misuse of state law cannot be state action, the Ninth Circuit's rulings conflict with this Court's recent decision in *Lindke*, 144 S. Ct. ---, "To be clear, the "[m]isuse of power, possessed by virtue of state law," constitutes state action." citing *United States v. Classic,* 313 U.S. 299, 326 (1941).

This split in the Courts of Appeal centers on an important issue that is likely to recur. It will be implicated whenever a state partners with a private entity in an endeavor that deprives individuals of their protected rights. When a private party is granted a special privilege pursuant to state statute, it may properly be treated as a state actor to whom constitutional provisions apply. This Court's intervention is necessary to clarify this rule and bring the Courts of Appeals into harmony on this issue.

III. THE NINTH CIRCUIT'S DECISIONS PRESENT AN EXCEPTIONALLY IMPORTANT ISSUE—COMPELLED FUNDING OF PARTISAN POLITICAL SPEECH.

The questions before the Court in these cases have been firmly settled by this Court's precedents, going as far back as *Abood*:

> We do not hold that a union cannot constitutionally spend funds for the expression of political views, on behalf of political candidates, or toward the advancement of other ideological causes not germane to its duties as collective-bargaining representative. Rather, the Constitution requires only that such expenditures be financed from charges, dues, or assessments paid by employees *who do not object* to advancing those ideas...

Abood, 431 U.S. at 235-236 (internal citations omitted, emphasis added); and see *Knox*, 567 U.S. at 322, *Janus*, 585 U.S. at 884-886. But the Ninth Circuit's decisions force the issue of whether *direct political campaign funds* may be taken from public employees who object, thereby placing *Abood's* longstanding principle in jeopardy.

While the amounts deducted, $2.75 per month and $16 per month, respectively, may appear negligible, they represent an enormous windfall for union political campaign funds—money the union can spend in addition to its political spending out of regular union dues.[10] For SEIU Local 503 alone, this amounts to nearly a million and a half dollars annually. This money is spent on political campaigns alone; none of it goes to any union representational activities.[11]

As the First Amendment's author, James Madison, put it: "the same authority which can force a citizen to contribute three pence … for the support of any one establishment, may force him to conform to any other establishment..." The Writings of James Madison 186 (G. Hunt ed. 1901). *Abood*, 431 U.S., at 234–235, n. 31. The Ninth Circuit's decisions below illustrate the poignancy of Madison's warning. Under the court's rationale, it would not matter whether the employee was paying $2/month for the political campaign or $200/month for the political campaign—the state may force the objecting employee to pay, and as long as the employee at one time agreed to be a union member, no First Amendment protections attach.

Worse, in *Cram*, any so-called consent to the campaign fund assessments contained in the membership applications was made without information as to the political nature of the assessment. But the Ninth Circuit refused to consider this because the employees, at the same time they became tied to the campaign

---

[10] According to its most recent LM2 report (September 2023), SEIU Local 503 has 44,281 members. At $2.75 per month, SEIU Local 503 receives $121,772.75 per month, or $1,461,273 annually.

[11] *See* footnote 6, *supra*, for a list of the type of state political campaigns AFSCME's fund supports.

assessments, also agreed to be union members. The court refused to consider that Petitioners also successfully ended their union memberships.

The record in *Espinoza* indicates that the union and state continued deducting campaign funds from Dr. Espinoza's wages even after he specifically objected—which he was entitled to do under the terms of the membership application. Yet, according to the Ninth Circuit, it was this very failure of the union to follow the agreed terms that defeated Dr. Espinoza's claim since it was conduct contrary to the state's policy. Pet. App. 5-7a. *See contra*, *Lindke v. Freed*, 601 U.S. ----,144 S. Ct. 756, 768 (2024).

As these cases illustrate, public employees are, often without even knowing it, paying directly into campaign funds. In the Ninth Circuit, states and unions are funding partisan political speech by means of payroll deductions from objecting employees. This loss of First Amendment freedoms is irreparable harm. *Elrod v. Burns*, 427 U.S. 347, 373 (1976). This compelled political speech would have not been permitted even under *Abood*. The practical impact of the Ninth Circuit's decisions below is that public employees now have less-robust protection from compelled political speech than they enjoyed prior to *Janus*. The important federal question and split of authority raised by these decisions warrant this Court's review.

CONCLUSION

The Petition for a Writ of Certiorari to the Ninth Circuit should be granted.

Respectfully submitted,

REBEKAH SCHULTHEISS
Counsel of Record
TIMOTHY R. SNOWBALL
JAMES G. ABERNATHY
FREEDOM FOUNDATION
P.O. Box 552
Olympia, WA 98507
(360) 956-3482
rschultheiss@freedomfoundation.com

Counsel for Petitioners

April 10, 2024

APPENDIX

APPENDIX TABLE OF CONTENTS

Page

Appendix A: Memorandum Opinion, U.S. Court of Appeals for the Ninth Circuit, *Cram, et al v. Service Employees International Union, Local 503*, No. 22-35321 (October 23, 2023)..... 1a

Appendix B: Memorandum Opinion, U.S. Court of Appeals for the Ninth Circuit, *Espinoza v. Union of American Physicians and Dentists, et al*., No. 22-55331 (October 23, 2023)..... 4a

Appendix C: Order and Denial of Petition for Rehearing En banc, U.S. Court of Appeals for the Ninth Circuit, *Cram, et al v. Service Employees International Union, Local 503,* No. 22-35321 (December 12, 2023)..... 9a

Appendix D: Order and Denial of Petition for Rehearing En banc, U.S. Court of Appeals for the Ninth Circuit, *Espinoza v. Union of American Physicians and Dentists, et al*, No. 22-55331 (December 12, 2023) 10a

Appendix E: Opinion and Order, U.S. District Court for the Central District of California, *Cram, et al v. Service Employees International Union, Local 503,* No. 6:20-00544 (March 11, 2022)..... 11a

Appendix F: Order, U.S. District Court for the Central District of California, *Espinoza v. Union of American Physicians and Dentists, et al.,* No. 21-01898 (March 16, 2022)..... 47a

Appendix G: SEIU Membership Card (Ryan L. Cram, April 3, 2018)..... 59a

APPENDIX TABLE OF CONTENTS

	Page
Appendix H: AFSCME Membership Card (Robert Espinoza, April 23, 2018)	61a
Appendix I: Or. Rev. Stat. § 243.806	63a
Appendix J: Cal. Gov't Code § 1157.12	66a
Cal. Gov't Code § 3512	67a
Cal. Gov't Code § 3517.5	68a
Cal. Gov't Code § 3520.5	68a
Appendix K: U.S. Const. amend. I	69a

APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 22-35321

D.C. No. 6:20-cv-00544-MK
U.S. District Court for Oregon, Eugene

RYAN CRAM; *et al.*,

Plaintiffs-Appellants,

and

BARBARA GRABBEL; et al.,

Plaintiffs,

v.

SERVICE EMPLOYEES INTERNATIONAL UNION LOCAL 503, OREGON PUBLIC EMPLOYEES UNION, a labor organization and KATY COBA, in her official capacity as Director of the Oregon Department of Administrative Services,

Defendants-Appellees.

Appeal from the U.S. District Court
for the District of Oregon
Mustafa Kasubhai, Magistrate Judge, Presiding

Submitted October 19, 2023
San Francisco, California

MEMORANDUM*

Before: W. FLETCHER, NGUYEN, and R. NELSON, Circuit Judges.

Plaintiffs are Oregon State employees who voluntarily joined the Service Employees International Union Local 503 ("Union"), the exclusive bargaining representative for their unit. Plaintiffs signed membership agreements that authorized the deduction of "all Union dues and other fees or assessments." Plaintiffs later resigned their union membership, and the Union notified them that their deductions would continue until the window period for revoking authorization.[1] Plaintiffs raise First Amendment claims against the Union and Katy Coba, Director of the Oregon Department of Administrative Services, under Section 1983. The district court granted summary judgment for defendants. We have jurisdiction under 28 U.S.C. § 1291 and affirm.

1. Plaintiffs assert that they were not given an informed choice about whether to pay the $2.75 per month "Issues Fund" fee, which amounts to a political charge, and that the deduction procedure was impermissibly controlled by the Union. *See Knox v. Serv. Emps. Int'l Union, Loc. 1000*, 567 U.S. 298, 316 (2012). Plaintiffs argue that they were not members of the Union when they originally executed their membership agreements and that, after they resigned their union membership, they became nonmembers. But the "procedural safeguards" that protect nonmembers from the risk of compelled political speech do not apply

---

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

[1] Plaintiff Ryan Cram is the only exception. His payroll deductions terminated shortly after his resignation of membership.

here since Plaintiffs were voluntary union members. *See Knox*, 567 U.S. at 316; *Belgau v. Inslee*, 975 F.3d 940, 951–52 (9th Cir. 2020) (rejecting the argument that the language in *Janus v. Am. Fed'n of State, Cnty., & Mun. Emps., Council 31*, 138 S. Ct. 2448, 2486 (2018) about "waiver" applies to union members at the time they enter into their membership agreement).

2. Plaintiffs similarly assert that under *Janus*, defendants unconstitutionally deduced political charges from their wages as nonmembers because there is not "clear and compelling evidence" that they waived their First Amendment rights. But this Court has held that *Janus* does not reach those "who affirmatively signed up to be union members." *Belgau*, 965 F.3d at 944.

3. The Union also did not engage in state action. *See Lugar v. Edmondson Oil Co.*, 457 U.S. 922 (1982). Any harm from the union deductions is caused by the membership agreements which Plaintiffs freely signed. On similar facts, we declined to find state action under *Lugar* in *Belgau*, 975 F.3d at 946–47.

Nor is the Union a state actor under the "joint action" or "governmental nexus" tests that guide our analysis under Lugar's second prong. *See Tsao v. Desert Palace, Inc.*, 698 F.3d 1128, 1140 (9th Cir. 2012). The state's transmission of an assessment to a union after an employee authorizes such deductions does not give rise to a section 1983 claim against the union under the "joint action" test. *See Belgau*, 975 F.3d at 947–49. Similarly, "ministerial processing of payroll deductions pursuant to [e]mployees' authorizations" does not create a nexus between the state and the Union. *Id.* at 947–48 & n.2.

AFFIRMED.

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No.22-55331

D.C. No. 8:21-cv-01898-DOC-KES

ROBERT ESPINOZA,

Plaintiff-Appellant,

v.

UNION OF AMERICAN PHYSICIANS AND DENTISTS, AFSCME LOCAL 206; ET AL.,

Defendants-Appellees.

Appeal from the United States District Court
for the Central District of California
David O. Carter, District Judge, Presiding

Submitted October 19, 2023[**]
San Francisco, California

MEMORANDUM[*]

Before: W. FLETCHER, NGUYEN, and R. NELSON, Circuit Judges.000

[**] The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

[*] This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

Robert Espinoza appeals from the district court's dismissal of his 42 U.S.C. § 1983 action alleging that the unauthorized deduction of union dues from his pay violated his First and Fourteenth Amendment rights under *Janus v. American Federation of State, County, & Municipal Employees, Council 31*, 138 S. Ct. 2448 (2018). We have jurisdiction pursuant to 28 U.S.C. § 1291 and review de novo. *Wright v. Serv. Emp. Int'l Union Loc. 503*, 48 F.4th 1112, 1118 n.3 (9th Cir. 2022), *cert. denied*, 143 S. Ct. 749 (2023). We may affirm on any ground supported by the record. *Ochoa v. Pub. Consulting Grp., Inc.*, 48 F.4th 1102, 1106 (9th Cir. 2022), *cert. denied*, 143 S. Ct. 783 (2023). We affirm.

1. The district court properly dismissed the § 1983 claims Espinoza alleged against his former union, the Union of American Physicians and Dentists, AFSCME Local 206 ("UAPD"). UAPD did not act under color of state law when it allegedly failed to process Espinoza's request to cancel the deduction of dues from his wages.

Actions by a private actor may be subject to § 1983 liability if the plaintiff can show that the conduct was "fairly attributable to the State." *Lugar v. Edmondson Oil Co.*, 457 U.S. 922, 937 (1982). To establish fair attribution, two prongs must be met: (1) "the deprivation must be caused by the exercise of some right or privilege created by the State or by a rule of conduct imposed by it or by a person for whom it is responsible," and (2) "the party charged with the deprivation must be a person who may fairly be said to be a state actor." *Id*. Neither prong is met here.

First, Espinoza argues that UAPD "uses the authority of the state" through California Government Code § 1153. That provision requires employees who

wish to cancel wage deductions for union dues to direct requests to the union, which is responsible for processing such requests. Cal. Gov't Code § 1153(h) ("Employee requests to cancel or change deductions . . . shall be directed to the employee organization rather than to the [State]. The employee organization shall be responsible for processing these requests."). Espinoza concedes that he originally authorized UAPD to request such deductions, and his claims are premised on the allegation that UAPD continued to request such deductions after he validly withdrew authorization. This amounts to an allegation of "private misuse of a state statute," which "does not describe conduct that can be attributed to the State." *Lugar*, 457 U.S. at 941. By alleging that UAPD continued to request that dues be deducted from his pay even after he had revoked his dues deduction authorization, Espinoza necessarily alleged that UAPD "'act[ed] contrary to the relevant policy articulated by the State.'" *Collins v. Womancare*, 878 F.2d 1145, 1153 (9th Cir. 1989) (quoting *Lugar*, 457 U.S. at 940).

Second, Espinoza argues that UAPD is a "state actor" under the "joint action" or "governmental nexus" tests. *See Tsao v. Desert Palace, Inc.*, 698 F.3d 1128, 1140 (9th Cir. 2012). In *Belgau v. Inslee*, we held that the mere fact that a state transmits dues payments to a union does not give rise to a section 1983 claim against the union under the "joint action" test. 975 F.3d 940, 947–49 (9th Cir. 2020), *cert. denied*, 141 S. Ct. 2795 (2021). Nor would a state employer's "ministerial processing of payroll deductions pursuant to [e]mployees' authorizations" create sufficient nexus between a state and a union to subject the union to section 1983 liability. *Id.* at 947–48 & n.2; *see also Wright*, 48 F.4th at 1122 & n.6. Espinoza argues such a nexus exists because a memorandum of

understanding ("MOU") between UAPD and his state agency employer California Correctional Healthcare Services ("CCHCS") created a "contractual partnership" that enabled the continued unlawful deductions. But this MOU merely "provid[es] a 'machinery' for implementing the private agreement by performing an administrative task," which is insufficient to establish state action. *Belgau*, 975 F.3d at 948 (quoting *Am. Mfrs. Mut. Ins. Co. v. Sullivan*, 526 U.S. 40, 54 (1999)).

2. The district court properly dismissed Espinoza's nominal damages claim against CCHCS, the State Controller, and Attorney General because it is barred by Eleventh Amendment sovereign immunity. We have recognized "that, 'absent waiver by the State or valid congressional override,' state sovereign immunity protects state officer defendants sued in federal court in their official capacities from liability in damages, including nominal damages." *Platt v. Moore*, 15 F.4th 895, 910 (9th Cir. 2021) (quoting *Kentucky v. Graham*, 473 U.S. 159, 169 (1985)). Espinoza has not shown waiver by the State or valid congressional override.

3. The district court properly dismissed Espinoza's claims for declaratory and injunctive relief as moot. Where circumstances change after commencement of a suit such that the wrongful behavior is no longer likely to recur against the plaintiff (for example, because the plaintiff left his job with the defendant), "his claims for prospective relief [become] moot because he [can] no longer benefit from such relief." *Slayman v. FedEx Ground Package Sys., Inc.*, 765 F.3d 1033, 1048 (9th Cir. 2014). The dues deductions have ceased, and Espinoza admits that he is no longer a member of UAPD and that he is unlikely to

rejoin. The voluntary cessation exception therefore does not apply because the "allegedly wrongful behavior could not reasonably be expected to recur." *Friends of the Earth, Inc. v. Laidlaw Env't Servs. (TOC), Inc.*, 528 U.S. 167, 190 (2000).

AFFIRMED.

APPENDIX C

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 22-35321
D.C. No. 6:20-cv-00544-MK
District of Oregon, Eugene

RYAN CRAM; et al.,

Plaintiffs-Appellants,

and

BARBARA GRABELL; et al.,

Plaintiffs,

v.

SERVICE EMPLOYEES INTERNATIONAL UNION LOCAL 503, OREGON PUBLIC EMPLOYEES UNION, a labor organization; KATY COBA, in her official capacity as Director of the Oregon Department of Administrative Services,

Defendants-Appellees.

ORDER

Before: W. FLETCHER, NGUYEN, and R. NELSON, Circuit Judges.

The panel has voted to deny the petition for rehearing en banc (Dkt. No. 51) and Judge W. Fletcher has so recommended.

The full court has been advised of the petition for rehearing en banc and no judge has requested a vote on whether to rehear the matter en banc. Fed. R. App. P. 35.

The petition for rehearing en banc is denied.

APPENDIX D

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 22-55331

D.C. No. 8:21-cv-01898-DOC-KES
Central District of California, Santa Ana

ROBERT ESPINOZA,

Plaintiff-Appellant,

v.

UNION OF AMERICAN PHYSICIANS AND DENTISTS, AFSCME LOCAL 206; et al.,

Defendants-Appellees.

ORDER

Before: W. FLETCHER, NGUYEN, and R. NELSON, Circuit Judges.

The panel has voted to deny the petition for rehearing en banc (Dkt. No. 58) and Judge W. Fletcher has so recommended.

The full court has been advised of the petition for rehearing en banc and no judge has requested a vote on whether to rehear the matter en banc. Fed. R. App. P. 35.

The petition for rehearing en banc is denied.

APPENDIX E

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
EUGENE DIVISION

Case No. 6:20-cv-00544-MK

RYAN CRAM; ERICA DRAKE; LAURA BAILEY; RICHARD CAMPBELL; KATHERINE MANGLONA; DEANNE MURFIN; CORI STEPHENS; and KATHLEEN TRYON, as individuals and representatives of the respective requested classes,

Plaintiffs,

v.

SERVICE EMPLOYEES INTERNATIONAL UNION LOCAL 503, OREGON PUBLIC EMPLOYEES UNION, a labor organization; and KATY COBA, in her official capacity as Director of the Oregon Department of Administrative Services,

Defendants.

OPINION AND ORDER

KASUBHAI, United States Magistrate Judge:

Plaintiffs filed this civil rights action against Service Employees International Union, Local 503 ("SEIU"), and Katy Coba in her official capacity as Director of the Oregon Department of Administrative Services ("Director Coba"; collectively "Defendants"). *See* First Am. Compl., ECF No. 42 ("FAC"). Plaintiffs allege Defendants, without their consent, collected certain union assessments in violation of the First Amendment of the U.S. Constitution in the wake of the Supreme Court's decision in *Janus v. AFSCME*, 138

S.Ct. 2448 (2018). *See* Compl., ECF No. 1 (citing 42 U.S.C. § 1983). "*Janus* was the culmination of a series of cases that expressed skepticism about the core holding of *Abood v. Detroit Board of Education*—namely, that public employees could be required to pay agency fees as a condition of their employment without violating the First Amendment." *Cook v. Brown*, 364 F. Supp. 3d 1184, 1186 (D. Or. 2019) (detailing the Supreme Court's path to ultimately overruling *Abood*).

The Court recommended dismissing Defendants partial motions to dismiss the original Complaint as to the prospective claims for relief (ECF Nos. 20, 22) with leave to amend, which was subsequently adopted by United States District Judge Michael McShane. *See* ECF Nos. 35, 37. After Plaintiffs filed an amended complaint, the parties agreed to a briefing schedule for their respective cross-motions for summary judgment, which the Court heard oral argument on in December 2021. ECF Nos. 39, 44, 50, 55. For the reasons below, SEIU's motion for summary judgment and Director Coba's motion for summary judgment are GRANTED; Plaintiffs' motion for summary judgment is DENIED.[1]

BACKGROUND

The following facts are taken directly from the jointly submitted Statement of Stipulated Undisputed Facts for cross-motions for summary judgment. ECF No. 43.

1. SEIU 503 is a public-sector labor union that represents certain bargaining units of Oregon public employees. *See* FAC ¶¶ 1, 11, ECF No. 42.

---

[1] All parties have consented to allow a Magistrate Judge to enter final orders and judgment in this case in accordance with Federal Rule of Civil Procedure 73 and 28 U.S.C. § 636(c). *See* ECF No. 49.

2. At all times relevant to this lawsuit, membership in SEIU 503 was not a condition of public employment in Oregon.

3. By filling out and executing a membership application and joining SEIU 503 as a member, public employees become "active members" of SEIU 503 and obtain certain membership rights in SEIU 503 not afforded to non-members. Such membership rights of "active members" include the right to vote on the employment contract applicable to the bargaining unit, to nominate candidates for union office, to vote in union elections and referendums, to hold office at all levels of the union, to vote on amendments to the Constitution and Bylaws for SEIU 503 and for their sub-local union, to vote on changes to SEIU 503's organizational structure, to file charges under SEIU 503's internal disciplinary procedure, to attend membership meetings, and to participate in the deliberations and voting upon the business of such meetings. "Active members" also are eligible to enjoy various "members-only" benefits that are not available to non-members, including access to life, disability, legal, and other insurance offers, scholarship opportunities, mortgage programs, and discounts on travel, lodging, theme parks, and restaurants where offered. During their active membership in SEIU 503, many of the Plaintiffs took advantage of these membership rights and benefits, including by obtaining legal insurance; by voting on contract ratification, on constitution and bylaws amendments, and on changes to SEIU 503's organizational structure; and by filing internal union disciplinary charges.

4. In 1998, SEIU 503's General Council, the highest governing body of the union, which includes nearly 300 democratically-elected member representa-

tives, passed a resolution to empower the union's Board of Directors, in consultation with local and district leadership, to put to a vote of union members whether to implement an ongoing monthly assessment dedicated to promoting and defending the interests of the membership through public issue campaigns and ballot measures. *See* Exhibit 1. On November 25, 1999, a letter was sent by SEIU 503's Board of Directors to SEIU 503's members, announcing a referendum vote on whether to implement a $2.75 per month assessment for that purpose. *See id.* The members voted 60 percent to 40 percent to approve implementation of the $2.75 per month assessment on, inter alia, all members of SEIU 503. *See* Exhibit 2. This assessment funds the SEIU 503 "Issues Fund."

5. At that time, signatory employers began deducting $2.75 per month from SEIU 503 members' wages in addition to dues and any other assessments.

6. At all times relevant to this lawsuit, the Oregon Department of Administrative Services processed payroll deductions of union dues from SEIU 503 members who were state employees and had signed membership applications with dues authorizations, pursuant to Article 10, Sections 15(a) and (b) of the collective bargaining agreement ("CBA") between SEIU 503 and the Oregon Department of Administrative Services.

7. A true and correct copy of Article 10, Sections 15(a) and (b) is attached to the joint stipulation as Exhibit 3.

8. SEIU 503 members pay membership dues by automatic payroll deduction. Those payments include two components that are broken out as separate line items on SEIU 503 members' paystubs. One of those components, basic dues, appears as a line item deduc-

tion on SEIU 503 members' paystubs entitled "SEIU." Another component, the $2.75 dues assessment for the SEIU 503 "Issues Fund," appears on SEIU 503 members' paystubs as a separate line item deduction entitled "SEIU ISSUES." A true and correct copy of an example of such a paystub is attached to the joint stipulation as Exhibit 4.

9. SEIU 503 membership cards include a section in which a union member may sign up for a voluntary political contribution titled "Voluntary SEIU Local 503 Citizen Action for Political Education (CAPE)." The amount of this political contribution can be determined by the member, and it can be canceled separately from union membership. This contribution is separate from, and in addition to, the ISSUES assessment. The difference between CAPE and the Issues Fund is that CAPE is a political action committee that supports candidates in elections, whereas the Issues Fund is not a political action committee and does not support candidates, but rather supports public issue campaigns and ballot measures.

PLAINTIFF LAURA BAILEY

10. Plaintiff Laura Bailey is employed by the Oregon Youth Authority in a bargaining unit represented by SEIU 503. FAC ¶26.

11. Bailey signed an SEIU 503 membership application on September 11, 2017. The membership application contains the following payroll deduction authorization:

> I hereby designate SEIU Local 503, OPEU (or any successor entity) as my desired collective bargaining agent. I also hereby authorize my employer to deduct from my wages all Union dues and other fees or assessments as shall

> be certified by SEIU Local 503, OPEU (or any successor Union entity) and to remit those amounts to such Union. This authorization/ delegation is unconditional, made in consideration for the cost of representation and other actions in my behalf by the Union and is made irrespective of my membership in the Union. This authorization is irrevocable for a period of one year from the date of execution and from year to year thereafter unless not less than thirty (30) and not more than forty-five (45) days prior to the end of any annual period or the termination of the contract between my employer and the Union, whichever occurs first, I notify the Union and my employer in writing, with my valid signature, of my desire to revoke this authorization. Union dues may be tax deductible as a work related expense subject to Federal and/or State tax rules.

A true and correct copy of that document is attached to the joint stipulation as Exhibit 5. No additional information was included to explain what "assessments" would be used for or to explain that an assessment would be used for political purposes. Neither SEIU 503 nor Bailey has any record of Bailey requesting such information or inquiring as to the purposes for which the assessments would be used.

12. After signing the membership application, Bailey was treated as an SEIU 503 member and received the rights and benefits of membership.

13. Bailey mailed SEIU 503 a form dated November 1, 2018 resigning her union membership and objecting to the payment of any Union dues or fees. SEIU 503 received that letter on November 6, 2018. A true and

correct copy of that document is attached to the joint stipulation as Exhibit 6.

14. SEIU 503 mailed Bailey a letter dated November 15, 2018 responding to her November 1, 2018 letter confirming that her resignation was deemed effective upon receipt of her letter. Local 503's letter also stated:

> We also wish to remind you that, under the terms of the dues checkoff authorization form you signed, dues deductions cannot be terminated except in the periods set forth in the authorization. (We have included a copy of your authorization for your reference). Accordingly, we shall hold the cancellation request on file until the first date cancellation would be appropriate. In your case, that date is July 28. At that point, the Union will take appropriate steps to have your dues checkoff cancelled.

A true and correct copy of that document is attached to the joint stipulation as Exhibit 7.

15. Membership dues, including the $2.75 "SEIU ISSUES" assessment, continued to be deducted for Bailey until July 1, 2019. The final deduction was made from the paycheck for the pay period ending June 30, 2019.

16. A true and correct copy of a print-out from SEIU 503's records and files, showing Bailey's dues history from her resignation of membership on November 6, 2018 through her last deduction for the pay period ending June 30, 2019, is attached to the joint stipulation as Exhibit 8.

PLAINTIFF RICHARD CAMPBELL

17. Plaintiff Richard Campbell is employed by the Oregon Department of Administrative Services in a bargaining unit represented by SEIU 503. FAC ¶30.

18. Campbell signed an SEIU 503 membership application on May 23, 2016. A true and correct copy of that document is attached to the joint stipulation as Exhibit 9. No additional information was included to explain what "assessments" would be used for or to explain that an assessment would be used for political purposes. Campbell did not request any such information or inquire as to the purposes for which the assessments would be used.

19. Campbell signed another SEIU 503 membership application on September 10, 2017. A true and correct copy of that document is attached to the joint stipulation as Exhibit 10.

20. SEIU 503 records indicate Campbell signed an electronic SEIU 503 membership application on October 18, 2017. A true and correct copy of that document is attached to the joint stipulation as Exhibit 11.

21. SEIU 503 records indicate Campbell signed another electronic SEIU 503 membership application on November 9, 2017. A true and correct copy of that document is attached to the joint stipulation as Exhibit 12.

22. Campbell's May 23, 2016, September 10, 2017, October 18, 2017, and November 9, 2017 membership applications each contain the following payroll deduction authorization:

> I hereby designate SEIU Local 503, OPEU (or any successor entity) as my desired collective

> bargaining agent. I also hereby authorize my employer to deduct from my wages all Union dues and other fees or assessments as shall be certified by SEIU Local 503, OPEU (or any successor Union entity) and to remit those amounts to such Union. This authorization/delegation is unconditional, made in consideration for the cost of representation and other actions in my behalf by the Union and is made irrespective of my membership in the Union. This authorization is irrevocable for a period of one year from the date of execution and from year to year thereafter unless not less than thirty (30) and not more than forty-five (45) days prior to the end of any annual period or the termination of the contract between my employer and the Union, whichever occurs first, I notify the Union and my employer in writing, with my valid signature, of my desire to revoke this authorization. Union dues may be tax deductible as a work related expense subject to Federal and/or State tax rules.

No additional information was included to explain what "assessments" would be used for or to explain that an assessment would be used for political purposes. Neither SEIU 503 nor Campbell has any record of Campbell requesting such information or inquiring as to the purposes for which the assessments would be used.

23. After executing the membership application, Campbell was treated as an SEIU 503 member and received the rights and benefits of membership.

24. Campbell mailed SEIU 503 a letter dated October 26, 2018 resigning his union membership and

objecting to the payment of any union dues or fees. SEIU 503 received that letter on November 1, 2018. A true and correct copy of that document is attached to the joint stipulation as Exhibit 13.

25. SEIU 503 mailed Campbell a letter dated November 2, 2018 responding to Campbell's letter dated October 26, 2018 confirming that his resignation was deemed effective upon receipt of his letter. The letter also stated:

> We also wish to remind you that, under the terms of the dues checkoff authorization form you signed, dues deductions cannot be terminated except in the periods set forth in the authorization. (We have included a copy of your authorization for your reference). Accordingly, we shall hold the cancellation request on file until the first date cancellation would be appropriate. In your case, that date is September 29. At that point, the Union will take appropriate steps to have your dues checkoff cancelled.

A true and correct copy of that document is attached to the joint stipulation as Exhibit 14.

26. Membership dues, including but not limited to the Issues Fund assessment, continued to be deducted for Campbell for a period of time following his resignation of union membership and objection to the payment of any union dues or fees. Deductions for the $2.75 assessment listed as "SEIU ISSUES" on employee paystubs continued for Campbell until August 31, 2019. The final deduction for the $2.75 assessment listed as "SEIU ISSUES" on employee paystubs was made from the paycheck for the pay period ending August 31, 2019. A true and correct copy of a print-out

from SEIU 503's internal records and files showing Campbell's dues history from his resignation of membership on November 1, 2018 through his last deduction of membership dues for the pay period ending September 30, 2019 is attached to the joint stipulation as Exhibit 15.

PLAINTIFF KATHERINE MANGLONA

27. Plaintiff Katherine Manglona is employed by the Oregon Department of Human Services in a bargaining unit represented by SEIU 503. FAC ¶43.

28. Manglona signed an SEIU 503 membership application on July 10, 2015. A true and correct copy of that document is attached to the joint stipulation as Exhibit 16.

29. Manglona signed an SEIU 503 membership application on July 30, 2015. A true and correct copy of that document is attached to the joint stipulation as Exhibit 17.

30. Manglona signed an SEIU 503 membership application on August 16, 2017. A true and correct copy of that document is attached to the joint stipulation as Exhibit 18.

31. Manglona's July 10, 2015, July 30, 2015, and August 16, 2017 membership applications each contain the following payroll deduction authorization:

> I hereby designate SEIU Local 503, OPEU (or any successor entity) as my desired collective bargaining agent. I also hereby authorize my employer to deduct from my wages all Union dues and other fees or assessments as shall be certified by SEIU Local 503, OPEU (or any successor Union entity) and to remit those amounts to such Union. This authorization/

> delegation is unconditional, made in consideration for the cost of representation and other actions in my behalf by the Union and is made irrespective of my membership in the Union. This authorization is irrevocable for a period of one year from the date of execution and from year to year thereafter unless not less than thirty (30) and not more than forty-five (45) days prior to the end of any annual period or the termination of the contract between my employer and the Union, whichever occurs first, I notify the Union and my employer in writing, with my valid signature, of my desire to revoke this authorization.

No additional information was included to explain what "assessments" would be used for or to explain that an assessment would be used for political purposes. Neither SEIU 503 nor Manglona has any record of Manglona requesting such information or inquiring as to the purposes for which the assessments would be used.

32. After signing the first membership application, Manglona was treated as an SEIU 503 member and received the rights and benefits of membership.

33. Manglona mailed SEIU 503 an undated letter resigning her union membership and objecting to the payment of any union dues or fees. SEIU 503 received that letter on August 20, 2018. A true and correct copy of that document is attached to the joint stipulation as Exhibit 19.

34. SEIU 503 mailed Manglona a letter dated August 30, 2018 responding to her August 20, 2018 letter confirming that her resignation was deemed

effective upon receipt of her letter. The letter also stated:

> We also wish to remind you that, under the terms of the dues checkoff authorization form you signed, dues deductions cannot be terminated except in the periods set forth in the authorization. (We have included a copy of your authorization for your reference). Accordingly, we shall hold the cancellation request on file until the first date cancellation would be appropriate. In your case, that date is July 2. At that point, the Union will take appropriate steps to have your dues checkoff cancelled.

A true and correct copy of that document is attached to the joint stipulation as Exhibit 20.

35. Membership dues, including but not limited to assessments, continued to be deducted for Manglona for a period of time following her resignation of union membership, pursuant to the terms of her membership application. Deductions for the $2.75 assessment listed as "SEIU ISSUES" on employee paystubs, continued for Manglona until July 1, 2019. The final deduction was made from the paycheck for the pay period ending June 30, 2019. A true and correct copy of a print-out from SEIU 503's records and files showing Manglona's dues history from September 2018 through her last deduction for the pay period ending June 30, 2019 is attached to the joint stipulation as Exhibit 21.

PLAINTIFF DEANNE MURFIN

36. Plaintiff Deanne Murfin is employed by the Oregon Department of Human Services in a bargaining unit represented by SEIU 503. FAC ¶48.

37. Murfin signed an SEIU 503 membership application on April 17, 2019. The membership application contains the following payroll deduction authorization:

> I hereby designate SEIU Local 503, OPEU (or any successor entity) as my desired collective bargaining agent. I also hereby authorize my employer to deduct from my wages all Union dues and other fees or assessments as shall be certified by SEIU Local 503, OPEU (or any successor Union entity) and to remit those amounts to such Union. This authorization/delegation is unconditional, made in consideration for the cost of representation and other actions in my behalf by the Union and is made irrespective of my membership in the Union. This authorization is irrevocable for a period of one year from the date of execution and from year to year thereafter unless not less than thirty (30) and not more than forty-five (45) days prior to the end of any annual period or the termination of the contract between my employer and the Union, whichever occurs first, I notify the Union and my employer in writing, with my valid signature, of my desire to revoke this authorization. Union dues may be tax deductible as a work related expense subject to Federal and/or State tax rules.

A true and correct copy of that document is attached to the joint stipulation as Exhibit 22. No additional information was included to explain what "assessments" would be used for or to explain that an assessment would be used for political purposes. Neither SEIU 503 nor Murfin has any record of Murfin

requesting such information or inquiring as to the purposes for which the assessments would be used.

38. After executing the membership application, Murfin was treated as an SEIU 503 member and received the rights and benefits of membership.

39. Approximately two months later, Murfin mailed SEIU 503 a letter dated June 25, 2019 resigning her union membership and objecting to the payment of any union dues or fees. SEIU 503 received that letter on July 1, 2019. A true and correct copy of that document is attached to the joint stipulation as Exhibit 23.

40. SEIU 503 mailed Murfin a letter dated July 2, 2019 responding to her letter dated June 25, 2019 confirming that her resignation was deemed effective upon receipt of her letter. The letter also stated:

> We also wish to remind you that, under the terms of the dues checkoff authorization form you signed, dues deductions cannot be terminated except in the periods set forth in the authorization. (We have included a copy of your authorization for your reference). Accordingly, we shall hold the cancellation request on file until the first date cancellation would be appropriate. In your case, that date is March 3, 2020. At that point, the Union will take appropriate steps to have your dues checkoff cancelled.

A true and correct copy of that document is attached to the joint stipulation as Exhibit 24.

41. Membership dues, including but not limited to assessments, continued to be deducted for Murfin for a period of time following her resignation of union membership, pursuant to the terms of his membership

application. Deductions for the $2.75 assessment listed as "SEIU ISSUES" on employee paystubs continued for Murfin until February 28, 2020. The final deduction for the $2.75 assessment listed as "SEIU ISSUES" on employee paystubs was made from the paycheck for the pay period ending February 29, 2020. A true and correct copy of a print-out from SEIU 503's records and files showing Murfin's dues history from her resignation of membership on July 1, 2019 through her last deduction for the pay period ending February 29, 2020, is attached to the joint stipulation as Exhibit 25.

PLAINTIFF CORI STEPHENS

42. Plaintiff Cori Stephens is employed by the Oregon Health Authority in a bargaining unit represented by SEIU 503. FAC ¶52.

43. Stephens signed an SEIU 503 membership application on August 23, 2017. The membership application contains the following payroll deduction authorization:

> I hereby designate SEIU Local 503, OPEU (or any successor entity) as my desired collective bargaining agent. I also hereby authorize my employer to deduct from my wages all Union dues and other fees or assessments as shall be certified by SEIU Local 503, OPEU (or any successor Union entity) and to remit those amounts to such Union. This authorization/delegation is unconditional, made in consideration for the cost of representation and other actions in my behalf by the Union and is made irrespective of my membership in the Union. This authorization is irrevocable for a period of one year from the date of execution and from year to year thereafter unless not

> less than thirty (30) and not more than forty-five (45) days prior to the end of any annual period or the termination of the contract between my employer and the Union, whichever occurs first, I notify the Union and my employer in writing, with my valid signature, of my desire to revoke this authorization. Union dues may be tax deductible as a work related expense subject to Federal and/or State tax rules.

A true and correct copy of that document is attached to the joint stipulation as Exhibit 26. No additional information was included to explain what "assessments" would be used for or to explain that an assessment would be used for political purposes. Neither SEIU 503 nor Stephens has any record of Stephens requesting such information or inquiring as to the purposes for which the assessments would be used.

44. After executing the membership application, Stephens was treated as an SEIU 503 member and received the rights and benefits of membership.

45. Stephens mailed SEIU 503 a letter dated August 1, 2018 resigning her union membership. SEIU 503 received that letter on August 2, 2018. A true and correct copy of that document is attached to the joint stipulation as Exhibit 27.

46. SEIU 503 mailed Stephens a letter dated August 3, 2018 responding to her resignation of membership and confirming that her resignation was deemed effective upon receipt of her letter. The letter also stated:

> We also wish to remind you that, under the terms of the dues checkoff authorization form you signed, dues deductions cannot be

> terminated except in the periods set forth in the authorization. (We have included a copy of your authorization for your reference). Accordingly, we shall hold the cancellation request on file until the first date cancellation would be appropriate. In your case, that date is July 9. At that point, the Union will take appropriate steps to have your dues checkoff cancelled.

A true and correct copy of that document is attached to the joint stipulation as Exhibit 28.

47. Membership dues, including but not limited to assessments, continued to be deducted for Stephens for a period of time following her resignation of union membership, pursuant to the terms of her membership application. Deductions for the $2.75 assessment listed as "SEIU ISSUES" on employee paystubs, continued for Stephens until July 1, 2019. The final deduction was made from the paycheck for the pay period ending June 30, 2019. A true and correct copy of a print-out from SEIU 503's records and files showing Stephens' dues history from her resignation of membership on August 2, 2018 through her last deduction for the pay period ending June 30, 2019, is attached to the joint stipulation as Exhibit 29.

PLAINTIFF KATHLEEN TRYON

48. Plaintiff Kathleen Tryon is employed by the Oregon Office of Administrative Hearings in a bargaining unit represented by SEIU 503. FAC ¶57.

49. Tryon signed an SEIU 503 membership application on August 18, 2015.

A true and correct copy of that document is attached to the joint stipulation as Exhibit 30.

50. Tryon signed an SEIU 503 membership application on August 19, 2017. A true and correct copy of that document is attached to the joint stipulation as Exhibit 31.

51. Tryon's August 18, 2015 and August 19, 2017 membership applications each contain the following payroll deduction authorization:

> I hereby designate SEIU Local 503, OPEU (or any successor entity) as my desired collective bargaining agent. I also hereby authorize my employer to deduct from my wages all Union dues and other fees or assessments as shall be certified by SEIU Local 503, OPEU (or any successor Union entity) and to remit those amounts to such Union. This authorization/delegation is unconditional, made in consideration for the cost of representation and other actions in my behalf by the Union and is made irrespective of my membership in the Union. This authorization is irrevocable for a period of one year from the date of execution and from year to year thereafter unless not less than thirty (30) and not more than forty-five (45) days prior to the end of any annual period or the termination of the contract between my employer and the Union, whichever occurs first, I notify the Union and my employer in writing, with my valid signature, of my desire to revoke this authorization.

No additional information was included to explain what "assessments" would be used for or to explain that an assessment would be used for political purposes. Neither SEIU 503 nor Tryon has any record of Tryon requesting such information or inquiring as to the purposes for which the assessments would be used.

52. After executing the membership application, Tryon was treated as an SEIU 503 member and received the rights and benefits of membership.

53. Tryon mailed SEIU 503 a form dated October 16, 2018 resigning her union membership. SEIU 503 received that letter on or about October 29, 2018. A true and correct copy of that document is attached to the joint stipulation as Exhibit 32.

54. SEIU 503 mailed Tryon a letter dated November 2, 2018 responding to her resignation of membership and confirming that her resignation was deemed effective upon receipt of her letter. The letter also stated:

> We also wish to remind you that, under the terms of the dues checkoff authorization form you signed, dues deductions cannot be terminated except in the periods set forth in the authorization. (We have included a copy of your authorization for your reference). Accordingly, we shall hold the cancellation request on file until the first date cancellation would be appropriate. In your case, that date is July 5. At that point, the Union will take appropriate steps to have your dues checkoff cancelled.

A true and correct copy of that document is attached to the joint stipulation as Exhibit 33.

55. Membership dues, including but not limited to assessments, continued to be deducted for Tryon for a period of time following her resignation of union membership, pursuant to the terms of her membership application. Deductions for the $2.75 assessment listed as "SEIU ISSUES" on employee paystubs, continued for Tryon until July 1, 2019. The final deduc-

tion was made from the paycheck for the pay period ending June 30, 2019. A true and correct copy of a print-out from SEIU 503's records and files showing Tryon's dues history from her resignation of membership on October 16, 2018 through her last deduction for the pay period ending June 30, 2019 is attached to the joint stipulation as Exhibit 34.

PLAINTIFF ERICA DRAKE

56. Plaintiff Erica Drake is employed by the Oregon Department of Human Services in a bargaining unit represented by SEIU 503. FAC ¶ 11, 38.

57. Drake signed an SEIU 503 membership application on November 11, 2015. That membership application contains the following payroll deduction authorization:

> I hereby designate SEIU Local 503, OPEU (or any successor entity) as my desired collective bargaining agent. I also hereby authorize my employer to deduct from my wages all Union dues and other fees or assessments as shall be certified by SEIU Local 503, OPEU (or any successor Union entity) and to remit those amounts to such Union. This authorization/delegation is unconditional, made in consideration for the cost of representation and other actions in my behalf by the Union and is made irrespective of my membership in the Union. This authorization is irrevocable for a period of one year from the date of execution and from year to year thereafter unless not less than thirty (30) and not more than forty-five (45) days prior to the end of any annual period or the termination of the contract between my employer and the Union, which-

> ever occurs first, I notify the Union and my employer in writing, with my valid signature, of my desire to revoke this authorization.

A true and correct copy of that document is attached to the joint stipulation as Exhibit 35. No additional information was included to explain what "assessments" would be used for or to explain that an assessment would be used for political purposes. Neither SEIU 503 nor Drake has any record of Drake requesting such information or inquiring as to the purposes for which the assessments would be used.

58. After executing the membership application, Drake was treated as an SEIU 503 member and received the rights and benefits of membership.

59. In November 2020, Drake mailed SEIU 503 a letter resigning her union membership. SEIU 503 received that letter on November 25, 2020. A true and correct copy of that document is attached to the joint stipulation as Exhibit 36.

60. SEIU 503 mailed Drake a letter dated December 11, 2020 responding to her resignation of membership and confirming that her resignation was deemed effective upon receipt of her letter. The letter also stated:

> We also wish to remind you that, under the terms of the dues checkoff authorization form you signed, dues deductions cannot be terminated except in the periods set forth in the authorization. (We have included a copy of your authorization for your reference). Accordingly, we shall hold the cancellation request on file until the first date cancellation would be appropriate. In your case, that date is September 27, 2021. At that point, the

> Union will take appropriate steps to have your dues checkoff cancelled.

A true and correct copy of that document is attached to the joint stipulation as Exhibit 37.

61. Membership dues, including but not limited to assessments, continue to be deducted for Drake following her resignation of union membership, pursuant to the terms of her membership application. Deductions for the $2.75 assessment listed as "SEIU ISSUES" on employee paystubs, will continue for Drake until September 2021. A true and correct copy of a print-out from SEIU 503's records and files showing Drake's dues history from her resignation of membership in November 2020 through her deduction for the pay period ending April 30, 2021, is attached to the joint stipulation as Exhibit 38.

PLAINTIFF RYAN CRAM

62. Plaintiff Ryan Cram is employed by the Oregon Department of Transportation in a bargaining unit represented by SEIU 503. FAC ¶ 34.

63. Cram signed an SEIU 503 membership application on April 3, 2018. The membership application contains the following payroll deduction authorization:

> I hereby designate SEIU Local 503, OPEU (or any successor entity) as my desired collective bargaining agent. I also hereby authorize my employer to deduct from my wages all Union dues and other fees or assessments as shall be certified by SEIU Local 503, OPEU (or any successor Union entity) and to remit those amounts to such Union. This authorization/ delegation is unconditional, made in consid-

> eration for the cost of representation and other actions in my behalf by the Union and is made irrespective of my membership in the Union. This authorization is irrevocable for a period of one year from the date of execution and from year to year thereafter unless not less than thirty (30) and not more than forty-five (45) days prior to the end of any annual period or the termination of the contract between my employer and the Union, whichever occurs first, I notify the Union and my employer in writing, with my valid signature, of my desire to revoke this authorization. Union dues may be tax deductible as a work related expense subject to Federal and/or State tax rules.

A true and correct copy of that document is attached to the joint stipulation as Exhibit 39.

64. No additional information was included to explain what "assessment" would be used for or to explain that an assessment would be used for political purposes. Cram requested information regarding the SEIU Issues assessment in June 2018. A true and correct copy of his correspondence with SEIU 503 counsel Marc Stefan is attached to the joint stipulation as Exhibit 40.

65. After executing the membership application, Cram was treated as an SEIU 503 member and received the rights and benefits of membership.

66. Four months after joining the union, Cram provided SEIU 503 a letter dated August 17, 2018 resigning his union membership. SEIU 503 received that letter on August 17, 2018. A true and correct copy of that document is attached to the joint stipulation as Exhibit 41.

67. SEIU 503 sent Cram an email on August 28, 2018, responding to his resignation of membership and confirming that his resignation was deemed effective upon receipt of his letter. The email also stated, "Additionally, your public employer has been notified to cease further deductions of dues from your wages going forward. Dues that were withheld by your employer for the period from August 17 through the end of August 2018 will be refunded to you by the Union." A true and correct copy of that document is attached to the joint stipulation as Exhibit 42.

68. Dues deductions, including for the $2.75 assessment listed as "SEIU ISSUES" on employee paystubs, were made from Cram's paychecks for the months of April 2018 through September 2018. A true and correct copy of a print-out from SEIU 503's records and files showing Cram's dues history for 2018 is attached to the joint stipulation as Exhibit 43.

69. Payroll deductions for union dues, including the $2.75 assessment listed as "SEIU ISSUES" on employee paystubs, ceased after Cram resigned his union membership. The final payroll deduction from Cram's wages was made on October 1, 2018, from the paycheck for the pay period ending September 30, 2018. Id. On November 1, 2018, SEIU 503 issued Cram a full refund for the union dues deducted from his September 2018 paycheck, including the $2.75 assessment listed as "SEIU ISSUES" on employee paystubs. Id. No dues or assessments were deducted from Cram's paychecks after September 2018. Id.

70. Apart from the facts set forth in [the parties'] stipulation, neither Plaintiffs nor SEIU 503 contend that additional facts exist now that make the terms of the member-Plaintiffs membership applications,

including the dues deduction authorizations set forth therein, enforceable or unenforceable.

STANDARD OF REVIEW

Summary judgment is appropriate if the pleadings, depositions, answers to interrogatories, affidavits, and admissions on file, if any, show "that there is no genuine dispute as to any material fact and the [moving party] is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). Substantive law on an issue determines the materiality of a fact. *T.W. Elec. Servs., Inc. v. Pac. Elec. Contractors Ass'n*, 809 F.2d 626, 630 (9th Cir. 1987). Whether the evidence is such that a reasonable jury could return a verdict for the nonmoving party determines the authenticity of the dispute. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986).

The moving party has the burden of establishing the absence of a genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). If the moving party shows the absence of a genuine issue of material fact, the nonmoving party must go beyond the pleadings and identify facts which show a genuine issue for trial. *Id.* at 324. Special rules of construction apply when evaluating a summary judgment motion: (1) all reasonable doubts as to the existence of genuine issues of material fact should be resolved against the moving party; and (2) all inferences to be drawn from the underlying facts must be viewed in the light most favorable to the nonmoving party. *T.W. Elec.*, 809 F.2d at 630.

DISCUSSION

SEIU moves for summary judgment on Plaintiffs' claims against the union, arguing that the claims fail as a matter of law because Plaintiffs cannot establish

that SEIU was a state actor under controlling Ninth Circuit case law. SEIU Mot. Summ. J. 9–12, ECF No. 47 ("SEIU Mot."). SEIU also argues Plaintiffs' claims fail as a matter of law because deducting union assessments under a voluntary authorization does not violate the First Amendment. *Id.* at 12–20.[2] Plaintiffs disagree and assert that SEIU is a state actor. Pls.' Mot. Summ. J. 13–23, ECF No. 44 ("Pls.' Mot."). Plaintiffs also assert their First Amendment rights were violated because SEIU takes money from employees for "expression of political views" without notice or adequate consent. *Id.* at 4–13.

I. State Action

Plaintiffs argue that the Oregon Department of Administrative Services ("DAS") collection of the political assessment from Plaintiffs' paychecks at the direction of the SEIU establishes state action sufficient to confer liability under 42 U.S.C. § 1983. Pls.' Mot. 13–23. SEIU, on the other hand, asserts that this case is indistinguishable from *Belgau v. Inslee*, 975 F.3d 940, 946 (9th Cir. 2020), *cert. denied*, 141 S. Ct. 2795 (2021), where "[t]he gist of [the plaintiffs'] claim against the union [was] that it acted in concert with the state by authorizing deductions without proper consent in violation of the First Amendment." And that, as in *Belgau*, "[t]he fallacy of this approach is

[2] Because State Defendant has joined SEIU's motion for summary judgment, unless otherwise noted, the Court considers the arguments together. *See* Director Coba Mot. Summ. J. 2 ("Director Coba hereby joins in and incorporates by reference SEIU Local 503's Cross-Motion for Summary Judgment and Memorandum of Points and Authorities in Support thereof and in Opposition to Plaintiffs' Motion for Summary Judgment."), ECF No. 50.

that it assumes state action sufficient to invoke a constitutional analysis." *Id.*

SEIU's argument is well taken. The Court finds that *Belgau's* analysis on state action is controlling. There, the plaintiffs worked as public-sector employees who signed union membership agreements authorizing Washington State to deduct dues from their wages and pay them to a union. *Id.* at 945. After the Supreme Court held in *Janus* that compelling nonmembers to subsidize union speech violated the First Amendment, the plaintiffs notified the union that they no longer wanted to be union members or pay dues. *Id.* at 945–46. The union thereafter terminated the plaintiffs' union memberships. *Id.* at 946. However, the union continued to deduct union dues from their pay until an irrevocable one-year term expired based on the terms of the membership agreements. *Id.*

The plaintiffs brought a putative class action against the Washington Governor, several state agency directors, and the union, alleging that the dues deductions violated, among other things, their First Amendment rights. *Id.*; *see also Jarrett v. Marion Cty.*, No. 6:20-cv-01049- MK, 2021 WL 65493, at *2 (D. Or. Jan. 6, 2021) (discussing *Janus*), *adopted*, 2021 WL 233116 (D. Or. Jan. 22, 2021). Ultimately, *Belgau* held that the plaintiffs' claims failed because they could not establish the threshold requirement that the union was a "state actor." 975 F.3d at 944.

Belgau explained that to establish a claim under 42 U.S.C. § 1983, a plaintiff must show that the defendant "deprived them of a right secured by the Constitution and acted 'under color of state law.'" *Id.* at 946 (quoting *Collins v. Womancare*, 878 F.2d 1145, 1147 (9th Cir. 1989)). The court noted that Supreme Court precedent instructs that "merely private

conduct, however discriminatory or wrongful," falls outside the purview of the Fourteenth Amendment. *Id.* (quoting *Blum v. Yaretsky*, 457 U.S. 991, 1002 (1982)). The court began its state action inquiry by asking whether "the challenged conduct that caused the alleged constitutional deprivation [is] 'fairly attributable' to the state?" *Id.* (quoting *Naoko Ohno v. Yuko Yasuma*, 723 F.3d 984, 993 (9th Cir. 2013)). To answer that question, courts:

> employ a two-prong inquiry to analyze whether [the state's] "involvement in private action is itself sufficient in character and impact that the government fairly can be viewed as responsible for the harm of which plaintiff complains." *Ohno*, 723 F.3d at 994; *see Lugar v. Edmondson Oil Co.*, 457 U.S. 922, 937 (1982) (two-prong test).

Belgau, 975 F.3d at 946.

The first prong looks to "whether the claimed constitutional deprivation resulted from 'the exercise of some right or privilege created by the State or by a rule of conduct imposed by the state or by a person for whom the State is responsible.'" *Id.* (quoting *Ohno*, 723 F.3d at 994).

The second prong looks to "whether the party charged with the deprivation could be described in all fairness as a state actor." *Id.* (citing *Ohno*, 723 F.3d at 994). The Supreme Court has articulated four tests to determine whether a non-governmental person's actions amount to state action: (1) the joint action test; (2) the public function test; (3) the governmental nexus test; and (4) the state compulsion test. *Tsao v. Desert Palace, Inc.*, 698 F.3d 1128, 1140 (9th Cir. 2012) (citation omitted).

Plaintiffs cannot establish either prong. First, as in *Belgau*, Plaintiffs "do not generally contest the state's authority to deduct dues according to a private agreement." 975 F.3d at 946–47. Instead, Plaintiffs' "claimed constitutional harm is that the agreements were signed without a constitutional waiver of rights." *Id.* at 947. *Belgau* makes clear that such private agreements are not sufficient to establish state action. *Id.* ("Thus, the 'source of the alleged constitutional harm' is not a state statute or policy but the particular private agreement between the union and Employees.") (quoting *Ohno*, 723 F.3d at 994).

Second, although Plaintiffs assert that SEIU is a joint actor with DAS based on the collective bargaining agreement and Oregon's statutory scheme authorizing the assessment, Pls.' Mot. 16–18, as in *Belgau*, "[a]s a private party, the union is generally not bound by the First Amendment, unless it has acted 'in concert' with the state 'in effecting a particular deprivation of [a] constitutional right[.]'" *Id.* (citations omitted). Given the manner in which Plaintiffs' initially consented to the assessment, there is no evidence that "state officials and [the union] acted in concert in effecting a particular deprivation of constitutional rights.'" *Ohno*, 723 F.3d at 996; *see also Belgau*, 975 F.3d at 948 ("A merely contractual relationship between the government and the non-governmental party does not support joint action; there must be a 'symbiotic relationship' of mutual benefit and 'substantial degree of cooperative action.'") (citation omitted).

Plaintiffs' claims fare no better under the public function test, which "treats private actors as state actors when they perform a task or exercise powers traditionally reserved to the government." *Ohno*, 723 F.3d at 996. Plaintiffs assert that SEIU engages in a

public function "because directing government wage payments and deductions is a public function." Pls.' Mot. 18. However, as the Ninth Circuit explained in *Belgau*, more is required to establish state action:

> At best, [the state's] role in the allegedly unconstitutional conduct was ministerial processing of payroll deductions pursuant to Employees' authorizations. But providing a "machinery" for implementing the private agreement by performing an administrative task does not render [the state] and [and the union] joint actors. Much more is required; the state must have "so significantly encourage[d] the private activity as to make the State responsible for" the allegedly unconstitutional conduct.

Belgau, 975 F.3d at 948.[3]

Finally, Plaintiffs assert that SEIU is a state actor because it exercised the coercive power of the State. Pls.' Mot. 21–23. That argument, however, is also foreclosed by *Belgau*, which held that "[t]he state's role [in that case] was to permit the private choice of the parties, a role that is neither significant nor coercive" in nearly identical circumstances. *Belgau*, 975 F.3d at 947. (citations omitted). As the court explained, a "private party cannot be treated like a state actor where the government's involvement was only to provide 'mere approval or acquiescence,' 'subtle

[3] For similar reasons, Plaintiffs' assertion that SEIU's participation with DAS created a governmental nexus fails. Pls.' Mot. 19–21; *see also Ohno*, 723 F.3d at 996 n.16 (explaining that public function and joint action tests "largely subsume the state compulsion and governmental nexus tests, because they address the degree to which the state is intertwined with the private actor or action").

encouragement,' or 'permission of private choice.'" *Id.* (citations omitted).

In sum, the Court concludes that SEIU was not a state actor. Accordingly, SEIU's motion for summary judgment is granted; Plaintiffs' motion for summary judgment on state action is denied.

II. First Amendment

Plaintiffs argue that *Janus* requires a heightened waiver of their First Amendment rights and argue Defendants cannot deduct assessments absent "clear and compelling evidence that the employees waived their First Amendment right not to support the political speech." Pls.' Mot. 8 (citing *Janus v. Am. Fed'n of State, Cty., & Mun. Emps., Council 31*, 138 S. Ct. 2448, 2463–64 (2018). *Belgau*, however, squarely rejected a heightened "clear and compelling" waiver argument that Plaintiffs advance here. *Belgau*, 975 F.3d at 951–52 ("In arguing that *Janus* requires constitutional waivers before union dues are deducted, Employees seize on a passage requiring any waiver of the First Amendment right to be 'freely given and shown by 'clear and compelling' evidence.' This approach misconstrues *Janus*.") (citation omitted). Instead, the court explained that:

> The First Amendment does not support Employees' right to renege on their promise to join and support the union. This promise was made in the context of a contractual relationship between the union and its employees. When "legal obligations . . . are self-imposed," state law, not the First Amendment, normally governs. Nor does the First Amendment provide a right to "disregard

> promises that would otherwise be enforced under state law."

Id. at 950 (citations omitted).

Ultimately, the Ninth Circuit "join[ed] the swelling chorus of courts recognizing that *Janus* does not extend a First Amendment right to avoid paying union [financial obligations]," and held that "'*Janus* does not preclude enforcement of union membership and [payroll] deduction authorization agreements.'" *Belgau*, 975 F.3d at 951 & n.5 (quoting *Mendez v. Cal. Teachers Ass'n*, 419 F. Supp. 3d 1182, 1186 (N.D. Cal. 2020)); *see also Durst v. Oregon Educ. Ass'n*, 450 F. Supp. 3d 1085, 1091 (D. Or. 2020) ("This Court joins every other court to consider the issue in concluding that *Janus* is inapplicable to situations where an employee chooses to join a union, authorizes dues deductions over an entire academic year, receives union benefits not available to nonmembers, and then later attempts to cancel deductions outside of the opt-out period they earlier agreed to."), *aff'd*, 854 F. App'x 916 (9th Cir. 2021), *cert. denied sub nom. Anderson v. Serv. Emps. Int'l Union Loc. 503*, 142 S. Ct. 764 (2022). That same reasoning applies with equal force here.

There is no dispute that each individual Plaintiff voluntarily joined SEIU and signed membership agreements that included payroll deduction authorization agreements:

> I hereby designate SEIU Local 503, OPEU (or any successor entity) as my desired collective bargaining agent. *I also hereby authorize my employer to deduct from my wages all Union dues and other fees or assessments* as shall be certified by SEIU Local 503, OPEU (or any successor Union entity) and to remit those

> amounts to such Union. This authorization/ delegation is unconditional, made in consideration for the cost of representation and other actions in my behalf by the Union and is made irrespective of my membership in the Union. *This authorization is irrevocable for a period of one year from the date of execution* . . . .

See, e.g., Background ¶ 11 (emphasis added); *see also id.* ¶¶18–21, 28–30, 37, 43, 49–50, 57, 63. The membership agreements at issue here, as in *Belgau*, thus expressly authorized collection of the assessment, were voluntarily entered into by each individual Plaintiff, and were binding on Plaintiffs until they resigned memberships. "This choice to voluntarily join a union and the choice to resign from it are contrary to compelled speech." *Belgau*, 975 F.3d at 951.[4] As such, the Court concludes that the membership agreements signed by Plaintiffs and the collection of the assessments did not violate the First Amendment. *Belgau*, 975 F.3d at 952 ("In the face of their voluntary agreement to pay union dues and in the absence of any legitimate claim of compulsion, the district court appropriately dismissed the First Amendment claim against Washington.").[5]

---

[4] Plaintiffs' attempt to distinguish *Belgau* because that case authorized deduction of union *dues*, as opposed to the *assessments* at issue here, is a distinction with no meaningful difference. Both dues and assessments constitute financial support contractually owed to SEIU by union members.

[5] Plaintiffs' reliance on *Knox v. Ser. Emps. Int'l Union, Local 1000*, 567 U.S. 298 (2012) is misplaced. *Knox* dealt with the procedures unions must follow to collect a special assessment from *nonmembers*. *Id.* at 315. Although Plaintiffs assert they are *nonmembers*, they were union members until they resigned their memberships. Put differently, to the extent Plaintiffs are

Plaintiffs also assert they "had no information that would have allowed them to decide whether to fund the political fund through the political assessment" because "[t]his information was not included in the membership card, and [the Union] provides no other source by which the [Plaintiffs] would have obtained the information prior to becoming members." Pls' Mot. 11; *see also id.* at 3–4.

The Ninth Circuit has held, however, that "[a] party who signs a written agreement is bound by its terms, even though the party neither reads the agreement nor considers the legal consequences of signing it." *Emp. Painters' Tr. v. J & B Finishes*, 77 F.3d 1188, 1192 (9th Cir. 1996) (citation omitted); *see also id.* ("Parties to a collective bargaining agreement are conclusively presumed to have equal bargaining power[.]") (citation omitted). Plaintiffs could have declined to sign the membership agreements or asked for more information before agreeing to the assessment.[6] That they did not is no reason to excuse Plaintiffs from the agreements into which they voluntarily entered. *Belgau*, 975 F.3d at 950 ("The First Amendment does not support Employees' right to renege on their promise to join and support the union. This promise

---

presently nonmembers, they are nonmembers who, while they were union members, expressly authorized the assessment at issue. *Knox* is thus inapposite. Plaintiffs' reliance on *Chicago Teachers Union, Loc. No. 1 v. Hudson*, 475 U.S. 292 (1986) fails for the same reason.

[6] Other than Plaintiff Cram, there is no evidence Plaintiffs requested information about the assessments' purpose. *See* Background ¶¶ 11, 22, 31, 37, 43, 51, 57. Plaintiff Cram signed the membership application authorizing deductions for union dues in April 2018 and "requested information regarding the SEIU Issue assessment in June 2018." Background ¶ 64.

was made in the context of a contractual relationship between the union and its employees.").

At bottom, there "is an easy remedy for [ ] public employees who do not want to be part of the union: they can decide not to join the union in the first place, or they can resign their union membership after joining." *Belgau*, 975 F.3d at 952.

In sum, the Court concludes that Plaintiffs' First Amendment claims fail as a matter of law because Plaintiffs voluntarily authorized the collection of the assessment. Accordingly, SEIU's and Director Coba's motion for summary judgment is granted; Plaintiffs' motion for summary judgment is denied.

CONCLUSION

For the reasons above, SEIU's motion for summary judgment (ECF No. 47) and Director Coba's motion for summary judgment (ECF No. 50) are GRANTED. Plaintiffs' motion for summary judgment (ECF No. 44) is DENIED.

DATED this 11th day of March 2022.

s/ Mustafa T. Kasubhai
MUSTAFA T. KASUBHAI (He / Him)
United States Magistrate Judge

APPENDIX F

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No. SA CV 21-01898-DOC-KES

Date: March 16, 2022

Title: ROBERT ESPINOZA V. UNION OF AMERICAN PHYSICIANS AND DENTISTS, AFSCME LOCAL 206 ET AL.

PRESENT:

THE HONORABLE DAVID O. CARTER, JUDGE

Karlen Dubon	Not Present
Courtroom Clerk	Court Reporter

ATTORNEYS PRESENT FOR PLAINTIFF:	ATTORNEYS PRESENT FOR DEFENDANT:
None Present	None Present

PROCEEDINGS (IN CHAMBERS):
ORDER GRANTING MOTIONS TO DISMISS [30, 33]

Before the Court is Defendants California Correctional Healthcare Services, Betty Yee, and Rob Bonta's (collectively, "State Defendants") Motion to Dismiss ("State Defendants' Motion" or "State Def. Mot.") (Dkt. 33) and Defendant Union of American Physicians and Dentists, AFSCME Local 206's ("UAPD") Motion to Dismiss ("UAPD Motion" or "UAPD Mot.") (Dkt. 30). The Court finds this matter appropriate for resolution without oral argument. *See* Fed. R. Civ. P. 78; C.D. Cal. R. 7-15. Having reviewed the moving papers submitted by the parties, the Court GRANTS State Defendants' Motion and GRANTS UAPD's Motion. The hearing scheduled for March 21, 2022, is VACATED.

I. Background

A. Facts

Plaintiff Robert Espinoza ("Plaintiff") is a physician employed at California Correctional Healthcare Services and became a member of UAPD in 2018. Complaint ("Compl.") (Dkt. 1-1) ¶¶ 9-16. The UAPD membership application states, in relevant part, that the joining member authorizes union dues as well as union fees paid to the Political Action Program to be deducted from wages. *Id.* ¶ 17. *See also* Compl. Ex. A, Dkt. 1-2.

Plaintiff submitted a UAPD membership application on April 23, 2018, and began having $217.33 deducted from his salary in May 2018. Compl. ¶¶ 16, 18. In May 2018, Plaintiff learned that, of the total amount deducted, $16.00 per paycheck was being used for UAPD's Political Action Program, and participation in such program was entirely voluntary. *Id.* ¶¶ 19-22.

California Government Code section 1153 authorizes a State Controller to "[m]ake, cancel, or change a deduction . . . at the request of the person or organization authorized to receive the deduction" and that "Employee requests to cancel or change [deductions] . . . shall be directed to the employee organization rather than to the [State]. The employee organization shall be responsible for processing these requests." CAL. GOV'T CODE §§ 1153(a), (h). Accordingly, a union member has the option to decline making contributions to the Political Action Program if UAPD receives notice. Compl. ¶ 21.

In 2020, Plaintiff inquired as to how the union dues and contributions to the Political Action Program were being spent, and eventually informed UAPD that

Plaintiff wished to cease making union contributions. *Id.* ¶¶ 24-35. UAPD assured Plaintiff that his deductions would cease in July 2021. *Id.* ¶ 54. In total, Plaintiff alleges that UAPD has taken $1,551.96 of his wages to spend on political speech without consent, *id.* ¶ 64, and seeks damages and declaratory and injunctive relief, *id.* ¶ 124.

B. Procedural History

On November 17, 2021, Plaintiff filed a complaint in this Court under 42 U.S.C. § 1983 alleging violations of the First and Fourteenth Amendments. *See generally* Compl.

Also on November 17, 2021, Plaintiff immediately moved for a Temporary Restraining Order to enjoin UAPD and the State Defendants (collectively, "Defendants") from deducting membership dues and Political Action Program from his wages, (Dkt. 14), which this Court denied on November 22, 2021. (Dkt. 10). On December 3, 2021, Plaintiff moved for another Temporary Restraining Order, after alleging Defendants continued to deduct union dues from his wages. (Dkt. 21) The Court once again denied the motion on December 7, 2021, because the continued deductions were the result of administrative error. ("December Order") (Dkt. 27).

Both the UAPD and the State Defendants moved to dismiss the case on January 21, 2022. Plaintiff filed the Opposition ("Opp'n") (Dkt. 37) on February 18, 2022. UAPD replied ("UAPD Reply") (Dkt. 39) on February 25, 2022, and the State Defendants replied ("State Defendants Reply") (Dkt. 40) on February 28, 2022.

II. Legal Standard

A Federal Rule of Civil Procedure 12(b)(1) motion to dismiss tests whether a complaint alleges grounds for federal subject matter jurisdiction. Subject-matter jurisdiction refers to the court's power to hear a case, and cannot be forfeited or waived. *Union Pac. R.R. Co. v. Bhd. of Locomotive Eng'rs & Trainmen Gen. Comm. of Adjustment,* 558 U.S. 67, 81 (2009) (citations omitted). Plaintiff bears the burden of establishing subject matter jurisdiction. *See, e.g.*, *Robinson v. United States*, 586 F.3d 683, 685 (9th Cir. 2009).

Under Federal Rule of Civil Procedure 12(b)(6), a complaint must be dismissed when a plaintiff's allegations fail to set forth a set of facts that, if true, would entitle the complainant to relief. *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009); *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (holding that a claim must be facially plausible in order to survive a motion to dismiss). The pleadings must raise the right to relief beyond the speculative level; a plaintiff must provide "more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Twombly*, 550 U.S. at 555 (citing *Papasan v. Allain*, 478 U.S. 265, 286 (1986)). On a motion to dismiss, a court accepts as true a plaintiff's well-pleaded factual allegations and construes all factual inferences in the light most favorable to the plaintiff. *See Manzarek v. St. Paul Fire & Marine Ins. Co.*, 519 F.3d 1025, 1031 (9th Cir. 2008). A court is not required to accept as true legal conclusions couched as factual allegations. *Iqbal*, 556 U.S. at 678.

In evaluating a Rule 12(b)(6) motion, review is ordinarily limited to the contents of the complaint and material properly submitted with the complaint. *Van Buskirk v. Cable News Network, Inc.*, 284 F.3d 977,

980 (9th Cir. 2002); *Hal Roach Studios, Inc. v. Richard Feiner & Co., Inc.*, 896 F.2d 1542, 1555, n.19 (9th Cir. 1990). Under the incorporation by reference doctrine, the court may also consider documents "whose contents are alleged in a complaint and whose authenticity no party questions, but which are not physically attached to the pleading." *Branch v. Tunnell*, 14 F.3d 449, 454 (9th Cir. 1994), *overruled on other grounds by Galbraith v. Cnty. of Santa Clara*, 307 F.3d 1119, 1121 (9th Cir. 2002). The court may treat such a document as "part of the complaint, and thus may assume that its contents are true for purposes of a motion to dismiss under Rule 12(b)(6)." *United States v. Ritchie*, 342 F.3d 903, 908 (9th Cir. 2003).

When a motion to dismiss is granted, the court must decide whether to grant leave to amend. The Ninth Circuit has a liberal policy favoring amendments, and thus leave to amend should be freely granted. *See, e.g.*, *DeSoto v. Yellow Freight Sys., Inc.*, 957 F.2d 655, 658 (9th Cir. 1992). However, a court need not grant leave to amend when permitting a plaintiff to amend would be an exercise in futility. *See Rutman Wine Co. v. E. & J. Gallo Winery*, 829 F.2d 729, 738 (9th Cir. 1987) ("Denial of leave to amend is not an abuse of discretion where the pleadings before the court demonstrate that further amendment would be futile.").

III. Discussion

Defendants argue that Plaintiff's claims should be dismissed because (1) Plaintiff's claims are moot; and (2) the purported harm is not based on any state action. *See generally* State Def. Mot.; UAPD Mot. The Court will address each argument in turn.

A. Plaintiff's Claims are Moot

Defendants first argue that Plaintiff's claims are not justiciable because UAPD "has ceased all deductions and reimbursed Plaintiff for any overpayments for his dues," State Def. Mot. at 1, and that it is unlikely the practice will be reinstated, UAPD Mot. at 6-7. In contrast, Plaintiff alleges that the claims are not moot because UAPD's activities in confiscating Plaintiff's wages without authorization are "part of a larger systemic effort . . . by public sector unions to circumvent the Supreme Court's clear holding in *Janus*." Opp'n at 30. In *Janus*, the Supreme Court held that unions that compel members to subsidize the speech of others run afoul of the First Amendment. *Janus v. AFSCME, Council 31*, 138 S. Ct. 2448, 2464 (2018). The Court finds that Plaintiff's claims are not justiciable.

Federal courts have limited jurisdiction, possessing only the power authorized by Article III of the Constitution and the related statutes Congress has passed. *See Bender v. Williamsport Area Sch. Dist.*, 475 U.S. 534, 541 (1986). Standing is a jurisdictional limitation and is "an essential and unchanging part of the case-or-controversy requirement of Article III." *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992). The party asserting federal jurisdiction bears the burden of pleading and establishing Article III standing. *Id.* at 562. "The requisite personal interest that must exist at the commencement of the litigation (standing) must continue throughout its existence (mootness)." *United States Parole Comm'n v. Geraghty*, 445 U.S. 388, 396 (1980) (internal quotation omitted). A case is moot when (1) "the issues presented are no longer live" or (2) the parties lack a "legally cognizable interest in the outcome." *Id.* (internal quotations

omitted). Once a case becomes moot, courts are "required to dismiss it." *Dufresne v. Veneman*, 114 F.3d 952, 954 (9th Cir. 1997).

Here, UAPD ceased making deductions from Plaintiff and returned the erroneously taken wages. Opp'n at 27-28. Additionally, Plaintiff has no intention of rejoining UAPD. *Id.* at 27. For Plaintiff to obtain injunctive or declaratory relief, he "must show that he has suffered or is threatened with a concrete and particularized legal harm . . . coupled with a sufficient likelihood that he will again be wronged in a similar way." *Cantanella v. State of Cal.*, 304 F.3d 843, 852 (9th Cir. 2002) (internal quotation marks and citations omitted). Because Plaintiff concedes that he will not be harmed again in a similar way, Plaintiff's claim is moot.

Additionally, Plaintiff requests that "if the Court believes this case is mooted by UAPD's unilateral refund . . . [Plaintiff] seeks leave to amend his complaint to seek class certification." Opp'n at 31-32. The Court denies this request because, as discussed below, seeking class certification would be futile as Plaintiff's harm cannot be legally attributed to either UAPD or State Defendants.

B. Plaintiff's Harm Was Not Based on State Action

To state a claim under § 1983, a plaintiff must allege both that (1) the defendant was acting under color of state law at the time the complained of act was committed, and (2) the defendant's conduct deprived the plaintiff of rights, privileges, or immunities secured by the Constitution or laws of the United States. *See Jensen v. City of Oxnard*, 145 F.3d 1078, 1082 (9th Cir. 1998).

Plaintiff argues that Defendants acted "under the color of state law under Cal Gov't Code § 1153." Compl. ¶¶ 79, 89. State Defendants, however, argue that Plaintiff's injuries "were not caused by section 1153." State Def. Mot. at 10-11. Instead, Plaintiff's harm "stem entirely from Plaintiff's decision to execute membership agreements with [UAPD] and [UAPD]'s subsequent enforcement of those agreements." *Id.* UAPD also contends that it was not acting "under color of law" because there was no constitutional deprivation that resulted from section 1153, nor is UAPD a state actor. UAPD Mot. at 9-10.

i. Acting Under Color of Law

To determine if a defendant is acting "under color of state law," the court uses a two- prong test. *See Lugar v. Edmondson Oil Co.*, 457 U.S. 922, 937 (1982). The first prong is "whether the claimed constitutional deprivation resulted from 'the exercise of some right or privilege created by the State or by a rule of conduct imposed by the state or by a person for whom the State is responsible.'" *Ohno v. Yasuma*, 723 F.3d 984, 994 (9th Cir. 2013) (quoting *Lugar*, 457 U.S. at 937). The second prong is "whether the party charged with the deprivation could be described in all fairness as a state actor." *Id.*

Section 1153 does not deprive Plaintiff of any constitutional right. Section 1153, in pertinent part, requires that a State Controller "[m]ake, cancel, or change a deduction . . . at the request of the person or organization authorized to receive the deduction" and that "Employee requests to cancel or change [deductions] . . . shall be directed to the employee organization rather than to the [State]. *The employee organization shall be responsible for processing these*

requests." CAL. GOV'T CODE §§ 1153(a), (h) (emphasis added).

Here, Plaintiff "alleges First Amendment injuries as a result of the deduction of both union dues and political action contributions from his paycheck, as well as Fourteenth Amendment injuries as a result of a deduction scheme lacking in adequate procedural safeguards," are caused by section 1153. State Def. Mot. at 10-11. However, section 1153 merely *authorizes* UAPD to make deductions, it does not compel them. *See Gilb v. Chiang*, 186 Cal. App. 4th 444, 474 n.14 (2010). Moreover, Plaintiff authorized UAPD to make those deductions until he revoked consent. Compl. ¶¶ 24-35. To the extent that UAPD's deductions were unlawful, "private misuse of a state statute does not describe conduct that can be attributed to the State." *Collins v. Womancare*, 878 F.2d 1145, 1152 (9th Cir. 1989) (quoting *Lugar*, 457 U.S. at 941). As such, it cannot be said that section 1153 deprived Plaintiff of any constitutional right.

As to the second prong, Plaintiff's contention that UAPD was acting under color of law because section 1153 "does not permit the state employer to communicate with its own employees and requires it to accept as gospel only what UAPD certifies [as true,]" is unavailing. Opp'n at 18.

Generally, private parties, such as unions, cannot be sued for Constitutional violations unless it can be shown that the union "acted 'in concert' with the state 'in effecting a particular deprivation of constitutional right[.]'" *Belgau v. Inslee*, 975 F.3d 940, 947 (9th Cir. 2020) (quoting *Tsao v. Desert Palace, Inc.*, 698 F.3d 1128, 1140 (9th Cir. 2012)). As the Supreme Court explained in *Blum v. Yaretsky:*

> [The] mere fact that a business is subject to state regulation does not by itself convert its action into that of the State [Plaintiff] must also show that there is a sufficiently close nexus between the State and the challenged action of the regulated entity so that the action of the latter may be fairly treated as that of the State itself. The purpose of this requirement is to assure that constitutional standards are invoked only when the State is *responsible* for the specific conduct of which the plaintiff complains. The importance of this assurance is evident when the complaining party seeks to hold the State liable for the actions of private parties.

457 U.S. 991, 1004, (1982) (internal quotation marks and citations omitted). Joint action between a state and a union can be shown two ways: "the government either (1) 'affirms, authorizes, encourages, or facilitates unconstitutional conduct through its involvement with a private party,' or (2) 'otherwise has so far insinuated itself into a position of interdependence with the non-governmental party,' that it is 'recognized as a joint participant in the challenged activity.'" *Belgau*, 975 F.3d at 947 (quoting *Ohno*, 723 F.3d at 996).

Although authorized by section 1153, the State is not *responsible* for any of UAPD's deductions. Here, UAPD is a private party authorized to deduct dues pursuant to Section 1153. Plaintiff opted to join UPAD and signed the membership agreement. The union, as authorized, began deducting dues as permitted before Plaintiff revoked consent. At no time did the government "affirm[], authorize[], encourage[], or facilitate[], UAPD in making any unconstitutional

deduction. *Belgau*, 975 F.3d at 947 (internal citation omitted).

Additionally, the government has not "so far insinuated itself into a position of interdependence with [UAPD.]" *Id.* The State Defendants do not have a role in the alleged scheme apart from the ministerial processing of requests. State Def. Mot. at 14-15. As this Court stated in its December Order,

> [T]he Ninth Circuit has found in similar circumstances that a union is not a state actor when the state's role "to deduct dues from Employees' payrolls was 'made by concededly private parties,' and depended on 'judgments made by private parties without standards established by the State.' *Belgau v. Inslee*, 975 F.3d 940, 947(9th Cir. 2020) (quoting *Am. Mfrs. Mut. Ins. Co. v. Sullivan*, 526 U.S. 40, 52 (1999)). As the Ninth Circuit explained, the state's "role in the allegedly unconstitutional conduct was ministerial processing of payroll deductions pursuant to Employees' authorizations." *Id.* at 948.

Here, State Defendants' actions constitute the ministerial processing of authorized deductions, State Def. Mot. at 15, which does not amount to state action.

Accordingly, the Court GRANTS UAPD's Motion to Dismiss and the State Defendants' Motion to Dismiss.

Now, the Court must determine whether to dismiss with prejudice. Dismissal with prejudice is appropriate only when "further amendment would be futile." *Rutman Wine Co. v. E. & J. Gallo Winery*, 829 F.2d 729, 738 (9th Cir. 1987). Here, further amendment would be futile because section 1153 does not deprive

Plaintiff of any constitutional right and Plaintiff's harm was not based on state action.

IV. Disposition

For the reasons set forth above, the Court GRANTS Defendants California Correctional Healthcare Services, Betty Yee, and Rob Bonta's Motion to Dismiss and GRANTS Defendant UAPD's Motion to Dismiss. The Court DISMISSES WITH PREJUDICE Plaintiff's Complaint.

The Clerk shall serve this minute order on the parties.

MINUTES FORM 11 Initials of Deputy Clerk: kdu

CIVIL-GEN

Online Membership Application

SEIU Local 503, OPEU PO Box 12159 Salem OR 97309-0159

(Please print or type clearly.)

NAME: Ryan Cram DATE OF BIRTH: [redacted]

ETHNICITY: _____ (OPTIONAL) PREFERRED LANGUAGE: _____

HOME PHONE: _____ *CELL: [redacted] HOME EMAIL: [redacted]

*By including your mobile number you are authorizing SEIU and its locals and affiliates, using various automated technologies, to call you and get text alerts to you- up to 5 per month W will neve harge you for text message alerts, but carrier message and data rates may apply. Text STOP to 787753 to unsubscribe, and HELP for more info. If you would like to opt out of text message please che k the bo ☐

RESIDENCE ADDRESS: [redacted] Albany OR 97322
(REQUIRED) STREET CITY TATE ZIP

MAILING ADDRESS: [redacted] Albany OR 97322
(IF DIFFERENT FROM RESIDENCE) STREET CITY STATE ZIP

EMPLOYEE I.D.#:

EMPLOYER/AGENCY: DHS/OHA JOB TITLE: _____

WORK ADDRESS: _____
STREET CITY STATE ZIP

HIRE DATE: _____ WORKSITE/DEPARTMENT: _____

I hereby designate SEIU Local 503, OPEU (or any successor Union entity) as my de ired c lectiv bargaining agent. I also hereby authorize my employer to deduct from my wages all Union dues and other fees or assessments as shall be ce fied by EIU Loca 503, OPEU (or any successor Union entity) and to remit those amounts to such Union. This authorization/delegation is unconditional, made i consideration for the cost of representation and other actions in my behalf by the Union and is made irrespective of my membership in the Union. This a thori ation is irrevocable for a period of one year from the date of execution and from year to year thereafter unless not less than thirty (30) and not more than orty-fi (45) days prior to the end of any annual period or the termination of the contract between my employer and the Union, whichever occurs fir t I no fy the Union and my employer in writing, with my valid signature, of my desire to revoke this authorization. Union dues may be tax deductible as a work relate expense subject to Federal and/or State tax rules.

SIGN HERE TO JOIN → SIGNATURE: Ryan L Cram DATE: 4/3/2018 9:35:00 AM

☐ I want to be active my unio . I am interested in learning more about our Union and ways to become involved.

Voluntary SEIU Local 503 Citizen Action for Political Education (CAPE) Check-off

☐ $10.00/month ☐ $13.00/month ☐ $15.00/month ☐ Other $_____

This contribution qu lifies for the Oregon Political Tax Credit. Single filers are eligible for a credit of up to $50/year; joint filers up to $100/year. I hereby author e my mployer to deduct the designated amount from my monthly earnings as a contribution to SEIU Local 503, OPEU CAPE. My contribution will be used to support mem er-end sed candidates and for expenditures in connection with elections for Local, Legislative, Statewide and Federal offices. These elected officials make critical ecision s ries, healthcare, retirement and other benefits and laws affecting SEIU Local 503, OPEU members. A portion of this contribution (as much as 48% for the average con ibutor) may be used by SEIU for federal elections. The contribution amounts indicated above are only suggestions and I may choose not to contribute or to vary my contribu on am unt without reprisal from my Union or my Employer. As per federal law, only union members and union executive/administrative staff who are U.S. citizens lawful perm nent residents are eligible to contribute to SEIU COPE (the Federal Committee on Political Education). This authorization is made voluntarily and is not a condition o my employment or membership in the union. This authorization shall remain in effect until revoked in writing by me. This contribution is in addition to union dues. Th contribu on is not deductible for federal income tax purposes.

SIGN HERE FOR CAPE → SIGNATURE: _____ DATE: _____

FOR OFFICE USE ONLY

☐ OTHER MAIL ☐ MEETINGS/TRAININGS ☐ IN-PERSON NEO ☐ NEW HIRE MAIL ☐ MAIL RETURN FROM ORIENTATIONS ☐ WORKSITE/HOUSE VISIT ☐ OTHER

REVISED2/17/2016 ALL SECTORS

069

MAO2031678

This page intentionally left blank.

Drawing

YES! Doctors in public employment need a strong Union. By signing below, I affirm my commitment to stand with my colleagues as a member of UAPD.

AB 1066 4/1/24

THE UNION OF AMERICAN PHYSICIANS & DENTISTS

MEMBERSHIP APPLICATION - STATE BU 16 AND CSU BU 1

Mail completed application to 180 Grand Avenue, Suite 1380, Oakland, CA 94612 or fax to (510) 763-8756.

Name: (Last, First, Middle Initial)	Social Security Number	Telephone (Home)
Robert Espinoza	[redacted]	[redacted]
	Telephone (Cell) [redacted]	Non-Work E-mail Espinoza@Alumni.UCLA.edu

Home Address (Street /P.O. Box /Apt. #) [redacted] (City) [redacted] (State) (Zip Code)

Employed By (Agency/Department/Campus & Classification)	Telephone (Office)
California Department of Corrections	951-310-2746

Work Location (Bldg./Unit/Dept.)	Degree	Specialty
CIW	MD	Family Medicine

PLEASE CHECK IF: (X) **Full time**
( ) **Part Time**
( ) **Intermittent**
( ) **Limited Term**

Gross: ~~22,605.00~~ 23 735.00

Dues
~~#203.49~~ 213.62 Redo

INITIATION FEE WAIVED

MONTHLY DUES: 0.90%

I hereby apply for membership in the UNION OF AMERICAN PHYSICIANS AND DENTISTS (hereafter the "Union"), and I agree to abide by its Constitution and Bylaws. I authorize the Union and its successor or assign to act as my exclusive bargaining representative for purposes of collective bargaining with respect to wages, hours and other terms and conditions of employment with my Employer. I certify that I am a holder of one or more of the following degrees: M.D., D.O., D.D.S., D.M.D., D.P.M.; and that I have graduated from an approved school of medicine, dentistry, podiatry, or osteopathy. I pledge to support the Union and its principles as outlined in the Preamble, and the Constitution and Bylaws. I hereby voluntarily authorize and direct the State Controller to deduct from my salary each pay period the amount of dues certified by the Union, and as they may be adjusted periodically by the Union, and the amount for the UAPD Political Action Program, and transmit said sum to the Union. This authorization will remain in full force and effect for the duration of the existing memorandum of understanding (MOU), if any, and yearly thereafter, unless I give signed and written notice of withdrawal to both the State Controller's office and the Union during the 30 days prior to expiration of the MOU, or if the MOU is expired then during the 30 days prior to the anniversary date thereof. My authorization will renew automatically, regardless of my membership status, unless revoked during the window periods described. Dues, contributions or gifts to the Union are not tax deductible as charitable contributions. However, they may be tax deductible as miscellaneous expenses.

SIGNATURE: DocuSigned by: Robert Espinoza AD8762B11C724FC... DATE: 4/23/2018

Revision: May 2017

This page intentionally left blank.

APPENDIX I

O.R.S. § 243.806

243.806. Authorization to make deduction from salary or wages of exclusive representative

(1) A public employee may enter into an agreement with a labor organization that is the exclusive representative to provide authorization for a public employer to make a deduction from the salary or wages of the public employee, in the manner described in subsection (4) of this section, to pay dues, fees and any other assessments or authorized deductions to the labor organization or its affiliated organizations or entities.

(2) A public employer shall deduct the dues, fees and any other deduction authorized by a public employee under this section and remit payment to the designated organization or entity.

(3)(a) In addition to making the deductions and payments to a labor organization or entity described in subsection (1) of this section, a public employer shall make deductions for and payments to a noncertified, yet bona fide, labor organization, if so requested and authorized by a public employee, in the manner described in subsection (4) of this section.

(b) The deductions and payments made in accordance with this subsection shall not be deemed an unfair labor practice under ORS 243.672.

(4)(a) A public employee may provide authorization for the deductions described in this section by telephonic communication or in writing, including by an electronic record or electronic signature, as those terms are defined in ORS 84.004.

(b) A public employee's authorization is independent of the employee's membership status in the labor organization to which payment is remitted and irrespective of whether a collective bargaining agreement authorizes the deduction.

(5) Notwithstanding subsections (1) to (4) of this section, a collective bargaining agreement between a labor organization and a public employer may authorize a public employer to make a deduction from the salary or wages of a public employee who is a member of the labor organization to pay dues, fees or other assessments to the labor organization or its affiliated organizations or entities.

(6) A public employee's authorization for a public employer to make a deduction under subsections (1) to (4) of this section shall remain in effect until the public employee revokes the authorization in the manner provided by the terms of the agreement. If the terms of the agreement do not specify the manner in which a public employee may revoke the authorized deduction, a public employee may revoke authorization for the deduction by delivering an original signed, written statement of revocation to the headquarters of the labor organization.

(7) A labor organization shall provide to each public employer a list identifying the public employees who have provided authorization for a public employer to make deductions from the public employee's salary or wages to pay dues, fees and any other assessments or authorized deductions to the labor organization. A public employer shall rely on the list to make the authorized deductions and to remit payment to the labor organization.

(8)(a) Notwithstanding subsection (10) of this section, a public employer that makes deductions and payments in reliance on the list described in subsection (7) of this section is not liable to a public employee for actual damages resulting from an unauthorized deduction.

(b) A labor organization that receives payment from a public employer shall defend and indemnify the public employer for the amount of any unauthorized deduction resulting from the public employer's reliance on the list.

(9) If a labor organization provides a public employer with the list described in subsection (7) of this section and the employer fails to make an authorized deduction and remit payment to the labor organization, the public employer is liable to the labor organization, without recourse against the employee who authorized the deduction, for the full amount that the employer failed to deduct and remit to the labor organization.

(10)(a) If a dispute arises between the public employee and the labor organization regarding the existence, validity or revocation of an authorization for the deductions and payment described under subsections (1) and (2) of this section, the dispute shall be resolved through an unfair labor practice proceeding under ORS 243.672.

(b) A public employer that makes unauthorized deductions or a labor organization that receives payment in violation of the requirements of this section is liable to the public employee for actual damages in an amount not to exceed the amount of the unauthorized deductions.

APPENDIX J

California Government Code Sections

Cal. Gov't Code § 1157.12

Public employers other than the state that provide for the administration of payroll deductions authorized by employees for employee organizations as set forth in Sections 1152 and 1157.3 or pursuant to other public employee labor relations statutes, shall:

(a) Rely on a certification from any employee organization requesting a deduction or reduction that they have and will maintain an authorization, signed by the individual from whose salary or wages the deduction or reduction is to be made. An employee organization that certifies that it has and will maintain individual employee authorizations shall not be required to provide a copy of an individual authorization to the public employer unless a dispute arises about the existence or terms of the authorization. The employee organization shall indemnify the public employer for any claims made by the employee for deductions made in reliance on that certification.

(b) Direct employee requests to cancel or change deductions for employee organizations to the employee organization, rather than to the public employer. The public employer shall rely on information provided by the employee organization regarding whether deductions for an employee organization were properly canceled or changed, and the employee organization shall indemnify the public employer for any claims made by the employee for deductions made in reliance on that information. Deductions may be revoked only pursuant to the terms of the employee's written authorization.

The Dills Act

Cal. Gov't Code § 3512, § 3517.5, § 3520.5

Cal. Gov't Code § 3512

It is the purpose of this chapter to promote full communication between the state and its employees by providing a reasonable method of resolving disputes regarding wages, hours, and other terms and conditions of employment between the state and public employee organizations. It is also the purpose of this chapter to promote the improvement of personnel management and employer-employee relations within the

State of California by providing a uniform basis for recognizing the right of state employees to join organizations of their own choosing and be represented by those organizations in their employment relations with the state. It is further the purpose of this chapter, in order to foster peaceful employer-employee relations, to allow state employees to select one employee organization as the exclusive representative of the employees in an appropriate unit, and to permit the exclusive representative to receive financial support from those employees who receive the benefits of this representation.

Nothing in this chapter shall be construed to contravene the spirit or intent of the merit principle in state employment, nor to limit the entitlements of state civil service employees, including those designated as managerial and confidential, provided by Article VII of the California Constitution or by laws or rules enacted pursuant thereto.

Cal. Gov't Code § 3517.5

If agreement is reached between the Governor and the recognized employee organization, they shall jointly prepare a written memorandum of such understanding which shall be presented, when appropriate, to the Legislature for determination.

Cal. Gov. Code § 3520.5

(a) The state shall grant exclusive recognition to employee organizations designated or selected pursuant to rules established by the board for employees of the state or an appropriate unit thereof, subject to the right of an employee to represent himself.

(b) The board shall establish reasonable procedures for petitions and for holding elections and determining appropriate units pursuant to subdivision (a).

(c) The board shall also establish procedures whereby recognition of employee organizations formally recognized as exclusive representatives pursuant to a vote of the employees may be revoked by a majority vote of the employees only after a period of not less than 12 months following the date of such recognition.

APPENDIX K

United States Constitution Amendment I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.