No. 21-____

In the Supreme Court of the United States

LORIANN ANDERSON, ET AL.,

Petitioners,

v.

SERVICE EMPLOYEES INTERNATIONAL UNION LOCAL 503, 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

JAMES G. ABERNATHY
REBEKAH C. MILLARD
FREEDOM FOUNDATION
P.O. BOX 552
Olympia, WA 98507
(360) 956-3482
jabernathy@freedomfoundation.com
rmillard@freedomfoundation.com
Counsel for Anderson, Durst, and Mendez Petitioners

MILTON L. CHAPPELL
Counsel of Record
ANGEL J. VALENCIA
c/o NATIONAL RIGHT TO WORK LEGAL DEFENSE FOUNDATION, INC.
8001 Braddock Road
Suite 600
Springfield, VA 22160
(703) 321-8510
mlc@nrtw.org
Counsel for All Petitioners
ajv@nrtw.org
Counsel for Irene Seager

October 22, 2021

[Additional Caption Information on Inside Cover]

JEREMY DURST, ET AL.,
Petitioners,

v.

OREGON EDUCATION ASSOCIATION, ET AL.,
Respondents.

BETHANY MENDEZ, ET AL.,
Petitioners,

v.

CALIFORNIA TEACHERS ASSOCIATION, ET AL.,
Respondents.

IRENE SEAGER,
Petitioner,

v.

UNITED TEACHERS LOS ANGELES, ET AL.,
Respondents.

QUESTION PRESENTED

Petitioners are public employees in the States of California and Oregon who exercised their First-Amendment rights to resign their union memberships, revoke their authorizations for their public employers to withhold further union payments from their wages after they became nonmembers, and object to subsidizing union speech. The respondent government employers and unions ignored petitioners' revocations and continued seizing payments for union speech from these objecting nonmembers until an escape period (contained in their dues deduction authorizations) for stopping union deductions occurred.

In 2018, the Court in *Janus v. AFSCME, Council 31* held that nonunion public employees have a First Amendment right not to subsidize union speech. 138 S. Ct. 2448, 2486 (2018). The Court also held that governments and unions violate that right by seizing union payments from nonmembers unless there is clear and compelling evidence the employees waived their constitutional right. *Id.*

Petitioners' deduction authorizations contain no First Amendment waiver language. Respondents offered none. The Ninth Circuit, however, held government employers and unions need only proof of employee contractual consent to join the union and pay membership dues (without any waiver) to seize payments for union speech after these employees become nonmembers.

The questions presented are:

1. Under the First Amendment, to seize payments for union speech from employees who resigned union membership, became nonmembers, and objected to subsidizing union speech, do government employers and unions need clear and compelling evidence that those nonmember employees knowingly, intelligently, and voluntarily waived their First Amendment rights to refrain from subsidizing union speech in order to constitutionally seize union payments from these employees?

2. When a union acts jointly with government to deduct and collect union payments from nonmember employees' wages, is that union a state actor participating in a state action under 42 U.S.C. § 1983?

PARTIES TO THE PROCEEDING

Petitioners are Loriann Anderson, Kenneth Hill, Rene Layton, Michael Miller, Bernard Perkins, Dennis Richey, Kathie Simmons, Kent Wiles, Melinda Wiltse, Jeremy Durst, Michael Garcie, Bethany Mendez, Linda Leigh-Dick, Audrey Stewart, Angela Williams, Stephanie Christie, Jennifer Gribben, and Irene Seager.

Respondents are Service Employees International Union (SEIU) Local 503, Oregon Public Employees Union (OPEU); Oregon AFSMCE Council 75; Katy Coba, in her official capacity as Director of the Oregon Department of Administrative Services; Jackson County, Oregon; Lane County, Oregon; Marion County, Oregon; Wallowa County, Oregon; City of Portland, Oregon; Western Oregon University; Northwest Senior and Disability Services; Oregon Education Association; Southern Oregon Bargaining Council Eagle Point Education Certified and Classified Employees; Eagle Point School District 9; Portland Association of Teachers; Portland Public Schools/ Multnomah County School District Number 1; California Teachers Association; National Education Association; Fremont Unified District Teachers Association; Valley Center-Pauma Teachers Association; Hayward Education Association-CTA-NEA; Associated Chino Teachers; Kim Wallace, in her official capacity as Freemont Unified School District Superintendent; Ron McCowan, in his official capacity as Valley Center-Pauma Unified School District; Norm Enfield, in his official capacity as Chino Valley Unified

School District Superintendent; Matt Wayne, in his official capacity as Hayward Unified School District Superintendent; Rob Bonta, in his official capacity as Attorney General of California; United Teachers Los Angeles; and Austin Beutner, in his official capacity as Superintendent of the Los Angeles Unified School District.

The following persons or entities were parties in the district court proceedings, but are not parties here for the reasons noted:

Kerrin Fiscus was a plaintiff in the district court in *Anderson*, but did not appeal the dismissal of her lawsuit.

Deanne Tanner was a plaintiff in the district court and an appellant in the Ninth Circuit in *Durst* but is not a petitioner.

Scott Carpenter was a plaintiff in the district court and an appellant in the Ninth Circuit; Gregory Franklin, in his official capacity as Tustin Unified School District Superintendent, and the Tustin Educators Association were defendants in the district court and appellees in the Ninth Circuit in *Mendez*. They were voluntarily dismissed as appellant and appellees, respectively, by stipulation of the parties and Order of the Ninth Circuit.

Xavier Becerra, in his official capacity as Attorney General of California, was a defendant in the district courts and an appellant in the Ninth Circuit in *Mendez* and *Seager*, until respondent Rob Bonta, in his official capacity as Attorney General of California, replaced him in both cases.

The Los Angeles Unified School District was a defendant in the *Seager* district court until dismissed by stipulation of the parties.

CORPORATE DISCLOSURE STATEMENT

A corporate disclosure statement is not required under Supreme Court Rules 14(b)(ii) and 29.6 because no petitioner is a corporation.

STATEMENT OF RELATED PROCEEDINGS

There are no directly related proceedings arising from any of the same trial court cases involved in the judgments sought to be reviewed by this Joint Petition.

TABLE OF CONTENTS

TABLE OF CONTENTS

TABLE OF CONTENTS

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

CASES

TABLE OF AUTHORITIES

TABLE OF AUTHORITIES

TABLE OF AUTHORITIES

JOINT PETITION FOR WRIT OF CERTIORARI

Loriann Anderson, Kenneth Hill, Rene Layton, Michael Miller, Bernard Perkins, Dennis Richey, Kathie Simmons, Kent Wiles, Melinda Wiltse, Jeremy Durst, Michael Garcie, Bethany Mendez, Linda Leigh-Dick, Audrey Stewart, Angela Williams, Stephanie Christie, Jennifer Gribben, and Irene Seager petition the Court to grant a writ of certiorari to the United States Court of Appeals for the Ninth Circuit in the following cases: *Anderson v. Service Employees International Union (SEIU) Local 503*, 854 F. App'x 915 (9th Cir. 2021); *Durst v. Oregon Education Association*, 854 F. App'x 916 (9th Cir. 2021); *Mendez v. California Teachers Association*, 854 F. App'x 920 (9th Cir. 2021); and *Seager v. United Teachers Los Angeles*, 854 F. App'x 927 (9th Cir. 2021). This joint petition is permitted by Supreme Court Rule 12.4 and warranted because the identity of the legal issues and interests in these cases involve identical or closely related questions.

OPINIONS BELOW

The Court of Appeals for the Ninth Circuit issued all four unpublished opinions on July 29, 2021. They are available at *Anderson*, 854 F. App'x 915; *Durst*, 854 F. App'x 916; *Mendez*, 854 F. App'x 920; and *Seager*, 854 F. App'x 927 and are reprinted in the Appendix at App. A (App. 1-3), App. B (App. 4-6), App. C (App. 7-9), and App. D (App. 10-12) respectively.

The United States District Court for the District of Oregon's opinion in *Anderson* is reported at 400 F. Supp. 3d 1113 (D. Ore. 2019) and reprinted in the Appendix at App. E (App. 13-22); its opinion in *Durst* is

reported at 450 F. Supp. 3d 1085 (D. Ore. 2020) and reprinted at App. F (App. 23-35). The United States District Court for the Northern District of California's opinion in *Mendez* is reported at 419 F. Supp. 3d 1182 (N.D. Cal. 2020) and reprinted at App. G (App. 36-45). The United States District Court for the Central District of California's opinion in *Seager* is unpublished but available at 2019 WL 3822001 (C.D. Cal. Aug. 14, 2019) and reprinted at App. H (App. 46-53).

JURISDICTION

The judgments of the Ninth Circuit in these four cases were entered on July 29, 2021. The Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The First Amendment to the United States Constitution, California Education Code § 45060 (as amended June 27, 2018), and Oregon Revised Statutes § 243.806(6)(7) (as amended June 20, 2019) are reproduced at App. J (App. 78-82).

STATEMENT OF THE CASE

A. Legal Background

In 2018, the Court in *Janus v. AFSCME, Council 31*, held: (i) public employees have a First Amendment right not to subsidize union speech; and (ii) governments and unions violate that right by taking payments for union speech from nonmembers without their affirmative consent. 138 S. Ct. 2448, 2486 (2018). The Court recognized that "[b]y agreeing to

pay, nonmembers are waiving their First Amendment rights, and such a waiver cannot be presumed." *Id.* The Court thus held that, to prove a nonmember's consent to financially supporting a union, a "waiver must be freely given and shown by 'clear and compelling' evidence." *Id.* (citation omitted).

California and Oregon public employers and unions are maintaining and enforcing union membership and dues deduction authorizations that prohibit public employees from exercising their right to stop subsidizing union speech except during limited escape periods. These escape periods create the possibility, and in petitioners' cases the certainty, that governments and unions will continue to seize union payments from these union members after they resigned their union membership until the escape period occurs. Petitioners never signed a knowing waiver of their First Amendment rights that would allow these deductions to continue after they became nonmembers.

B. Facts and Procedural History of Proceedings Below

1. *Anderson Petitioners*

Petitioners Loriann Anderson, Kenneth Hill, Rene Layton, Michael Miller, Bernard Perkins, Dennis Richey, Kathie Simmons, Kent Wiles, and Melinda Wiltse are individuals employed by state or local government entities in Oregon exclusively represented for collective bargaining by either respondent SEIU Local 503 or respondent Oregon AFSCME Council 75. Each petitioner signed a dues deduction authorization form before the Court's *Janus* decision while subject to Oregon's compelled "agency fee" regime of forced

unionism. The form also included a union membership provision and annual escape period for ending dues authorizations. None of the cards informed petitioners of their First Amendment right to be free from compelled union dues and to refrain from the union payments, or that petitioners were waiving that right when they signed the cards. App. 15-16; Appellants' Opening Brief at 5, *Anderson v. SEIU 503*, 854 F. App'x 915 (9th Cir. 2021) (No. 19-35871), 2020 WL 378029, at *5-*6 (Jan. 15, 2020).

After *Janus*, petitioners resigned membership in their unions, revoked their authorizations for further deductions of union dues or moneys from their paychecks, and objected to the continued subsidization of union speech. Respondent unions accepted petitioners' membership resignations, but continued to instruct the respondent governments to deduct union dues from their wages until the end of the annual deduction period, forcing petitioners to continue paying union payments for months after they resigned their union membership and withdrew their consent to fund union speech. *Id.*

Almost four months after the Court's holding in *Janus*, the Anderson petitioners sued respondents SEIU Local 503, Oregon AFSMCE Council 75, and the various government employers and officials responsible for the seizures of union payments from petitioners' wages. The suit was brought under 42 U.S.C. § 1983, alleging that these respondents violated the Anderson petitioners' First Amendment rights as recognized in *Janus*, and seeking damages or restitution for themselves, and a class of similarly situated employees, for the deductions from their wages that continued after

their union resignations and revocations of any deduction authorizations. App. 16-17.

The district court dismissed the putative class action complaint because it believed *Janus* and its First Amendment waiver requirements do not apply to union members, they only apply to nonmembers.[1] App. 17-22.

2. *Durst Petitioners*

Petitioners Jeremy Durst and Michael Garcie are public employees of two respondent school districts in Oregon. These teachers are each exclusively represented by respondent Oregon Education Association ("OEA") and its respondent affiliates. Until June 2018, Oregon law required petitioners to either become union members and pay membership dues, or pay a forced fee equal to full dues. Under this rule, petitioners signed union dues deduction authorizations and membership application forms. App. 24-25, 30, 33.

Six months after the *Janus* decision, the Durst petitioners objected to subsidizing union speech and attempted to end the automatic deduction of union dues from their paychecks. OEA denied their requests. It informed petitioners that, despite their resignations of membership, they would be forced to continue to pay union dues for another nine months until the following September—the annual escape period for anyone wishing to end dues deductions. Respondent

[1] The district court assumed, without deciding, that the conduct at issue is "state action" for a Section 1983 claim. App. 18, n. 2.

school districts continued the deductions without the petitioners consent until the escape period occurred. The dues authorization cards petitioners signed did not inform them of their First Amendment right under *Janus* to be free from compelled union dues and to refrain from the payment of any union dues or fees, unless the public employee knowingly consented to waive that right when they signed the deduction cards. *Id.*; Appellants' Opening Brief at 4-5, *Durst v. OEA*, 854 F. App'x 916 (9th Cir. 2021) (No. 20-35374), 2020 WL 5505764, at *4-*6 (Sep. 3, 2020).

The Durst petitioners filed this action under 42 U.S.C. § 1983 on June 11, 2019, seeking declaratory and injunctive relief as well as compensatory and nominal damages for the return of all dues deducted from their wages.[2] The District Court granted respondents' cross-motion for summary judgment, and dismissed the complaint, because it concluded "the waiver standard set forth in *Janus* concerns only nonconsenting employees, *i.e.*, nonmembers." and the First Amendment's protection only applies to employees who "refus[e] to ever join their unions."[3] App. 24, 30-35.

3. *Mendez Petitioners*

Petitioners Bethany Mendez, Linda Leigh-Dick,

---

[2] After the complaint was filed, the OEA tendered checks for the compensatory damages sought. The district court decided the merits of petitioners' case because the claim for nominal damages created a live case or controversy. App. 28-29.

[3] The district court did not address respondents' alternative argument that the "garnishments" were not state action required under Section1983. App. 24, n.1.

Audrey Stewart, Scott Carpenter, Angela Williams, Stephanie Christie, and Jennifer Gribben are public school teachers in California in bargaining units exclusively represented by respondents California Teachers Association ("CTA") and various local CTA affiliates. Each petitioner signed a union dues deduction authorization card that made them a union member and authorized their respondent school district employers to deduct union dues from their wages and forward those dues to the unions. The cards made the dues deductions irrevocable for a period of a year and annually renewed for another year unless the employees resigned union membership and revoked their dues deduction authorizations within a narrow annual escape period occurring 90-days before the anniversary of each employee's signed card. App. 36-37.

None of the cards petitioners signed informed them of their First Amendment right under *Janus* to be free from compelled union dues and to refrain from the payment of any union dues or fees, or that petitioners were waiving that right when they signed the cards. In fact, Petitioners Mendez, Leigh-Dick, Stewart, and Williams each signed a card while compelled agency fees were required before the Court's *Janus* decision. Petitioners Carpenter, Christie, and Gribben each signed a card post-*Janus*, although the content of the card was unchanged from the one the other petitioners had signed pre-*Janus*. Appellants' Opening Brief at 9-10, *Mendez v. CTA*, 854 F. App'x 920 (9th Cir. 2021) (No. 20-15394), 2020 WL 1643854, at *9-*10 (Mar. 25, 2020).

After *Janus*, each petitioner resigned union membership, objected to continued financial support of the

unions, revoked their deduction authorization, and notified their respondent employers and unions to cease further deductions from their wages of moneys for the CTA and its affiliates. The unions processed petitioners' membership resignations, making them nonmembers, but continued to instruct petitioners' school districts to deduct union dues from their wages until the expiration of the 30-day escape period described in the card. Respondent school districts continued deducting moneys from petitioners' wages for union speech over their objections. *Id.* at *10; App. 36-37.

Petitioners sued respondents California Attorney General, their school superintendents ("employers") and unions under Section 1983, alleging that their public employers and unions violated their First Amendment rights as recognized in *Janus* by deducting dues from their wages. They sought declaratory and injunctive relief as well as damages or restitution for themselves, and a class of similarly situated employees, for the return of all dues deducted from their wages without proper authorization after they resigned their union membership and revoked their dues deduction authorizations. Petitioners alleged that California Education Code § 45060 and the various collective bargaining agreements between the respondent governments and unions violated their First Amendment rights because they authorized their employers to deduct union dues from their wages in the absence of a waiver of their First Amendment right not to pay any union dues or fees and over their objection to subsidizing union speech. App. 37, 39-41.

The district court dismissed Petitioners' putative

class action complaint, holding that respondent unions were not state actors under § 1983 because "Section 45060 does no more than set forth an administrative, ministerial mechanism for carrying out a deduction from the wages of those individuals who voluntarily elected to become union members and authorized deduction of their union dues from their paychecks." *Id.* at 41. The district court further found that "*Janus* does not preclude enforcement of union membership and dues deduction authorization agreements like plaintiffs' agreements here" and thus neither the state statute nor CBAs authorized any wrongful conduct by the relevant respondent employers or unions involved in the continued deductions. *Id.* at 41-44.

4. *Seager Petitioner*

Petitioner Seager is an elementary school teacher with the Los Angeles Unified School District ("LAUSD") in a unit exclusively represented by respondent United Teachers Los Angeles ("UTLA"). Almost four months before *Janus* was decided and when teachers were still required to pay UTLA dues or fees to keep their jobs, Seager signed a union membership and concurrent dues deduction authorization form subject to an annual 30-day escape-period restriction on her ability to revoke her deduction authorization. Less than a month after the Court's *Janus* holding, Seager notified UTLA of her union membership resignation, objection to union support, and revocation of her dues deduction authorization. UTLA processed Seager's membership resignation, but not her demand to cease union deductions. LAUSD at UTLA's demand continued to deduct and collect union dues from

Seager's wages for slightly more than six months after her union resignation and dues deduction revocation. App. 47-49; Appellant's Opening Brief at 3-4, *Seager v. UTLA*, 854 F. App'x 927 (9th Cir. 2021) (No. 19-55977), 2019 WL 5579372, at *2-*4 (Oct. 21, 2019).

Seven months after the Court's holding in *Janus*, Seager sued LAUSD and respondents UTLA and the California Attorney General under § 1983, alleging that these respondents violated her First Amendment rights as recognizes in *Janus*. She sought damages or restitution for herself, and a class of similarly situated teachers, for the dues unconstitutionally collected from her wages after she withdrew affirmative consent for those deductions.[4] App. 49-53.

The district court found that enforcing Seager's union membership and dues deductions agreements did not violate her rights under *Janus*. It therefore held her "First Amendment claim for return of dues paid pursuant to her voluntary union membership agreement fails as a matter of law."[5] *Id.* at 52. The court granted UTLA's and the California Attorney General's motions and ruled in their favor. *Id.* at 46-47.

5. *The Ninth Circuit Memoranda*

Petitioners timely appealed their district court dismissals of their actions to the Ninth Circuit. The same

---

[4] Like the *Mendez* petitioners, Seager also challenged the constitutionality of California Education Code §45060. App. 50. Seager also substituted respondent Beutner, in his official capacity as Superintendent of LAUSD, for LAUSD. App. 49.

[5] The district court did not mention state action. *See* App. 46-53.

Ninth Circuit panel, feeling controlled by the intervening decision in *Belgau v. Inslee*, 975 F.3d 940 (9th Cir. 2020), *cert. denied*, 141 S. Ct. 2795 (2021),[6] (App. 54-77), affirmed those four dismissals on July 29, 2021, in similar unpublished memoranda. App. 1-12.

As for the First Amendment claims against the public employers, the opinions in *Durst* and *Mendez* stated the dismissals were appropriate because "plaintiffs affirmatively consented to voluntary deduction of union dues, and . . . *Janus* . . . did not extend a First Amendment right to avoid paying union dues that were agreed upon under validly entered membership agreements. *See Belgau*, 975 F.3d at 950-52." App. 6, 8-9. Echoing the same sentiment, the opinion in *Anderson* merely cited the same *Belgau* pages with the parenthetical: "concluding that . . . *Janus* . . . did not extend a First Amendment right to avoid paying union dues that were agreed upon under validly entered union membership agreements." App. 2-3. The *Seager* decision did not mention the public employers. *See* App. 11-12.

---

[6] The Court denied the *Belgau* petition for certiorari last term. *Belgau v. Inslee*, 141 S. Ct. 2795 (2021). That petition did not limit its focus and questions presented to only the seizures of payments for union speech after the employees resigned their union membership and became nonmembers as the joint petition does here. *See* Petition for a Writ of Certiorari, *Belgau v. Inslee,* 141 S. Ct. 2795 (2021) (No. 20-1120), 2021 WL 640501 (Feb. 11, 2021). Instead, the *Belgau* petition focused on union membership, the deduction of union dues, and the "repayment of union dues deducted from the [petitioners'] wages *going* back to the limitations period." *Id.* at 8 & n.6 (*8, & n.6). The two petitions are vastly different in scope and substance.

As for the claims against the unions, the panel said dismissal was appropriate because "the deduction of union membership dues arose from private membership agreements between the parties, and 'private dues agreements do not trigger state action and independent constitutional scrutiny.' *Belgau* . . . 975 F.3d [at] 946-49 . . . (discussing state action)." App. 5-6, 8, 11. The *Anderson* memorandum simply cited the same *Belgau* citation with a "discussing state action" parenthetical. App. 2.

As noted, these four summary affirmances were all based on the earlier Ninth Circuit *Belgau* decision. The *Belgau* panel saw the issues before it as pertaining to the deduction of union dues, specifically, whether *Janus*'s strict constitutional waivers apply to the deduction of union dues by union members. The panel's answer was: "*Janus* does not address this financial burden of union membership," does "not extend a First Amendment right to avoid paying union dues," nor did it "create[] a new First Amendment waiver requirement for union members before dues are deducted pursuant to a voluntary agreement." *Belgau*, 975 F.3d at 951, 952 (App. 75, 76-77); *see also* at 950-52 (App. 72-77). The panel, *id.* at 950 (App. 72-73), further supported its decision on whether the First Amendment applies to union member dues deduction authorizations by citing *Cohen v. Cowles Media Co.*, 501 U.S. 663, 671 (1991), as had three of the district courts. App. 18-21, 42, 52.

At the same time, the *Belgau* panel recognized *Janus* and its waiver requirement applied to nonmembers. "[T]he Court [in *Janus*] mandated that nonmembers 'freely,' 'clearly,' and 'affirmatively' waive their

First Amendment rights before any payment can be taken from them. The Court discussed constitutional waiver *because* it concluded that nonmembers' First Amendment right had been infringed." 975 F.3d at 952 (App. 76) (citations omitted); *see also* at 951-52 (App.74) ("Choosing to pay union dues cannot be decoupled from the decision to join a union").

In its state action ruling, the *Belgau* panel focused on the dues deduction authorizations that union members had signed, not the deductions the public employer made from nonmember employees after they resigned their union membership. "The actual claim is aimed at deduction of dues without a constitutional waiver, not a deduction of agency fees, which did not occur." *Id.* at 948 (footnote omitted) (App. 69); *see also* at 946-49 (App. 63-70).

Unlike *Belgau*, petitioners' claims here concern the public employers' deduction of union moneys from employees after they resigned their union membership, objected to financially supporting union speech, and were recognized by their unions as nonmembers from whom there are no waivers that would make the union payment deductions constitutional. Petitioners' claims here do not concern the deduction of union dues while they were union members.

Petitioners file this joint petition for certiorari to present to the Court the important question of whether governments and unions need clear and compelling evidence that employees waived their First Amendment rights, or just proof of a contract, to seize payments for union speech when those payments are seized after union members resign their membership and are objecting nonmembers. The Court's resolution

of this question will largely determine the extent to which governments and unions can restrict employees' speech rights under *Janus*.

REASONS FOR GRANTING THE JOINT PETITION

The Ninth Circuit created a massive loophole to the Court's *Janus* holding that public employees have a First Amendment right not to subsidize union speech and must waive that right before governments and unions may seize union payments from nonmembers. It did so by finding that both *Janus*'s holding and the First Amendment do not apply to public employees, governments, and public-sector unions, when those employees sign union membership and dues deduction authorizations that limit employees' exercise of their right to stop subsidizing union speech except during short escape periods.

The practical effect of these escape-period restrictions is that they authorize the seizures of union payments from employees who resign their union membership, object to the continued subsidization of union speech, and revoke their deduction authorizations outside the escape period. These nonmembers, like petitioners here and the class of similarly situated nonmembers they seek to represent, have not waived their First Amendment rights not to support the unions as nonmembers.

Petitioners do not challenge the deduction of union dues, nor do they seek a return of the dues deducted under their union membership and dues deduction authorizations while they were union members. They

only challenge and seek the return of the union payments the governments and unions seized after they resigned their union membership and objected to subsidizing union speech because they had not waived their First Amendment rights nor affirmatively consented to the seizure of nonmember union payments as *Janus* requires. 138 S. Ct. at 2486.

The Ninth Circuit added insult to injury when it determined public-sector unions are not state actors for purposes of 42 U.S.C. § 1983 claims when governments relied on unions' dues deduction authorizations for deducting union payments from nonmembers' wages because "private dues agreements do not trigger state action and independent constitutional scrutiny." App. 5, 8, 11.

The Court should resolve these issues for at least three reasons. *First*, the Ninth Circuit deviated from *Janus* by replacing this Court's constitutional waiver requirement with its own lesser contract requirement. The need for proof of a waiver is especially apparent where, as here, governments and unions prohibit objecting nonmembers from stopping the seizure of union payments from their wages.

Second, the Ninth Circuit's holding that unions are not state actors when they work jointly with states to deduct and collect union dues from employees' wages conflicts with the Court's decisions in *Janus*, among other fee seizure cases the Court has decided, and *Lugar v. Edmondson Oil Co.*, 457 U.S. 922, 936 (1982), and with two Seventh Circuit precedents, *see Janus v. AFCSME, Council 31*, 942 F.3d 352, 356-57, 361 (7th Cir. 2019) ("*Janus* II"); *Hudson v. Teachers Union*, 743

F.2d 1187, 1191 (7th Cir. 1984). The Court should resolve this conflict.

Finally, the vitality of *Janus*' waiver requirement is an issue of exceptional importance. The requirement protects employees' ability freely to exercise their speech rights by ensuring that employee who authorize the government to take payments for union speech from their wages do so voluntarily and with an understanding of their rights. *Janus*' waiver requirement also ensures that states and unions cannot enforce escape-period restrictions against nonmember employees unless there is clear and compelling evidence the employees knowingly and voluntarily waived their First Amendment rights and the enforcement of the escape-window restriction is not against public policy.

If *Janus'* waiver requirement is not enforced, states and unions will continue to restrict severely when public employees can stop paying for union speech. The Court should not allow the fundamental speech rights it recognized in *Janus* to be hamstrung in this way. The Court should grant the joint petition to instruct lower courts to enforce *Janus*'s waiver requirement, especially as it applies to union members who resign their membership to become nonmembers from whom the governments and unions still seize union payments from their wages.

I. The Ninth Circuit's Decisions Conflict with *Janus*.

A. *Janus* held that governments and unions must have clear and compelling evidence of a constitutional waiver to seize union payments from nonmember employees.

1. In *Janus*, the Court held the following standard governs when the government and unions can constitutionally take union payments from nonmember employees:

> Neither an agency fee nor any other payment to the union may be deducted from a nonmember's wages, or may any other attempt be made to collect such a payment, unless the employee affirmatively consents to pay. By agreeing to pay, nonmembers are waiving their First Amendment rights, and such a waiver cannot be presumed. *Johnson v. Zerbst*, 304 U.S. 458, 464 (1938); *see also Knox* [*v. Service Employees*, 567 U.S. 298, 312–13 (2012)]. Rather, to be effective, the waiver must be freely given and shown by "clear and compelling" evidence. *Curtis Publ'g Co. v. Butts*, 388 U.S. 130, 145 (1967) (plurality opinion); *see also Coll. Sav. Bank v. Fla. Prepaid Postsecondary Ed*[*uc*]. *Expense Bd.*, 527 U.S. 666, 680–682 (1999). Unless employees clearly and affirmatively consent before any money is taken from them, this standard cannot be met.

138 S. Ct. at 2486.

The Court's waiver requirement makes sense. Given nonmember employees have a First Amendment right

not to pay for union speech, it follows that the government must have proof employees waived that right if there is any possibility, like what occurs when there are escape-period restrictions, that such payments may be taken from them while they are nonmembers.

2. The need for a waiver is especially apparent when the government and unions prohibit employees from stopping dues deductions for certain periods. Employees cannot be prohibited from exercising their First Amendment right not to subsidize union speech for periods in which they are nonmembers unless those employees validly waived their constitutional right for that period.

Without proof of a waiver, the government necessarily violates the First Amendment rights of employees who leave the union by compelling these nonmembers to subsidize union speech until the escape period is satisfied. Employees who provide notice outside the escape period that they are nonmembers and object to supporting the union will nevertheless have payments for union speech seized from their wages. These seizures violate the "bedrock principle" that "no person in this country may be compelled to subsidize speech by a third party that he or she does not wish to support." *Harris v. Quinn*, 573 U.S. 616, 656 (2014). The need for clear and compelling evidence that these employees waived their First Amendment rights under *Janus* is manifest when, as here, the government and a union compel objecting nonmembers to subsidize union speech under an escape-period restriction.

B. The Ninth Circuit defied *Janus* by substituting a contract standard for the waiver standard the Court required.

The Ninth Circuit gutted *Janus*'s waiver requirement by holding that proof of a waiver is not required for the governments and unions to seize union dues from objecting, nonmember employees when they had signed escape-period restrictions in their union membership or dues deduction authorization. App. 2-3, 6, 8-9, 11; *Belgau*, 975 F.3d at 951-52 (App. 74-77). The lower court held the public employee's contractual consent to restrictions on their First Amendment rights, not a First Amendment waiver, was sufficient. *Id.* The court thus substituted its own contract requirement for the constitutional waiver requirement the Court set forth in *Janus* to govern when governments and unions can seize payments for union speech from nonmember employees.

The lower court's two rationales for not enforcing *Janus*'s waiver requirement are both untenable.

1. The Ninth Circuit found evidence of a constitutional waiver to be unnecessary because it believed employees who contractually consent to pay union dues until an escape period are not compelled to subsidize union speech in violation of their First Amendment rights. *Id.* This rationale ignores that *Janus* requires evidence of a waiver to establish employee consent to paying for union speech—i.e., a waiver is a prerequisite to proving consent. 138 S. Ct. at 2486. Without evidence nonmembers waived their right not to subsidize union speech, the government has not satisfied the Court's "standard" that "employees [must]

clearly and *affirmatively* consent before any money is taken from them." *Id.*

Most glaringly, the lower court's rationale ignores the dispositive fact that escape-period restrictions compel objecting employees who no longer wish to remain a member of the union and support a union financially, or who never freely chose to do so in the first place, to continue supporting it until the escape period is satisfied. Here, all petitioners had union payments in amounts equal to union dues seized from their wages after they provided notice that they were nonmembers and opposed those seizures. *See supra* 4-6, 8, 10. As such, escape-period restrictions are effectively an "agency shop" requirement—a requirement that employees pay union dues or fees as a condition of their employment—with a limited duration.

In some ways, escape-period requirements are worse than the agency fee law *Janus* held unconstitutional. Illinois's law required government employers to deduct from nonconsenting employees' wages reduced union fees that excluded monies used for some political purposes. 138 S. Ct. at 2486. California's and Oregon's post-*Janus* revocation law requires that governments deduct *full* union dues, including monies used for partisan political purposes, from employees who resign and object to these seizures outside an annual revocation period. Cal. Educ. Code § 45060; Or. Rev. Stat. 243.806 (App.40-41, 78-82). For employees who do not want to support union expressive activities, escape-period restrictions can be more harmful to their speech rights than the "agency shop" requirement *Janus* struck down.

If *Janus*'s waiver requirement applies in any circumstance, it applies when employees are prohibited from exercising their First Amendment rights to stop subsidizing union speech by escape-period restrictions. The Ninth Circuit's conclusion that no waiver is required for the government and unions to continue to seize union payments from nonmembers over their express objections cannot be reconciled with the Court's holding in *Janus*. It should be readily apparent that governments and unions cannot restrict when employees can stop paying for union speech unless those employees waived their First Amendment rights under *Janus*.

2. The other justification the Ninth Circuit set forth for not requiring evidence of a waiver is the proposition that state enforcement of a "private agreement" under a law of general applicability does not violate the First Amendment under *Cohen*, 501 U.S. 663 (1991). *See Belgau*, 975 F.3d at 950 (App. 72-74). However, *Cohen* has no application here because this case does not concern a "private agreement" being enforced by a law of general applicability. It concerns government seizures of monies for union speech required by specialized statutes about public-sector union deductions that violate employees' First Amendment rights under *Janus*.

Cohen concerned a promissory estoppel action against a newspaper based on an alleged breach of a private contract. 501 U.S. at 666. The Court found that enforcing a promissory estoppel law against the newspaper for that breach did not violate the newspaper's First Amendment rights because it was "a law of general applicability." *Id.* at 669-70. The Court did not

need to address whether the newspaper waived its First Amendment rights because it found those rights were not violated in the first place.

The situation here is nothing like that in *Cohen*. *First*, dues deduction forms purporting to authorize the government to deduct union dues from employees' wages are not "private agreements," but are agreements with government employers. *See IAM Dist. Ten v. Allen*, 904 F.3d 490, 492 (7th Cir. 2018) ("A dues-checkoff authorization is a contract between an employer and employee for payroll deductions" and "[t]he union itself is not a party to the authorization."). It is the government that deducts union dues from public employees' wages *and* enforces restrictions on stopping those deductions. This is clear from California's and Oregon's statutes, which requires public employers to deduct union dues until revoked "pursuant to the terms of the written authorization," Cal. Educ. Code § 45060(c) (App. 79-80), or "in the manner provided by the terms of the agreement." Or. Rev. Stat. 243.806(6) (App. 81-82). It also is clear from the various dues deduction forms petitioners signed, which state the signatory agrees to "voluntarily authorize my employer to deduct from my earnings and pay over to [the union] such union dues." App. 47.

Second, government employers do not deduct union dues from employees' wages under a law of general applicability, like the promissory estoppel law in *Cohen*. *See* 501 U.S. at 669-70. They do so under narrow state payroll deductions laws that specify under what circumstances governmental employers must deduct union dues from employees' wages. *See* Cal. Educ. Code § 45060 & Or. Rev. Stat. 243.806, which specify

in exacting detail when and how public employers must deduct union dues from employees' wages. App. 78-82.

Finally, unlike the conduct at issue in *Cohen*, it is beyond peradventure that it violates the First Amendment for the government and unions to seize union dues or fees from nonmembers. *Janus*, 138 S. Ct. at 2486. That is what the respondent governments and unions did to petitioners and putative class members: They seized payments for unions from those employees' wages after they resigned their union membership and objected to financially supporting their unions.

Thus, unlike in *Cohen*, a waiver analysis must be conducted here because, absent proof these employees waived their First Amendment rights to stop subsidizing union speech, the governments' seizures from nonmembers' wages undoubtedly were unconstitutional.

C. Escape-period restrictions are against public policy.

A purported waiver is unenforceable if the "interest in its enforcement is outweighed in the circumstances by a public policy harmed by enforcement of the agreement." *Town of Newton v. Rumery*, 480 U.S. 386, 392 (1987) (footnote omitted). The escape-period restrictions found in petitioners' dues deduction forms are unenforceable under this standard.

The policy weighing against prohibiting employees from exercising their rights under *Janus* is of the highest order: employees' First Amendment right not to subsidize speech they do not wish to support. *See*

Janus, 138 S. Ct. at 2463-64. "[C]ompelled subsidization of private speech seriously impinges on First Amendment rights" and "cannot be casually allowed." *Id.* at 2464. In *Curtis Publishing*, the Court rejected an alleged waiver of First Amendment freedoms, finding that "[w]here the ultimate effect of sustaining a claim of waiver might be an imposition on that valued freedom, we are unwilling to find waiver in circumstances which fall short of being clear and compelling." 388 U.S. at 145.

There is no countervailing interest in enforcing severe restrictions on when employees can exercise their First Amendment rights to stop paying for union speech. The Court held in *Knox* that unions have no constitutional entitlement to monies from dissenting employees. 567 U.S. at 313 (citing *Davenport v. WEA*, 551 U.S. 177, 185 (2007)). The Court further held that union financial self-interests in collecting monies from nonmember employees—even monies to which the union arguably was entitled under state law—do not outweigh nonmembers' First Amendment rights. *Id.* at 321. Escape-period restrictions, especially those applying to nonmembers, are unenforceable as against public policy.

In sum, under a proper constitutional-waiver analysis, respondents could not lawfully enforce their escape-period restriction against petitioners because they never waived their First Amendment right to stop subsidizing union speech. A court conducting a constitutional-waiver analysis, which was not done by the courts below, would therefore make all the difference in this case.

If enforced, *Janus*'s waiver requirement would prohibit governments and unions from restricting employees' exercise of their rights under *Janus* unless employees knowingly, intelligently, and voluntarily consented to the restrictions. The restrictions could not be so onerous as to be against public policy. This salutary result is why it is important that the Court grant the joint petition to determine whether lower courts must enforce *Janus*'s waiver requirement.

D. The Ninth Circuit's state actor and state action holding conflicts with this Court's precedents and Seventh Circuit case law.

The Ninth Circuit found dismissal of petitioners' First Amendment claims against the unions was proper "because the deduction of union membership dues arose from private membership agreements between the parties, and 'private dues agreements do not trigger state action and independent constitutional scrutiny.' *Belgau*, . . . 975 F.3d [at] 946-49 . . . (discussing state action)." App. 5-6, 8, 11; *accord* App. 2.

It is preposterous that the Ninth Circuit found unions that seize union payments from nonmember employees pursuant to statutes, collective bargaining agreements and government payroll deductions are *not* state actors and government deductions from the wages of public employees are *not* state action. 975 F.3d at 947 (App. 65-67). This holding conflicts not only with *Janus* and with the Court's other fee seizure cases, but also with the Court's decision in *Lugar* and Seventh Circuit precedents.

1. The state action here is the same as in *Janus*: a state and union, acting jointly pursuant to a state statute and collective bargaining agreement, are deducting and collecting union payments from nonmembers' wages. 138 S. Ct. at 2486;[7] The Court has long held that unions can violate employees' constitutional rights when working with government employers to seize payments from those individuals. *See Harris*, 573 U.S. at 655-56; *Knox*, 567 U.S. at 309-11; *Teachers v. Hudson*, 475 U.S. 292, 304 & n.13, 306, 307 & n.20, 309 & n.22 (1986); *Abood v. Det. Bd. of Educ.*, 431 U.S. 209, 222, 234-35, (1977), *overruled on other grounds by Janus*, 138 S. Ct. 2448; *cf. Ellis v. Ry. Clerks*, 466 U.S. 435, 455 (1984) (Railway Labor Act case finding "significant impingement on First Amendment rights").

In *Janus*, the Court held both "States *and public-sector unions* may no longer extract agency fees from nonconsenting employees." 138 S. Ct. at 2486 (emphasis added). In *Hudson*, the Court held both "the government *and union* have a responsibility to provide procedures that minimize that impingement and that facilitate a nonunion employee's ability to protect his [First Amendment] rights." 475 U.S. at 307 n.20.

On remand in *Janus*, the Seventh Circuit confirmed it is "sufficient for the union's conduct to amount to state action" when government "deduct[s] fair-share fees from the employees' paychecks and transfer[s]

---

[7] The Court tellingly noted in *Janus*: "[W]e doubt that the Union—or its members—actually want us to hold that public employees have 'no (free speech) rights.'" *Janus v. AFSCME, Council 31*, 138 S. Ct. 2448, 2469 (2018) (citations omitted).

that money to the union." *Janus v. AFSCME, Council 31*, 942 F.3d 352, 361 (7th Cir. 2019). Likewise, several decades earlier, the Seventh Circuit reached a similar conclusion: "when a public employer assists a union in coercing public employees to finance political activities, that is state action," and when "a union acts in concert with a public agency to deprive people of their federal constitutional rights, it is liable under section 1983 along with the agency." *Hudson v. Teachers*, 743 F.2d 1187, 1191 (7th Cir. 1984).

The Seventh Circuit's conclusions are consistent with the Court's finding of state action under *Lugar v. Edmondson Oil Co.*, 457 U.S. 922 (1982), in the context of a government seizure of money or property on behalf of a private actor. *See, e.g.*, *Lugar* at 941 ("[A] private party's joint participation with state officials in the seizure of disputed property is sufficient to characterize the party as a 'state actor,'" and a statutory procedure that permits a private party to attach disputed property "obviously is the product of state action."); *Tulsa Pro. Collection Servs., Inc. v. Pope*, 485 U.S. 478, 486 (1988) ("[W]hen private parties make use of state procedures with the overt, significant assistance of state officials, state action may be found."); *Sniadach v. Fam. Fin. Corp.*, 395 U.S. 337 (1969) (addressing state garnishment of employees' wages).

Lugar is controlling here. California's and Oregon's statutes and procedures for deducting union dues and payments from petitioners' and other employees' wages obviously is the product of state action. However, the state action here is even more involved than what occurred in the litany of public-sector union cases mentioned above. Here respondent unions are

more than just engaged with government in the unconstitutional seizure of union payments from nonmembers. They control those seizures. Both deduction statutes as amended give unions power traditionally held by government employers over wage assignments. The statutes require governments to continue making union payroll deductions under a written authorization until the authorization is revoked following the terms of, and in the manner provided by, the authorization. Cal. Educ. Code § 45060(a)(c) (App. 78-80); Or. Rev. Stat. 243.806(6) (App. 81). The statutes mandate that unions, not governments, determine when those requirements have been met and that governments may only cease the deductions at the union's directive, not at the independent determination of government. Cal. Educ. Code § 45060(e) (App. 80-81); Or. Rev. Stat. 243.806(7) (App. 81-82).

The statutes also require all requests that governments cease deductions go to the unions, not governments. *Id.* In fact, California's statute allows unions to retain the employee's written authorization and not provide "a copy of [it to the employer] in order for the payroll deductions . . . to be effective," and mandates governments must "rely on information provided by the [unions] regarding whether deductions . . . were properly cancelled." Cal. Educ. Code § 45060(e)(f) (App. 80-81). Indeed, the respondent governments and unions worked in concert at every step to establish statutes and a system and to seize union payments form nonmembers' wages.

2. The Ninth Circuit's reasoning that "private dues agreements do not trigger state action and independent constitutional scrutiny," *Belgau*, 975 F.3d at 949

(App. 69-70), is untenable in at least two respects. *First*, the source of the constitutional harm here, as in *Janus*, is that governments and unions seized payments for union speech from nonmembers' wages. Petitioners did not claim that the dues deduction authorizations deprived them of their constitutional rights. Rather, they alleged the respondents'—both governments' and unions'—deduction of dues from their wages under state law and collective bargaining agreements, and without a sufficient waiver, violated their constitutional rights. App. 17, 24-25, 30-31, 37, 39-40, 49-50. They also challenged that the respective state statutes are unconstitutional to the extent they authorize those seizures. *Id.* Petitioners dues deduction forms are not the source of their injuries, but are relevant as evidence that they did not waive their right to stop subsidizing union speech when they became nonmembers.

The Ninth Circuit's state-action holding cannot be reconciled with *Janus* or *Lugar*, and conflicts with Seventh Circuit's decisions in *Janus* II and *Hudson*. The Court should resolve this conflict.

II. This Case Is Exceptionally Important for Millions of Public Employees Who Are Subject to Escape-Period Restrictions That Limit When They Can Exercise Their First Amendment Rights.

The Court's review is urgently needed because as the cases in this joint petition show, governments and unions are severely restricting when millions of employees can exercise their First Amendment rights under *Janus*, without those employees having waived

those rights. To rein in these abuses, the Court should make clear that governments and unions cannot compel nonmember employees to subsidize union speech absent proof the employees waived their First Amendment rights.

1. In 2020, there were roughly 4,767,211 public-sector union members in the seventeen states that enforce escape-period restrictions—Alaska, California, Colorado, Connecticut, Delaware, Hawaii, Illinois, Massachusetts, Minnesota, Nevada, New Jersey, New Mexico, New York, Ohio, Oregon, Pennsylvania, and Washington.[8] Thus, roughly 4.7 million public employees are likely subject to, or could face, restrictions on when they can exercise their First Amendment right to stop subsidizing union speech without having knowingly and voluntarily waiving that right.

These restrictions are onerous and prohibit employees from exercising their rights under *Janus* except during annual escape periods. Employees who want to exercise their free speech rights outside the escape period by providing notice that they are nonmembers, and that they object to dues deductions, are compelled to continue to subsidize union speech until the escape period occurs.

---

[8] *See* Barry T. Hirsch & David A. Macpherson, *Union Membership and Coverage Database from the Current Population Survey: Note*, 56 Indus. & Lab. Rels. Rev. 349-54 (2003) (updated annually at unionstats.com) (2020), https://www.unionstats.com/State_U_2020.htm. *See also* Petition for a Writ of Certiorari at 2-4 & nn. 1-5, 21-22, *Troesch v. Chi, Tchrs, Union, Loc, Union No. 1* (2021) (No. 20-1786), 2021 WL 2592880, at *2-*4 & nn.1-5, *21-*22 (June 21, 2021).

Without having knowingly waived this First Amendment right, employees agreeing to these escape-period restrictions have their fundamental speech and associational rights infringed when they resign their union membership and are compelled to subsidize union speech against their will by the governments and unions' enforcement of these escape-period restrictions. The Court reiterated in *Janus* that "[i]f there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein." 138 S. Ct. at 2463 (emphasis omitted) (quoting *W. Va. Bd. of Educ. v. Barnette*, 319 U.S. 624, 642 (1943)).

That fixed star shines throughout the year, and not only for a few days. "Compelling individuals to mouth support for views they find objectionable violates that cardinal constitutional command." *Id.* at 2463. "Compelling a person to *subsidize* the speech of other private speakers raises similar First Amendment concerns." *Id.* at 2464. "As Jefferson famously put it, 'to compel a man to furnish contributions of money for the propagation of opinions which he disbelieves and abhor[s] is sinful and tyrannical.'" *Id.* (quoting Thomas Jefferson, *A Bill for Establishing Religious Freedom* (1779), *reprinted in* 2 *Papers of Thomas Jefferson* 545 (J. Boyd ed. 1950)). The sole effect of an escape-period restriction is to compel employees who have left their union and no longer want to contribute money to propagate union speech to continue to do so.

2. Yet the Ninth Circuit gave governments and unions a green light to severely restrict when employees

may exercise their First Amendment rights not to subsidize union speech. It did so by holding *Janus*'s waiver requirement inapplicable whenever employees sign contracts authorizing government deductions of union dues that would continue after the public employees became nonmembers. App. 2-3, 5-6, 8-9, 11; *Belgau*, 975 F.3d at 950-52 (App. 72-77).

Under this lesser contract standard, governments and unions can easily restrict when and how employees may exercise their First Amendment rights under *Janus* simply by writing escape-period restrictions into the fine print of their dues deduction forms. There is no requirement that governments or unions notify employees presented with those forms of their constitutional right not to financially support the union, especially as nonmembers if they resign their union membership outside the escape period. Employees can unwittingly sign their First Amendment rights away for a year or more without having any idea they are doing so.

First Amendment speech and associational rights deserve greater protections than this. That is why the Court provided for such protections in *Janus* when it held that, to take payments for union speech from nonmember employees, governments and unions must have clear and compelling evidence those employees waived their First Amendment rights. 138 S. Ct. at 2486. Because dues deduction authorizations with escape-period restrictions authorize the deduction of union payments from employees who resign their union membership, *Janus*'s waiver requirements must apply.

The requirement that a waiver must be "knowing" and "intelligent" will require that employees who are presented with restrictive dues deduction authorizations be notified of their constitutional rights, allowing them to make informed decisions about whether to subsidize union speech even after they become nonmembers. The "voluntary" criteria for a waiver will ensure that employees can also make a free choice.

The Court should not permit governments and unions, as several appellate courts have done, to hamstring the First Amendment right it recognized in *Janus*. To protect employees' ability to freely exercise their speech rights, it is vital that the Court instruct the lower courts that they must enforce *Janus*'s waiver requirement when escape-period restrictions are included in union dues deduction authorizations that are enforced and executed by government employers.

III. This Case Is an Excellent Vehicle to Clarify That a Waiver Is Required for Governments and Unions to Seize Payments for Union Speech from Nonmember Employees.

This case squarely presents the question of whether *Janus* requires proof of a constitutional waiver for governments and unions to extract monies for union speech from nonmembers who resigned their previous union membership. *First*, this case presents a fact pattern that has become all too common since *Janus*: governments and unions enforcing escape-period restrictions that are written into employees' dues deduction forms that result in government seizures of union payments from nonmembers. *See supra* 4-6, 8, 10. The

Court's resolution of this case would establish a legal rule applicable to a common tactic that governments and unions are using to limit this Court's holding in *Janus*.

Second, the facts here are straightforward and cleanly present the legal question. California and Oregon expressly authorize unions to restrict when employees can stop government dues deductions and require governments to comply with the instructions of the unions, not their employees. Cal. Educ. Code § 45060; Or. Rev. Stat. 243.806(6)(7) (App. 78-82). Respondents restrict petitioners and similar employees from stopping dues deductions outside the escape period in the deduction authorization as mandated by state law and collective bargaining agreements. App. 15-16, 24-25, 36-37, 49-50. The governments and unions enforced their restrictions against petitioners by seizing union payments from their wages after they resigned their union membership and objected to supporting unions financially. *See supra* 4-6, 8, 10.

Without more, governments' seizures of payments for union speech violated petitioners' and putative class members' First Amendment rights under *Janus*, 138 S. Ct. at 2486. If the Court wants to correct the ongoing error the Ninth Circuit continues to make, and clarify that governments and unions need clear and compelling evidence of a constitutional waiver to lawfully seize payments for union speech from employees who have resigned union membership during an escape-period restriction, this case is an excellent vehicle to do so.

CONCLUSION

For all these reasons, petitioners respectfully request that the Court grant their joint petition for a writ of certiorari to the Ninth Circuit.

Respectfully submitted,

MILTON L. CHAPPELL
Counsel of Record
ANGEL J. VALENCIA
c/o NATIONAL RIGHT TO WORK LEGAL DEFENSE FOUNDATION, INC.
8001 Braddock Road
Suite 600
Springfield, VA 22160
(703) 321-8510
mlc@nrtw.org
Counsel for All Petitioners
ajv@nrtw.org
Counsel for Irene Seager

JAMES G. ABERNATHY
REBEKAH C. MILLARD
C/O FREEDOM FOUNDATION
P.O. BOX 552
Olympia, WA 98507
(360) 956-3482
jabernathy@freedomfoundation.com
rmillard@freedomfoundation.com

Counsel for Anderson, Durst and Mendez Petitioners

October 22, 2021

APPENDIX

TABLE OF APPENDICES

TABLE OF APPENDICES (cont'd)

TABLE OF APPENDICES (cont'd)

Appendix A

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

LORIANN ANDERSON; et al., Plaintiffs-Appellants, and KERRIN FISCUS, Plaintiff, v. SERVICE EMPLOYEES INTERNATIONAL UNION (SEIU) LOCAL 503, OREGON PUBLIC EMPLOYEES UNION (OPEU), labor organization; et al., Defendants-Appellees.	No. 19-35871 D.C. No. 3:18-cv-02013-HZ MEMORANDUM*

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

Appeal from the United States District Court
for the District of Oregon
Marco A. Hernandez, District Judge, Presiding

Submitted July 19, 2021**

Before: SCHROEDER, SILVERMAN, and MURGUIA, Circuit Judges.

Loriann Anderson, Kenneth Hill, Rene Layton, Michael Miller, Bernard Perkins, Dennis Richey, Kathie Simmons, Kent Wiles, and Melinda Wiltse appeal from the district court's judgment in their 42 U.S.C. § 1983 putative class action alleging a First Amendment claim arising out of union membership dues. We have jurisdiction under 28 U.S.C. § 1291. We review de novo the district court's dismissal under Federal Rule of Civil Procedure 12(b)(6). *Daniels-Hall v. Nat'l Educ. Ass'n*, 629 F.3d 992, 998 (9th Cir. 2010). We affirm.

The parties agree that this court's intervening decision in *Belgau v. Inslee*, 975 F.3d 940 (9th Cir. 2020), *cert. denied*, No. 20-1120, 2021 WL 2519114 (June 21, 2021), controls the outcome of this appeal. We affirm the district court's judgment dismissing plaintiffs' action for failure to state a claim. *See Belgau*, 975 F.3d at 946-69 (discussing state action), 950-52 (concluding that the Supreme Court's decision in *Janus v. American Federation of State, County & Municipal Employees, Council 31*, 138 S. Ct. 2448

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

(2018), did not extend a First Amendment right to avoid paying union dues that were agreed upon under validly entered union membership agreements).

Plaintiffs' motion for summary affirmance, set forth in their reply brief, is denied.

AFFIRMED.

Appendix B

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JEREMY DURST; et al., Plaintiffs-Appellants, v. OREGON EDUCATION ASSOCIATION, a labor organization; et al., Defendants-Appellees.	No. 20-35374 D.C. No. 1:19-cv-00905-MC MEMORANDUM*

Appeal from the United States District Court
for the District of Oregon
Michael J. McShane, District Judge, Presiding

Submitted July 19, 2021**

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

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2). Plaintiffs' request for oral argument, set forth in the opening brief, is denied.

Before: SCHROEDER, SILVERMAN, and MURGUIA, Circuit Judges.

Jeremy Durst, Deanne Tanner, and Michael Garcie appeal from the district court's summary judgment in their 42 U.S.C. § 1983 action alleging First Amendment claims arising out of union membership dues. We have jurisdiction under 28 U.S.C. § 1291. We review de novo. *JL Beverage Co., LLC v. Jim Beam Brands Co.*, 828 F.3d 1098, 1104 (9th Cir. 2016) (decision on cross-motions for summary judgment); *Foster v. Carson*, 347 F.3d 742, 745 (9th Cir. 2003) (mootness determinations). We may affirm on any ground supported by the record. *Enlow v. Salem-Keizer Yellow Cab Co.*, 389 F.3d 802, 811 (9th Cir. 2004). We affirm.

The district court properly granted summary judgment on plaintiffs' claims for prospective relief because such claims are moot. *See Bain v. Cal. Teachers Ass'n*, 891 F.3d 1206, 1211-15 (9th Cir. 2018) (finding plaintiffs' claims for prospective relief moot when they resigned their union membership and presented no reasonable likelihood that they would rejoin the union in the future).

Summary judgment was proper on plaintiffs' First Amendment claims against Oregon Education Association, Southern Oregon Bargaining Council Eagle Point Education Certified and Classified Employees, and Portland Association of Teachers because the deduction of union membership dues arose from private membership agreements between the parties, and "private dues agreements do not trigger state action and independent constitutional scrutiny." *Belgau,* [sic] *v. Inslee*, 975 F.3d 940, 946-49

(9th Cir. 2020), *cert. denied*, No 20-1120, 2021 WL 2519114 (June 21, 2021) (discussing state action).

Summary judgment was proper on plaintiffs' First Amendment claim [sic] against Eagle Point School District 9 and Portland Public Schools/Multnomah County School District Number 1 because plaintiffs affirmatively consented to the voluntary deduction of union dues, and the Supreme Court's decision in *Janus v. American Federation of State, County & Municipal Employees, Council 31*, 138 S. Ct. 2448 (2018), did not extend a First Amendment right to avoid paying union dues that were agreed upon under validly entered membership agreements. *See Belgau*, 975 F.3d at 950-52.

We do not consider matters not specifically and distinctly raised and argued in the opening brief, or arguments and allegations raised for the first time on appeal. *See Padgett v. Wright*, 587 F.3d 983, 985 n.2 (9th Cir. 2009).

AFFIRMED.

Appendix C

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

BETHANY MENDEZ,; et al., Plaintiffs-Appellants, v. CALIFORNIA TEACHERS ASSOCIATION; et al., Defendants-Appellees	No. 20-15394 D.C. No. 4:19-cv-01290-YGR MEMORANDUM*

Appeal from the United States District Court
for the Northern District of California
Yvonne Gonzalez Rogers, District Judge,
Presiding

Submitted July 19, 2021**

Before: SCHROEDER, SILVERMAN, and MURGUIA, Circuit Judges.

Bethany Mendez, Linda Leigh Dick, Audrey Stewart, Angela Williams, Stephanie Christie, and

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

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

Jennifer Gribben appeal from the district court's judgment dismissing their 42 U.S.C. § 1983 putative class action alleging First Amendment claims arising out of union membership dues. We have jurisdiction under 28 U.S.C. § 1291. We review de novo the district court's dismissal under Federal Rule of Civil Procedure 12(b)(6), and we may affirm on any ground supported by the record. *Daniels-Hall v. Nat'l Educ. Ass'n*, 629 F.3d 992, 998 (9th Cir. 2010). We affirm.

The parties now agree that this court's intervening decision in *Belgau v. Inslee*, 975 F.3d 940 (9th Cir. 2020), *cert. denied*, No. 20-1120, 2021 WL 2519114 (June 21, 2021), controls the outcome of this appeal.

The district court properly dismissed plaintiffs' First Amendment claims against Associated Chino Teachers, California Teachers Association, Fremont Unified District Teachers Association, Hayward Education Association-CTA-NEA, National Education Association, Valley Center-Pauma Teachers Association because the deduction of union membership dues arose from the private membership agreements between the union defendants and plaintiffs, and "private dues agreements do not trigger state action and independent constitutional scrutiny." *Belgau*, 975 F.3d at 946-49 (discussing state action).

Dismissal of plaintiffs' First Amendment claims against superintendents Kim Wallace, Ron McCowan, Matt Wayne, Norm Engield, and Attorney General Ron Bonta was proper because plaintiffs affirmatively consented to the voluntary deduction of union membership dues, and the Supreme Court's decision

in *Janus v. American Federation of State, County & Municipal Employees, Council 31*, 138 S. Ct. 2448 (2018), did not extend a First Amendment right to avoid paying union dues that were agreed upon under validly entered membership agreements. *See Belgau*, 975 F.3d at 950-52.

The district court did not abuse its discretion in denying leave to amend because any amendment would have been futile. *See Cervantes v. Countrywide Home Loans, Inc.*, 656 F.3d 1034, 1041 (9th Cir. 2011) (setting forth standard of review and explaining that dismissal without leave to amend is proper when amendment would be futile).

We do not consider matters not specifically and distinctly raised and argued in the opening brief. *See Padgett v. Wright*, 587 F.3d 983, 985 n.2 (9th Cir. 2009).

AFFIRMED.

Appendix D-

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

IRENE SEAGER, individually and as representative of the requested classes, Plaintiff-Appellant, v. UNITED TEACHERS LOS ANGELES; et al., Defendants-Appellees.	No. 19-55977 D.C. No. 2:19-cv-00469-JLS-DFM MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Josephine L. Staton, District Judge, Presiding

Submitted July 19, 2021**

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

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2). Appellant's request for oral argument, set forth in the opening brief, is denied.

Before: SCHROEDER, SILVERMAN, and MURGUIA, Circuit Judges.

Irene Seager appeals from the district court's judgment on the pleadings in her 42 U.S.C. § 1983 putative class action alleging a First Amendment claim arising out of union membership dues. We have jurisdiction under 28 U.S.C. § 1291. We review de novo the district court's judgment on the pleadings. *Fleming v. Pickard*, 581 F.3d 922, 925 (9th Cir. 2009). We may affirm on any ground supported by the record. *Thompson v. Paul*, 547 F.3d 1055, 1058-59 (9thCir. 2008). We affirm.

Because Seager failed to raise an objection to the argument that her claim seeking prospective relief was moot, she waived the right to challenge the issue on appeal. *Silvas v. E*Trade Mortg. Corp.*, 514 F.3d 1001, 1007 (9th Cir. 2008) ("[I]f a party fails to raise an objection to an issue before judgment, he or she waives the right to challenge the issue on appeal." (citations and internal quotations omitted)).

Dismissal of Seager's First Amendment claim against United Teachers of Los Angeles ("UTLA") was proper because the deduction of union membership dues arose from private membership agreements between UTLA and Seager, and "private dues agreements do not trigger state action and independent constitutional scrutiny." *Belgau v. Inslee*, 975 F.3d 940, 946-49 (9th Cir. 2020), *cert. denied*, No. 20-1120, 2021 WL 2519114 (June 21, 2021) (discussing state action).

We do not consider matters not specifically and distinctly raised and argued in the opening brief. *See Padgett v. Wright*, 587 F.3d 983, 985 n.2 (9th Cir. 2009*); Indep. Towers of Wash. v. Washington,* 350 F.3d 925, 929 (9th Cir. 2003) ("[W]e will not consider any claims that were not actually argued in appellant's opening brief.").

Seager's motion for summary affirmance (Docket Entry No. 41) is denied.

AFFIRMED.

Appendix E

IN THE UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF OREGON
PORTLAND DIVISION

LORIANN ANDERSON, KERRIN FISCUS, KENNETH HILL, RENE LAYTON, MICHAEL MILLER, BERNARD PERKINS, DENNIS RICHEY, KATHIE SIMMONS, KENT WILES, and MELINDA WILTSE, as individuals and representatives of the respective requested classes,	No. 3:18-cv-02013-HZ OPINION & ORDER
Plaintiffs,	
v.	
SERVICE EMPLOYEES INTERNATIONAL UNION (SEIU) LOCAL 503, OREGON PUBLIC EMPLOYEES UNION (OPEU); OREGON	

AFSCME COUNCIL 75, labor organizations; KATY COBA, in her official capacity as Director of the Oregon Department of Administrative Services; JACKSON COUNTY, LANE COUNTY, MARION COUNTY, WALLOWA COUNTY, CITY OF PORTLAND, political subdivisions of the State of Oregon; WESTERN OREGON UNIVERSITY, a public higher educational institution; NORTHWEST SENIOR & DISABILITY SERVICES, a local intergovernmental agency,

Defendants.

HERNÁNDEZ, District Judge:

Before the Court is Defendants' Motion to Dismiss for failure to state a claim [24].[1] For the reasons that follow, Defendants' motion is granted, and Plaintiffs' case is dismissed.

---

[1] The substantive motion [24] was filed by Defendants Service Employees International Union (SEIU) Local 503, Oregon Public Employees Union (OPEU) and Oregon AFSCME Council 75, and joined by all other defendants, see [28][29] [38][39][51][52].

BACKGROUND

Plaintiffs are ten individuals employed by state or local government entities in Oregon. Compl. ¶¶ 2, 12-21. Each Plaintiff is in a bargaining unit represented by at least one of the union defendants or its affiliates. *Id.* ¶¶ 2, 12-21. Before the Supreme Court's decision in *Janus v. AFSCME*, *Counsel 31*, 138 S. Ct. 2448, 2486 (2018), Plaintiffs signed agreements to join their respective unions. *Id.* ¶ 2. Each agreement included a "maintenance of membership" provision. *Id.* ¶¶ 4, 65, 67. This provision authorized the payment of union dues and was irrevocable for a period of at least one year. *Id.* As explained by Defendants, the provision authorized the deduction of union dues—or an amount equivalent to union dues—from Plaintiffs' wages "for a one-year period, and from year to year thereafter, unless revoked during an annual window period, regardless of whether the Plaintiff[s] later resigned from union membership." Defs. Mot. 4, ECF 24.

Following the Court's decision in *Janus*, Plaintiffs resigned their union memberships and revoked the authorization for deduction of union dues from their wages. Compl. ¶¶ 32, 35, 38, 42, 45, 49, 52, 55, 59, 62. The unions processed the resignations, and Plaintiffs are no longer union members. *Id.* ¶¶ 33, 36, 39, 43, 46, 50, 53, 56, 60, 63. However, because each Plaintiff resigned from membership before the end of the annual window period, Defendants continued to deduct payment from Plaintiffs' wages. *Id.* ¶¶ 4, 70.

The unions informed each Plaintiff that these deductions would automatically terminate at the end of the one-year deduction commitment period. *Id.* ¶¶ 33, 36, 39, 43, 46, 50, 53, 56, 60, 63.

Plaintiffs bring a single cause of action under 42 U.S.C. § 1983. Defendants now move to dismiss the complaint for failure to state a claim.

STANDARDS

On a motion to dismiss, the court must review the sufficiency of the complaint. *Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974). A complaint is construed in favor of the plaintiff, and its factual allegations are taken as true. *Daniels–Hall v. Nat'l Educ. Ass'n*, 629 F.3d 992, 998 (9th Cir. 2010). "[F]or a complaint to survive a motion to dismiss, the non-conclusory factual content, and reasonable inferences from that content, must be plausibly suggestive of a claim entitling the plaintiff to relief." *Moss v. United States Secret Serv.*, 572 F.3d 962, 969 (9th Cir. 2009) (internal quotation marks omitted). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). "[O]nce a claim has been stated adequately, it may be supported by showing any set of facts consistent with the allegations in the complaint." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 563 (2007). The court, however, need "not assume the truth of legal conclusions merely because they are cast in the form

of factual allegations." *Id.* "[A] plaintiff's obligation to provide the 'grounds' of his 'entitle[ment] to relief' requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do . . ." *Id.* at 555.

DISCUSSION

Plaintiffs bring a single claim under 42 U.S.C. § 1983, alleging that:

> Each Defendant's maintenance and enforcement of its dues checkoff and maintenance of mem-bership provisions and restrictive revocation policies and continued deduction and collection of union dues/fees from the wages of Plaintiffs and class members, pursuant to ORS 243.776 and ORS 292.055(3), without the affirmative authorization and knowing waiver of their First Amendment rights violates Plaintiffs' and class members' First Amendment rights to free speech and association [.]

Compl. ¶ 85. In other words, Plaintiffs allege that Defendants violate their First Amendment rights to not subsidize union speech through (a) the "Union Defendants' restrictive revocation policies; (b) the public employer Defendants' continued dues deductions; and (c) the Union Defendants' collection of union dues from Plaintiffs . . . without their consent." Pls. Resp. 3, ECF 53.

To the extent that Plaintiffs challenge Defendants' "revocation policies" and "continued dues deduction" (under these policies), this challenge lacks merit. *See Fisk v. Inslee*, 759 F. App'x 632, 633 (9th Cir. 2019) ("Appellees' deduction of union dues in accordance with the membership cards' dues irrevocability provision does not violate Appellants' First Amendment rights. Although Appellants resigned their membership in the union and objected to providing continued financial support, the First Amendment does not preclude the enforcement of 'legal obligations' that are bargained-for and 'self-imposed' under state contract law.") (quoting *Cohen v. Cowles Media Co.*, 501 U.S. 663, 668–71 (1991)).

However, Plaintiffs also argue that Defendants violate the First Amendment by collecting union dues without consent. In other words, Plaintiffs appear to argue that the underlying membership agreement violates Plaintiffs' First Amendment rights because it lacks the "waiver" Plaintiffs allege is necessary under *Janus*. This argument is also without merit.[2] The membership agreement here does not compel involuntary dues deductions and does not violate the First Amendment. See *Belgau v. Inslee*, 359 F. Supp. 3d 1000, 1016 (W.D. Wash. 2019). All deductions of dues from Plaintiffs' pay are made pursuant to Plaintiffs' explicit written consent in the membership agreements. The parties do not dispute that Plaintiffs

[2] For this motion, the Court assumes, without deciding, that the conduct at issue is "state action" for the purposes of a § 1983 claim.

signed the membership agreements and that they did not need to do so as a condition of their employment. Plaintiffs could have declined to join the union and paid agency fees instead. In reaching this conclusion, the Court follows the district courts in this circuit that have addressed this issued [sic]. *See, e.g.*, *Belgau*, 359 F. Supp. 3d at 1016 (same); *Cooley v. Cal. Statewide Law Enf't Ass'n.*, No. 2:18-cv-02961-JAM-AC, 2019 WL 2994502, at *2 (E.D. Cal. July 9, 2019) ("Mr. Cooley's contractual dues payments to the Union were in no part compulsory."); *Smith v. Bieker*, No. 18-cv-05472-VC, 2019 WL 2476679, at *2 (N.D. Cal. June 13, 2019) ("Smith's constitutional rights were not violated by the union's insistence on continuing to collect dues from him for a few more months after he resigned. The continued collection of dues until the next revocation period . . . was authorized by Smith's membership agreement.").

To the extent that Plaintiffs may argue they were "coerced" into membership, the Court does not agree. As stated in *Kidwell v. Transportation Communications International Union*, "[w]here the employee has a choice of union membership and the employee chooses to join, the union membership money is not coerced. The employee is a union member voluntarily." 946 F.2d 283, 292–93 (4th Cir. 1991); *see also Cooley*, 2019 WL 331170, at *2 ("Mr. Cooley knowingly agreed to become a dues-paying member of the Union, rather than an agency fee-paying nonmember, because the cost difference was minimal. That decision was a freely-made choice. The

notion that Mr. Cooley may have made a different choice in 2013 (or before) if he knew the Supreme Court would later invalidate public employee agency fee arrangements does not void his previous, knowing agreement."); *Farrell v. Int'l Ass'n. of Firefighters, AFL-CIO, Local 55*, 781 F. Supp. 647, 648–49 (N.D. Cal. 1992) (plaintiffs with option to opt out of union membership under an agency fee were [sic] provision were not compelled to join or remain in union). That Plaintiffs' alternative to union dues—i.e., agency fees—was later found unconstitutional when it failed to include a First Amendment waiver does not change this analysis; a "dues checkoff authorization is a contract between an employee and the employer," *NLRB v. US Postal Service*, 827 F.2d 548 (9th Cir. 1987), and "changes in intervening law—even constitutional law—do not invalidate a contract." *Bieker*, 2019 WL 2476679, at *2 (citing *Brady v. United States,* 397 U.S. 742, 757 (1970) and *Dingle v. Stevenson*, 840 F.3d 171, 174–76 (4th Cir. 2016) ("Contracts in general are a bet on the future.")); *Smith v. Superior Court,* [*Cnty.*] *of Contra Costa*, 18-cv-05472-VC, 2018 WL 6072806, at *1 (N.D. Cal. Nov. 16, 2018) ("Smith specifically consented for the dues deduction to continue for the full contractual period even if he resigned from the Union. Smith cannot now invoke the First Amendment to wriggle out of his contractual duties. '[T]he First Amendment does not confer . . . a constitutional right to disregard promises that would otherwise be enforced under state law.'" (quoting *Cohen v. Cowles Media Co.*, 501 U.S. 663, 672

(1991)). Plaintiffs do not otherwise attack the contract itself, by, for example, arguing that the membership agreement was not supported by consideration, made under duress, or invalid due to mistake. And Plaintiffs fail [to] identify a single court that has found, under these circumstances, either coercion or compelled speech.

Janus does not compel a different outcome. *Janus* held that *agency fees* "violate[] the free speech rights of nonmembers by compelling them to subsidize private speech on matters of substantial public concern." 138 S. Ct. at 2460. As noted above, here, unlike in *Janus*, Plaintiffs chose to become dues-paying members of their respective unions, rather than agency fee paying non-members. In doing so, they acknowledged restrictions on when they could withdraw from membership. Thus, because Plaintiffs were voluntary union members, *Janus* does not apply. *See Bieker*, 2019 WL 2476679, at *2 ("*Janus* did not concern the relationship of unions and members; it concerned the relationship of unions and non-members."); *Belgau*, 359 F. Supp. 3d at 1016 ("Plaintiffs' assertions that the agreements are not valid because they had not waived their First Amendment rights under *Janus* in their authorization agreements because they did not know of those rights yet, is without merit. Plaintiffs seek a broad expansion of the holding in *Janus*. *Janus* does not apply here—Janus was not a union member, unlike the Plaintiffs here, and Janus did not agree to a dues deduction, unlike the Plaintiffs here."); *Cooley,*

2019 WL 331170, at *2 ("[T]he relationship between unions and their voluntary members was not at issue in *Janus*.").

In sum, Plaintiffs have failed to allege a constitutional violation. Because there is no constitutional violation, this complaint must be dismissed for failure to state a claim.

CONCLUSION

For the reasons set forth above, this Court grants Defendants' Motions to Dismiss.

Dated this 4th day of September, 2019.

MARCO A. HERNÁNDEZ

United States District Judge

Appendix F

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

Jeremy Durst, Deanne Tanner, and Michael Garcie, individuals;

Plaintiffs,

v.

Oregon Education Association, a labor organization; **Southern Oregon Bargaining Council Eagle Point Education Certified and Classified Employees**, a labor organization; **Eagle Point School District 9; Portland Association of Teachers**, a labor organization; **Portland Public Schools/Multnomah County School District Number 1**;

Defendants.

Case No. 1:19-cv-00905-MC

OPINION AND ORDER

MCSHANE, District Judge:

Plaintiffs Jeremy Durst, Deanne Tanner, and Michael Garcie allege Defendants violated their First Amendment rights by garnishing union dues from Plaintiff's [sic] paychecks. The parties filed cross motions for summary judgment. Plaintiffs argue the deductions violated their First Amendment right to be free from compelled speech. Defendants argue: (1) Plaintiffs' claims are moot; and (2) Plaintiffs' claims fail on the merits as the voluntary garnishments do not violate the First Amendment.[1] Because Plaintiffs' claims for injunctive relief and compensatory damages are moot, and their claim for nominal damages fails on the merits, Plaintiffs' motion for summary judgment is DENIED and Defendants' motion for summary judgment is GRANTED.

BACKGROUND

Plaintiffs are all teachers and former members of Defendant Oregon Education Association, a statewide labor organization, and its local affiliates. When Plaintiffs filed the complaint, they had each been members of their respective unions for several years. Plaintiffs joined their unions by initially signing membership and dues authorization agreements.

[1] As Plaintiffs' claims clearly fail on the merits, the Court does not address Defendants' alternative arguments that the garnishments were not state action required under 28 U.S.C. § 1983 and that, even assuming their other arguments fail, Defendants are entitled to a "good faith" defense.

Stipulated Facts for Cross-Motions for Summary Judgment ("Stipulated Facts"), Ex. 2, 9, 13, ECF No. 24. These agreements contained explicit cancellation provisions that required Plaintiffs to pay dues unless they revoked authorization for payroll deductions in September of that cancellation year. *Id.*

In early 2019, Plaintiffs requested that their payroll deductions cease immediately in light of the recent decision by the United States Supreme Court in *Janus v. AFSCME, Council 31*, 138 S. Ct. 2448 (2018). *Janus* held that the First Amendment prohibits unions from forcing compulsory payroll deductions—i.e., "fair share" fees—from workers who are not union members. *Janus*, 138 S. Ct. at 2486. Union representatives notified Plaintiffs that pursuant to their authorization agreements, their cancellation requests would not be effective until September 2019. Stipulated Facts ¶¶ 16, 21, 25.

Plaintiffs argue that they never waived their rights and therefore the continued deductions violated their First Amendment right to be free from compelled speech as laid out in *Janus.* Defendants contend that because Plaintiffs voluntarily entered into payroll deduction agreements as union members, the continued deductions did not violate Plaintiffs' First Amendment rights. The Court concludes—as has every other court considering similar issues—that Plaintiffs' arguments are meritless.

STANDARDS

A court must grant summary judgment if there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a). An issue of fact is genuine "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Villiarima v. Aloha Island Air., Inc.*, 281 F.3d 1054, 1061 (9th Cir. 2002) (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986)). A court will view the evidence in the light most favorable to the nonmoving party. *Allen v. City of Los Angeles*, 66 F.3d 1052, 1056 (9th Cir. 1995).

DISCUSSION

As noted, the parties filed cross-motions for summary judgment. As discussed below, Plaintiffs' claims for injunctive and compensatory relief are moot. Plaintiffs' claim for nominal damages fails on the merits. The Court discusses each claim in turn.

I. Mootness

A. Injunctive Relief

Plaintiffs seek to "Permanently enjoin Defendants ... from deducting or collecting union dues from Plaintiffs and from maintaining and enforcing the revocation policy[.]" Compl. 10. As Plaintiffs are no longer union members and the union no longer takes deductions from paychecks of non-members, Plaintiffs' claim for injunctive relief is moot.

"Where the activities sought to be enjoined have already occurred, and the appellate courts cannot undo what has already been done, the action is moot." *Ctr. for Biological Diversity v. Lohn*, 511 F.3d 960, 964 (9th Cir. 2007) (quoting *Friends of the Earth, Inc. v. Bergland*, 576 F.2d 1377-79 (9th Cir. 1978)). One exception to the mootness doctrine is when the issue is "capable of repetition, yet evading review." *Doe v. Madison Sch. Dist. No. 321*, 177 F.3d 789, 798 (9th Cir. 1999) (quoting *Am. Rivers v. Nat'l Marine Fisheries Serv.*, 126 F.3d 1118, 1123 (9th Cir. 1997)). This exception to the mootness doctrine applies only in cases where "(1) 'the duration of the challenged action is too short to be fully litigated before it ceases,' *and* (2) 'there is a reasonable expectation that plaintiffs will be subjected to the same action again.'" *Id.* (emphasis added) (quoting *Am. Rivers*, 126 F.3d at 1123).

Plaintiffs argue the exception applies because "[t]he same deduction scheme which resulted in the violation of Employees' rights is still in effect today and Defendants have no intention to alter it. Moreover, Employees are still employed by School Districts .... They remain subject to dues deductions if their employers decide to begin them again." Pls.' Resp. 23, ECF No. 29. Plaintiffs' argument is unpersuasive. Plaintiffs are not subject to any "deduction scheme." Plaintiffs are no longer members of the unions. Stipulated Facts ¶ 27. Their employers no longer deduct fair share fees from non-union members. *Id.* ¶¶ 6, 28. In other words, there is no

reasonable expectation that Plaintiffs will be subject to any involuntary deductions going forward. The capable of repetition yet evading review exception does not apply and Plaintiffs' claim for injunctive relief is moot.[2]

B. Compensatory Damages

Plaintiffs' claim for compensatory damages is also moot as Defendants provided Plaintiffs with all of the compensatory damages sought in the form of checks sent to Plaintiffs' attorney. *See Id.* at ¶ 29 (after Plaintiffs filed this action, the union sent each Plaintiff a check for all the deductions taken from Plaintiff's paychecks from the date the Plaintiffs requested cancellation on). Plaintiffs' counsel immediately responded to Defendants' offer with the following letter:

> I write on behalf of Mr. Durst, Ms. Tanner, and Mr. Garcie. Please find enclosed with this letter a return of the checks you sent dated October 3, 2019. After having considered your proffer, Mr. Dust, Ms. Tanner, and Mr. Garcie each respectfully

[2] A one-time clerical error, where a school erroneously deducted $4.44 from Tanner's paycheck is just that; a clerical error. Stipulated Facts ¶ 28. That error, which was quickly identified and corrected, did not even result in the $4.44 being transferred to the union. This administrative error does not somehow mean Plaintiffs are subject to harm in the form of future fair share deductions.

> refuse to accept this money and hearby return it.

Stipulated Facts Ex. 20.

The voluntary cessation doctrine is another exception to mootness. *Lohn*, 511 F.3d at 964. Generally, "voluntary cessation of allegedly illegal conduct does not deprive the tribunal of power to hear and determine the case, *i.e.*, does not make the case moot." *Los Angeles* [*Cnty.*] *v. Davis*, 440 U.S. 625, 631 (197[9]) (quoting *United States v. W.T. Grant Co.*, 345 U.S. 629, 632 (1953)). However, where the Court determines that (1) the alleged violation will not recur and (2) "interim relief or events have completely and irrevocably eradicated the effects of the alleged violation," the case will become moot. *Id.*

Here, it is clear the alleged violation will not recur for the reasons stated above. Additionally, Defendants voluntarily refunded the full amount of dues garnished, plus interest, for the months following Plaintiffs' requested cancellation. Stipulated Facts ¶ 29. In other words, "interim relief" has completely "eradicated the effects" of Plaintiffs' claim for compensatory damages. *Davis*, 440 U.S. at 631. The mere fact that Plaintiffs have refused to cash the refunds does not turn an otherwise moot claim into a live case or controversy.

II. First Amendment

A. Nominal Damages

Plaintiffs' claim for nominal damages is not moot. "A live claim for nominal damages will prevent dismissal for mootness." *Bernhardt v. City of Los Angeles*, 279 F.3d 862, 872 (9th Cir. 2002). This is true even where related claims for injunctive relief and compensatory damages have been rendered moot. *Lokey v. Richardson*, 600 F.2d 1265, 1266 (9th Cir. 1979) (claim for nominal damages prevented dismissal even though claim for injunctive relief was moot); *Chew v. Gates*, 27 F.3d 1432, 1437 (9th Cir. 1994) (claim for nominal damages prevented dismissal even if claim for actual damages might be moot). This is because nominal damages, while symbolic in nature, serve the important purpose of vindicating an individual's rights even when no actual damages are available. *See Bayer v. Neiman Marcus Grp., Inc.*, 861 F.3d 853, 872 (9th Cir. 2017).

B. Compelled Speech Doctrine

Plaintiffs argue they never waived their First Amendment rights before Defendants deducted dues from their paychecks. Plaintiffs also argue that they became nonmember employees at the time they requested to leave their unions, and the continued deductions "eviscerate their First Amendment freedoms of speech and association." Pls.' Mot. SJ. 8. Plaintiffs rely heavily on *Janus* to argue that the deductions made here are "identical" to the deductions there. *Id.* Specifically, Plaintiffs contend that "in both instances, the employees challenging the coerced speech are public employees who are not union

members," and the "arrangement violates the free speech rights of nonmembers by compelling them to subsidize private speech on matters of substantial public concern." Pls.' Mot. SJ. 8–9. The Court disagrees.

The First Amendment to the United States Constitution not only protects an individual's right to speak freely but also the right not to speak at all. *Riley v. Nat'l Fed'n of the Blind of North Carolina, Inc.* 487 U.S. 781, 796-9 (1988). The Supreme Court has invoked the compelled speech doctrine to strike down laws that compelled individuals to engage in expressive activities against their will; to hold events that contain messages with which they disagree; and, as relevant here, to subsidize political messages they find personally objectionable. *See W. Virginia State Bd. of Educ. v. Barnette*, 319 U.S. 624 (1943) (holding that public schools requiring children to salute the American flag violated the First Amendment); *Hurley v. Irish-Am. Gay, Lesbian and Bisexual Grp. of Boston*, 515 U.S. 557 (1995) (holding that using anti-discrimination laws to require private parade organizers to include messages in their parade with which they disagreed violated the First Amendment); *Keller v. State Bar of California*, 496 U.S. 1 (1990) (holding that the use of compulsory bar dues to finance political activities violated the First Amendment). Each of these cases illustrate the principle that the government is barred from "[c]ompelling individuals to mouth support for views they find objectionable[.]" *Janus*, 138 S. Ct. at 2463.

In *Janus,* the Supreme Court held that the exaction of compulsory agency fees from nonmembers to support union activities violated this principle. *Id.* at 2464. The petitioner in *Janus* was employed by a state agency and represented by a union he wanted no affiliation with. *Id.* at 2461. The petitioner refused to join the union based on his belief that the union didn't represent his public policy positions. *Id.* Although Janus was not a member of the union, the collective bargaining agreement nevertheless required him to pay agency fees to the union. *Id*. In addition to costs for collective bargaining, the agency fees paid by nonmembers went towards costs for lobbying and advertising on behalf of the union. *Id*. Janus argued the agency fees violated the First Amendment by compelling him to subsidize speech with which he disagreed. *Id*. at 2462. The Supreme Court agreed, reasoning that public sector unions often advocate for controversial issues during collective bargaining. *Id*. at 2476. These issues relate to subjects such as climate change, religion, wages, and sexual orientation, all of which are matters of "substantial public concern." *Id*. at 2476-77. Compelling nonmembers to subsidize these views ran afoul of the First Amendment. *Id*. at 2478. The Court concluded agency fees may be exacted from nonmembers only if such employees give affirmative consent and waive their First Amendment rights. *Id*. at 2486. Any waiver must be shown by "clear and compelling evidence." *Id*. (quoting *Curtis Publ'g Co. v. Butts*, 388 U.S. 130, 145 (1967) (plurality opinion).

*Janus i*s not applicable to the facts at issue here. As a preliminary matter, the waiver standard set forth in *Janus* concerns only nonconsenting employees, *i.e.*, nonmembers. *Janus* only addressed workers who had agency fees extracted despite refusing to ever join their unions. *Janus* does not apply because this is not a situation where the government "compell[ed] individuals to mouth support for views they find objectionable[.]" *Id.* at 2463. Unlike the employee in *Janus* who never joined the union, Plaintiffs here voluntarily joined their unions when they signed the membership cards. Stipulated Facts ¶¶ 11, 18, 22. Unlike the nonmember in *Janus*, Plaintiffs here signed dues authorization agreements. *Id.* at ¶¶ 12, 19, 23. The authorization agreements explicitly confirmed that Plaintiffs would pay dues for the entire academic year (and could only opt out of paying future dues during a specified one-month time period).[3] *Id.* at Ex. 3; Ex. 10; Ex. 14. None of the Plaintiffs here were required to join the union as a condition of employment. *Id.* at ¶ 4. By joining the union, Plaintiffs received "membership rights and access to members-only benefits not available to non-members." *Id.* at 7.

---

[3] Plaintiffs' claim that they didn't read the fine print in the agreement and did not know they had the right not to sign it is meritless. *Emp. Painters' Trust v. J&B Finishes*, 77 F.3d, 1188, 1191 (9th Cir. 1996) ("A party who signs a written [labor] agreement is bound by its terms, even though the party neither reads the agreement nor considers the legal consequences of signing it."). That one chooses not to read an agreement does not mean one did not voluntarily enter the agreement.

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. *See Loescher v. Minnesota Teamsters Pub. & Law Enf't Emp.'s Union, Local No. 320*, No. 19-cv-1333 (WMW/BRT), 2020 WL 912785, at *7 (D. Minn. Feb. 26, 2020) (neither *Janus* nor state contract law allows plaintiff to voluntarily enter into a dues authorization agreement with her union and then cancel outside of the opt-out period); *Few v. United Teachers Los Angeles et al.*, No. 2:18-cv-09531-JLS-DFM, 2020 WL 633598, at *6 (C.D. Cal. Feb. 10, 2020) (holding that nothing in *Janus* makes plaintiff's decision to sign his union membership and dues authorization agreement involuntary).[4]

Requiring Plaintiffs to honor the earlier, voluntary opt-out agreement did not violate Plaintiffs' First Amendment rights merely because Plaintiffs later chose to revoke their memberships outside of the previously agreed upon opt-out period. *See N.L.R.B. v. U.S. Postal Serv.*, 827 F.2d 548, 554 (9th Cir. 1987) (upholding similar opt-out agreement after member revoked membership and noting "A party's

[4] In the interest of brevity, The Court only specifically cites to two of the tens of courts across the country to agree under facts analogous to those present here. *See* Defs.' Mot. 2-3 (collecting cases).

duty to perform even a wholly executory contract is not excused merely because he decides that he no longer wants the consideration for which he has bargained."). Because Plaintiffs voluntarily agreed to the deductions, the deductions did not violate Plaintiffs' First Amendment rights. Plaintiffs' claim for nominal damages therefore fails on the merits.[5]

CONCLUSION

Defendant's motion for summary judgment (ECF No. 26) is GRANTED.

IT IS SO ORDERED.

DATED this 31st day of March, 2020.

/s/ Michael McShane
Michael McShane
United States District Judge

[5] To the extent Plaintiffs argue Defendants violated their rights by forcing Plaintiffs to remain union members against their will, this argument fails. Union members are not required to remain union members and "may resign from membership at any time." Stipulate Facts ¶ 4.

Appendix G

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

BETHANY MENDEZ, ET AL., Plaintiffs, vs. **CALIFORNIA TEACHERS ASSOCIATION, ET AL.,** Defendants.	Case No. 19-cv-01290-YGR **ORDER GRANTING MOTIONS TO DISMISS; DIRECTING JOINT STATEMENT OF PLAINTIFFS AND DEFENDANT MCCOWAN** Dkt. Nos. 83, 84, 88

The instant action is one of many brought in the wake of the United States Supreme Court's decision in *Janus v. AFSCME, Council 31*, 138 S. Ct. 2448 (2018) ("Janus"). Plaintiffs Scott Carpenter, Linda Leigh-Dick, Bethany Mendez, Audrey Stewart, and Angela Williams are teachers in different school districts across California who were, at one time, members of their respective teachers' unions. They allege that they submitted requests to revoke their union memberships and dues deductions and that they were informed those dues deductions would not cease until the time period specified in their membership agreements, *i.e.*, a 90-day window falling

around their membership anniversary date in which they could request termination of the dues deduction according to the agreement's terms. (FAC ¶ 38.) Plaintiffs bring this action on behalf of themselves and others similarly situated pursuant to 42 U.S.C. section1983 against: (1) defendant Attorney General Xavier Becerra ("the State"); (2) defendants Associated Chino Teachers, California Teachers Association, Fremont Unified District Teachers Association, Hayward Education Association-CTA-NEA, National Education Association, Tustin Educators Association, Valley Center-Pauma Teachers Association (collectively, "the Union defendants"); and (3) defendants Kim Wallace, Matt Wayne, Norm Enfield and Gregory Franklin ("the Superintendents").[1]

In particular, plaintiffs bring a Section1983 claim against all defendants on the grounds that deduction of dues from plaintiffs' wages pursuant to California Education Code section 45060 violates the First Amendment of the United States Constitution. They bring a second Section 1983 claim against the Union defendants and the Superintendents on the grounds that the deduction of dues pursuant to the collective bargaining agreements (CBAs) likewise violates the First Amendment.

With a motion to dismiss pending, plaintiffs filed their First Amended Complaint ("FAC") as of right on

---

[1] Plaintiffs also name an additional defendant, Ron McCowan, who answered the FAC on June 18, 2019. (Dkt. No. 66).

June 11, 2019. (Dkt. No. 62.) Thereafter, the State (Dkt. No. 83), the Union defendants (Dkt. No. 84); [sic] and the Superintendents (Dkt. Nos. 86, 88) filed or joined in motions to dismiss the FAC. The Court heard oral argument on the motions on November 19, 2019. The Court has considered carefully the papers submitted and the pleadings in this action, as well as the parties' arguments at the hearing. For the reasons set forth below and the decisions cited herein, the motions to dismiss (Dkt. Nos. 83, 84, and 88) and the joinders to those motions are **GRANTED**.

***

"To state a claim under § 1983, a plaintiff [1] must allege the violation of a right secured by the Constitution and laws of the United States, and [2] must show that the alleged deprivation was committed by a person acting under color of state law." *Naffe v. Frey*, 789 F.3d 1030, 1035–36 (9th Cir. 2015). "Dismissal of a § 1983 claim following a Rule 12(b)(6) motion is proper if the complaint is devoid of factual allegations that give rise to a plausible inference of either element." *Id.* at 1036 (internal citation omitted). "Section 1983 creates a cause of action based on personal liability and predicated upon fault; thus, liability does not attach unless the individual defendant caused or participated in a constitutional deprivation." *Vance v. Peters*, 97 F.3d 987, 991 (9th Cir. 1996); *see also Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir. 1989).

"In order to recover under § 1983 for conduct by the defendant, a plaintiff must show 'that the conduct

allegedly causing the deprivation of a federal right be fairly attributable to the State.'"*Caviness v. Horizon Cmty. Learning Ctr., Inc.*, 590 F.3d 806, 812 (9th Cir. 2010) (quoting *Lugar v. Edmondson Oil Co.,* 457 U.S. 922, 937 (1982)). "[M]ost rights secured by the Constitution are protected only against infringement by governments." *Lugar,* 457 U.S. at 936–37 (1982); *Naoko Ohno v. Yuko Yasuma*, 723 F.3d 984, 993 (9th Cir. 2013) (state court enforcement of Japanese judgment under California Uniform Judgment Act was not state action). "[C]onstitutional standards are invoked only when it can be said that the State is responsible for the specific conduct of which the plaintiff complains." *Id.* at 994. The state-action element in section 1983 "excludes from its reach merely private conduct, no matter how discriminatory or wrongful." *Caviness*, 590 F.3d at 812 (quoting *Am. Mfrs. Mut. Ins. Co. v. Sullivan,* 526 U.S. 40, 50 (1999)). Where the actions complained of are undertaken by a private actor, "[s]tate action may be found . . . only if [] there is such a close nexus between the State and the challenged action that seemingly private behavior may be fairly treated as that of the State itself." *Id.* at 812 (9th Cir. 2010) (quoting *Villegas v. Gilroy Garlic Festival Ass'n,* 541 F.3d 950, 955 (9th Cir.2008) (en banc)).

Plaintiffs allege that California Education Code section 45060 violates their First Amendment rights because it permits the Superintendents to deduct union dues from their wages without their clear, affirmative consent to use that money to subsidize the union's political activity. (FAC ¶ 131.) Plaintiffs allege

that, after *Janus*, neither their union representatives nor their public employer informed them of their rights to refrain from joining or financially supporting a union. (Id. ¶¶ 33, 42, 51, 60, 68, 76, 87.)

In general, under California Education Code section 45060, public school teachers who voluntarily join the union may have their union dues deducted from their paychecks if "requested in a revocable written authorization by the employee." Cal. Educ. Code § 45060(a). "Any revocation of a written authorization shall be in writing and shall be effective provided the revocation complies with the terms of the written authorization." *Id*. "The revocable written authorization shall remain in effect until expressly revoked in writing by the employee, pursuant to the terms of the written authorization." Cal. Educ. Code § 45060(c). The unions are responsible for informing the school districts of employees' authorization status:

> The governing board shall honor the terms of the employee's written authorization for payroll deductions. Employee requests to cancel or change authorizations for payroll deductions for employee organizations shall be directed to the employee organization rather than to the governing board. The employee organization shall be responsible for processing these requests. The governing board shall rely on information provided by the employee organization regarding whether deductions for an employee

> organization were properly canceled or changed.

Cal. Educ. Code § 45060(e).

Here, the Court analyzes whether plaintiffs' alleged constitutional injury on account of dues deductions under section 45060 constitutes an injury arising from state action and finds that it does not. The FAC alleges plaintiffs each signed an agreement to pay union membership dues through a payroll deduction for at least one year. Section 45060 does no more than set forth an administrative, ministerial mechanism for carrying out a deduction from the wages of those individuals who voluntarily elected to become union members and authorized deduction of their union dues from their paychecks. The State and Superintendents play no role in enforcing union membership agreements or setting their terms.

As every court to consider the issue has concluded, *Janus* does not preclude enforcement of union membership and dues deduction authorization agreements like plaintiffs' agreements here. *See Seager v. United Teachers Los Angeles*, No. 2:19-CV-469-JLS(DFM), 2019 WL 3822001, at *2 (C.D. Cal. Aug. 14, 2019) (claim for dues already deducted pursuant to agreement fails as a matter of law because consented to union membership and dues deduction); *O'Callaghan v. Regents of the Univ. of California*, No. CV 19-02289-JVS(DFMx), 2019 WL 2635585, at *3–4 (C.D. Cal. June 10, 2019) ("nothing in *Janus*'s holding requires unions to cease deductions for individuals who have affirmatively chosen to

become union members and accept the terms of a contract that may limit their ability to revoke authorized dues-deductions in exchange for union membership rights, such as voting, merely because they later decide to resign membership"); *Belgau v. Inslee*, 359 F.Supp.3d 1000, 1016 (W.D. Wash. 2019); *Babb v. California Teachers Ass'n*, 378 F. Supp. 3d 857, 877 (C.D. Cal. 2019) (C.D. Cal. May 8, 2019) [sic]; *Crockett v. NEA Alaska*, 367 F.Supp.3d 996, 1008 (D. Alaska 2019); *Bermudez v. SEIU Local 521*, 2019 WL 1615414, at *2 (N.D. Cal. Apr. 16, 2019*); Cooley v. California Statewide Law Enforcement Ass'n*, 2019 WL 331170, at *3 (E.D. Cal. Jan. 25, 2019); *Smith v. Superior Court, C*[*n*]*ty. of Contra Costa*, 2018 WL 6072806, at *1 (N.D. Cal. Nov. 16, 2018), *order after further proceedings*, *Smith v. Bieker*, 2019 WL 2476679, at *2 (N.D. Cal. June 13, 2019); *see also Cohen v. Cowles Media Co.*, 501 U.S. 663, 672 (1991) ("the First Amendment does not confer… a constitutional right to disregard promises that would otherwise be enforced under state law."). Union members "voluntarily chose to pay membership dues in exchange for certain benefits, and the fact that plaintiffs would not have opted to pay union membership fees if *Janus* had been the law at the time of their decision does not mean their decision was therefore coerced." *Babb*, 378 F. Supp. 3d at 877 (internal citation and quotation omitted). The State's (and Superintendents') "deduct[ion of] fees in accordance with the authorization agreements does not transform decisions about membership requirements . . . into state action." *Belgau*, 359 F.

Supp. 3d at 1015 (internal citation omitted). The Court spent considerable time reviewing the rationale underpinning these decisions during oral arguments and finds no persuasive basis to reject the rationale set forth therein.

Further, there is no alleged nexus between the State and Superintendents' actions and the alleged wrongful conduct of the Union defendants such as establish state action for purposes of section 1983 liability. Plaintiffs allege that they believed that they had to join a union or were misinformed by the Union defendants about the legal implications of signing their membership and dues deduction authorization agreements. California's Educational Employment Relations Act ("EERA") makes union membership voluntary for school district employees. *See* Cal. Gov't Code §§ 3543, 3543.5, 3543.6; *Cumero v. Pub. Employment Relations Bd.*, 49 Cal.3d 575, 587 (1989). To the extent plaintiffs allege that the Union defendants misinformed them about their legal obligations to join the union or pay membership dues, their claims would be against the Union defendants under state law. Plaintiffs' allegations regarding the Union defendants' conduct do not set forth a claim challenging state action for purposes of section 1983.[2]

---

[2] In their second claim for relief, plaintiffs allege that the defendant's [sic] actions "taken pursuant to California statutes governing the Districts' relationships with the Unions and their collective bargaining agreements ('CBAs')" impermissibly infringe on their First Amendment rights. (FAC ¶ 4.) The FAC does not identify any provisions of the CBAs that plaintiffs contend infringe their rights, nor did plaintiffs identify any in

In sum, for the reasons stated herein, on the record, and the decisions cited herein, and because plaintiffs have not alleged any basis for finding that state action gave rise to any of their alleged constitutional injuries, the motion to dismiss the claims as against all moving defendants is **GRANTED**.[3]

At the hearing, plaintiffs indicated that they did not seek leave to amend and therefore no leave to amend is granted.

This action is dismissed as to defendants Xavier Becerra, Associated Chino Teachers, California

---

their briefing or at the hearing. The second claim fails for this additional reason.

[3] The Court notes two additional bases for dismissal. First, all seven named plaintiffs' dues deductions ceased prior to the hearing on these motions. Consequently, to the extent the claims in the FAC seek prospective relief on behalf of plaintiffs, such claims would be moot. *See Babb*, 378 F. Supp. 3d at 886; *Seager*, 2019 WL 3822001, at *2; *Aliser v. SEIU California*, No. 19-CV-00426-VC, 2019 WL 6711470, at *4 (N.D. Cal. Dec. 10, 2019) (former union members' claims were no longer justiciable because they voluntarily elected to resign from the union and no longer had any legal interest in the outcome of the claims).

Second, to the extent that the FAC can be read to seek retrospective relief against Wallace, Wayne, Franklin, and Enfield in their official capacities, such claims would be barred by the Eleventh Amendment. *See Sato v. Orange C*[n]*ty. Dep't of Educ.*, 861 F.3d 923, 934 (9th Cir. 2017) ["California school districts . . . remain arms of the state and continue to enjoy Eleventh Amendment immunity"]; *Belanger v. Madera Unified School District*, 963 F.2d 248 (9th Cir. 1992); *Eaglesmith v. Ward*, 73 F.3d 857 (9th Cir. 1995); *Mitchell v. Los Angeles Community College District*, 861 F.2d 198 (9th Cir. 1988).

The Court declines to reach the additional arguments raised as they are not necessary to conclude that the action must be dismissed.

Teachers Association, Fremont Unified District Teachers Association, Hayward Education Association-CTA-NEA, National Education Association, Tustin Educators Association, Valley Center-Pauma Teachers Association, Kim Wallace, Matt Wayne, Gregory Franklin and Norm Enfield.

The only other defendant in this action, Ron McCowan, answered the FAC rather than move to dismiss. Plaintiffs and defendant McCowan shall submit a joint statement as to how they wish to proceed no later than **January 28, 2020**.

This Order terminates Docket Nos. 83, 84 and 88.

IT IS SO ORDERED.

Date: January 16, 2020

_____

YVONNE GONZALEZ ROGERS
UNITED STATES DISTRICT COURT JUDGE

Appendix H

JS-6

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No. 2:19-cv-00469-JLS-DFM Date: August 14, 2019
Title: Irene Seager et al v. United Teachers Los Angeles et al

Present: **Honorable JOSEPHINE L. STATON, UNITED STATES DISTRICT JUDGE**

Terry Guerrero	N/A
Deputy Clerk	Court Reporter

ATTORNEYS PRESENT FOR PLAINTIFF:

Not Present

ATTORNEYS PRESENT FOR DEFENDANT:

Not Present

PROCEEDINGS: (IN CHAMBERS) ORDER GRANTING DEFENDANTS' MOTIONS FOR JUDGEMENT ON THE PLEADINGS (Docs. 43 & 44)

Before the Court are two Motions for Judgment on the Pleadings, one filed by Defendant Xavier Becerra,

Attorney General of California (AG Mot., Doc. 44), and another filed by Defendant United Teachers Los Angeles ("UTLA") (UTLA Mot., Doc. 43). Plaintiff Irene Seager opposed both motions (AG Opp., Doc. 51; UTLA Opp., Doc. 50) and Defendants each replied (AG Reply, Doc. 55; UTLA Reply, Doc. 56).[1] For the reasons given below, the Court GRANTS both motions.

Plaintiff is an employee of the Los Angeles Unified School District ("LAUSD"). (First Amended Complaint ("FAC") ¶ 15, Doc. 34.) Her bargaining unit is represented by Defendant UTLA. (*Id*. ¶ 2.) On April 6, 2018, Plaintiff voluntarily chose to become a member of UTLA and signed a written agreement authorizing the deduction of dues from her paycheck. (*Id*. ¶ 20.) The agreement provided:

> I hereby (1) agree to pay regular monthly dues uniformly applicable to members of UTLA; and (2) request and voluntarily authorize my employer to deduct from my earnings and to pay over to UTLA such dues. This agreement to pay dues shall remain in effect and shall be irrevocable unless I revoke it by sending written notice via U.S. mail to UTLA during the period no less than thirty (30) days and no more than sixty (60) days before the annual anniversary date of this agreement or as

[1] The Court finds this matter appropriate for decision without oral argument. Fed. R. Civ. P. 78; C.D. Cal. R. 7-15. Accordingly, the hearing set for August 16, 2019, at 10:30 a.m., is VACATED.

> otherwise required by law. This agreement shall be automatically renewed from year to year unless I revoke it in writing during the window period, irrespective of my membership in UTLA.

(*Id.*) On June 27, 2018, the Supreme Court decided *Janus v. AFSCME Council 31*, 138 S. Ct. 2448 (2018), overruling *Abood v. Detroit Board of Education*, 431 U.S. 209 (1977) and its progeny and holding that collection of agency fees from non-union members without their affirmative consent violated the First Amendment.

On July 18, 2018, Plaintiff wrote to UTLA and stated: "Based on the recent Supreme Court ruling in Janus v. AFSCME [sic], I, Irene Seager, want to Request Termination of my UTLA Membership effective immediately." (Exhibit B to Gottlieb Decl., Doc. 43-4; FAC ¶ 19.)[2] On August 8, 2018, UTLA responded to Plaintiff and informed her that she could "terminate [her] membership and become a Dues Paying Non-Member only, but [she] must continue to pay dues until it is revoked in writing during the open

[2] Because the FAC refers to the correspondence between Plaintiff and UTLA, her claims depend on such correspondence, and Plaintiff does not dispute the accuracy of the documents submitted by UTLA, the Court considers the documents in resolving the pending Motions. *See Marder v. Lopez*, 450 F.3d 445, 448 (9th Cir. 2006) ("A court may consider evidence on which the complaint 'necessarily relies' if: (1) the complaint refers to the document; (2) the document is central to the plaintiff's claim; and (3) no party questions the authenticity of the copy attached to the 12(b)(6) motion.").

period [in the membership agreement]." (Ex. C. to Gottlieb Decl., Doc. 43-5; FAC ¶ 19.) On August 24, 2018, Plaintiff responded, through counsel, arguing that *Janus* "gives all public employees, including Ms. Seager, the right to opt out of union membership," and requesting that UTLA "[d]rop [Plaintiff] from [UTLA's] membership rolls immediately and inform the LAUSD to stop deducting dues from her next paycheck and moving forward." (Ex. D. to Gottlieb Decl., Doc. 43-6.) On September 25, 2018, UTLA responded, noting that while it had processed Plaintiff's resignation from UTLA effective July 18, 2018, union dues would continue to be deducted from her paycheck until she revoked the authorization in writing to UTLA "not less than thirty (30) days and not more than sixty (60) days before the annual anniversary date of the agreement she signed on April 6, 2018." (Ex. E. to Gottlieb Decl., Doc. 43-7.) UTLA noted that the next such period was between February 5 through March 7, 2019. (*Id.*) Ultimately, UTLA accepted the service of Plaintiff's Complaint in this lawsuit as a timely revocation within the February-March window, and thus deductions for membership dues from her paycheck have ceased as of February 5, 2019. (Ex. F. to Gottlieb Decl., Doc. 43-8.)

The gravamen of Plaintiff's First Amended Complaint, brought against UTLA, Austin Beutner in his official capacity as Superintendent of LAUSD, and the Attorney General, is that enforcement of her agreement with UTLA—whereby she agreed to join UTLA, to pay membership dues, and that revocation of the authorization for such dues could occur only

within a specified timeframe—violates her First Amendment rights pursuant to *Janus*. (*See* FAC ¶¶ 42–55.) She also challenges California Education Code § 45060(a), which provides that "[a]ny revocation of a written authorization shall be in writing and shall be effective provided the revocation complies with the terms of the written authorization." (*Id.* ¶ 43.) She seeks prospective relief from enforcement from further dues deductions and from enforcement of § 45060(a), as well as retrospective relief for return of the deductions already taken. (*Id.* Prayer for Relief at C, D.)

First, as noted above, UTLA has processed Plaintiff's revocation of her authorization for membership dues. Thus, UTLA argues that Plaintiff's claims for prospective relief are moot. (*See* UTLA Mem. at 7.) Plaintiff does not respond to this argument in her Opposition and thus concedes its validity. *See Ramirez v. Ghilotti Bros. Inc.,* 941 F. Supp. 2d 1197, 1210 (N.D. Cal. 2013) (deeming argument conceded where plaintiff failed to address it in opposition). Moreover, this Court recently found a similar challenge[3] to § 45060(a) by a former union member to be moot because the individual "would have to rejoin his union for his claim to be live, which, given his representations in this lawsuit, seems a remote possibility." *Babb v. California Teachers Ass'n*, 378 F. Supp. 3d 857, 886 (C.D. Cal. 2019). Thus, the

[3] In *Babb*, the union members were challenging as unconstitutional the fact that § 45060(a) requires resignation from a union to be in writing. *See Babb*, 378 F. Supp. 3d at 885.

Court concludes that Plaintiff's claims for prospective relief from further dues deductions and her request for relief from further enforcement of § 45060(a) are moot.

Second, the Court concludes that Plaintiff's First Amendment claim for dues already deducted pursuant to the agreement fails as a matter of law. Essentially, Plaintiff alleges that her voluntary decision to join UTLA should now be viewed as involuntary because when she signed the agreement, she did not know *Janus* would be decided shortly thereafter. This Court, however, has already rejected a similar claim, noting that union members "voluntarily chose to pay membership dues in exchange for certain benefits, and '[t]he fact that plaintiffs would not have opted to pay union membership fees if *Janus* had been the law at the time of their decision does not mean their decision was therefore coerced.'" *Babb*, 378 F. Supp. 3d at 877 (quoting *Crockett v. NEA-Alaska*, 367 F. Supp. 3d 996, 1007–09 (D. Alaska 2019)). In *Babb*, the union members were not challenging the dues deduction revocation scheme *per se*, as Plaintiff does here, but rather tried to equate their payment of union dues with payment of agency fees. *See id.* Regardless, the Court's prior reasoning applies with equal force here. Indeed, other courts have rejected challenges framed in a manner identical to Plaintiff's. *See, e.g.*, *Smith v. Bieker*, Case No. 18-cv-05472-VC, 2019 WL 2476679, at *2 (N.D. Cal. June 13, 2019) ("Smith contends that *Janus* entitles him to elect to stop paying dues to the union at the drop of a hat. But *Janus* did not concern

the relationship of unions and members; it concerned the relationship of unions and non-members. Besides, 'the First Amendment does not confer . . . a constitutional right to disregard promises that would otherwise be enforced under state law.'" (quoting *Cohen v. Cowles Media Co.*, 501 U.S. 663, 672 (1991)); *O'Callaghan v. Regents of the Univ. of Cal.*, Case No. CV 19-02289JVS(DFMx), 2019 WL 2635585, at *3 (C.D. Cal. June 10, 2019) ("[N]othing in *Janus*'s holding requires unions to cease deductions for individuals who have affirmatively chosen to become union members and accept the terms of a contract that may limit their ability to revoke authorized dues-deductions in exchange for union membership rights, such as voting, merely because they later decide to resign membership."); *Belgau v. Inslee*, No. 18-5620 RJB, 2018 WL 4931602, at *5 (W.D. Wash. Oct. 11, 2018) ("Plaintiffs' assertions that they didn't knowingly give up their First Amendment rights before *Janus* rings hollow. *Janus* says nothing about people [who] join a Union, agree to pay dues, and then later change their mind about paying union dues.") Considering the Court's prior conclusion in *Babb*, and the growing consensus of authority on the issue, the Court concludes that Plaintiff's First Amendment claim for return of dues paid pursuant to her voluntary union membership agreement fails as a matter of law.

Accordingly, the Court GRANTS both Motions to Dismiss and DISMISSES WITH PREJUDICE Plaintiff's First Amended Complaint, as the Court concludes that Plaintiff's claims are moot or otherwise

fail as a matter of law. Defendants are ORDERED to file a proposed judgment within **five (5) days** of the date of this Order.

Initials of Preparer: tg

Appendix I

FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

MELISSA BELGAU; DONNA BYBEE; MICHAEL STONE; RICHARD OSTRANDER; MIRIAM TORRESPL; KATHERINE NEWMAN; GARY HONC, *Plaintiffs-Appellants*, v. JAY ROBERT INSLEE, in His Official Capacity as Governor of the State of Washington; DAVID SCHUMACHER, in His Official Capacity as Director of the Washington Office of Financial Management; JOHN WEISMAN, in His Official Capacity as Director of the Washington Department of Health; CHERYL STRANGE, in Her Official Capacity as Director of the Washington Department of Social Health and Services; ROGER MILLAR,	No. 19-35137 D.C. No. 3:18-cv-05620-RJB OPINION

in His Official Capacity as Director of the Washington Department of Transportation; JOEL SACKS, in His Official Capacity as Dir. of Washington Department of Labor and Industries; WASHINGTON FEDERATION OF STATE EMPLOYEES, (AFSCME, Council 28),
Defendants-Appellees.

Appeal from the United States District Court for the Western District of Washington
Robert J. Bryan, District Judge, Presiding

Argued and Submitted December 10, 2019
Seattle, Washington

Filed September 16, 2020

Before: M. Margaret McKeown and Morgan Christen, Circuit Judges, and M. Douglas Harpool*, District Judge.

Opinion by Judge McKeown

* The Honorable M. Douglas Harpool, United States District Judge for the Western District of Missouri, sitting by designation.

SUMMARY**

Civil Rights

The panel affirmed the district court's dismissal of a putative class action brought pursuant to 42 U.S.C. § 1983 alleging that deduction of union dues from plaintiffs' paychecks violated the First Amendment.

Plaintiffs are public employees who signed membership agreements authorizing Washington state to deduct union dues from their paychecks and transmit them to the Washington Federation of State Employees, AFSCME Council 28 ("WFSE"). They had the option of declining union membership and paying fair-share representation (or agency) fees. After the decision in *Janus v. American Federation of State, County, and Municipal Employees, Council 31*, 138 S. Ct. 2448 (2018), which held that compelling nonmembers to subsidize union speech is offensive to the First Amendment, employees notified WFSE that they no longer wanted to be union members or pay dues. Per this request, WFSE terminated employees' union memberships. However, pursuant to the terms of revised membership agreements, Washington

** This summary constitutes no part of the opinion of the court. It has been prepared by court staff for the convenience of the reader.

continued to deduct union dues from employees' wages until an irrevocable one-year term expired.

The panel held that plaintiffs' claims against WFSE failed under § 1983 for lack of state action. The panel held that neither Washington's role in the alleged unconstitutional conduct nor its relationship with WFSE justified characterizing WFSE as a state actor. At bottom, Washington's role was to enforce a private agreement. *See Roberts v. AT&T Mobility LLC*, 877 F. 3d 833, 844 (9th Cir. 2017) ("there is no state action simply because the state enforces [a] private agreement"). Because the private dues agreements did not trigger state action and independent constitutional scrutiny, the district court properly dismissed the claims against WFSE.

Addressing whether the claims for prospective relief against Washington were moot, the panel held that the claims fell within the "capable of repetition yet evading review" mootness exception. The panel held that the challenged action, continued payroll deduction of union dues after an employee objects to union membership, capped at a period of one year, was too short for judicial review to run its course.

The panel held that the First Amendment claim for prospective relief against Washington failed because employees affirmatively consented to the deduction of union dues. The panel rejected employees' argument that the Supreme Court's decision in *Janus* voided the commitment they made and now required the state to insist on strict constitutional waivers with respect to deduction of

union dues. The panel held that *Janus* did not extend a First Amendment right to avoid paying union dues, and in no way created a new First Amendment waiver requirement for union members before dues are deducted pursuant to a voluntary agreement. The panel held that neither state law nor the collective bargaining agreement compelled involuntary dues deduction and neither violated the First Amendment. The panel concluded that in the face of plaintiff's 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.

COUNSEL

James G. Abernathy (argued), Olympia, Washington, for Plaintiffs-Appellants.

Matthew J. Murray (argued), Scott A. Kronland, and P. Casey Pitts, Altshuler Berzon LLP, San Francisco, California; Edward E. Younglove III, Younglove & Coker PLLC, Olympia, Washington; for Defendant-Appellee Washington Federation of State Employees, (AFSCME, Council 28).

Alicia Orlena Young (argued), Senior Counsel; Kelly M. Woodward, Attorney; Robert W. Ferguson, Attorney General; Office of the Attorney General, Olympia, Washington; for Defendants-Appellees Jay Robert Inslee, David Schumacher, John Weisman, Cheryl Strange, Roger Millar, and Joel Sacks.

OPINION

McKEOWN, Circuit Judge:

The Supreme Court's decision in *Janus v. American Federation of State, County, and Municipal Employees, Council 31* was a gamechanger in the world of unions and public employment. 138 S. Ct. 2448 (2018). In Janus the Court concluded that compelling nonmembers to subsidize union speech is offensive to the First Amendment. Public employers stopped automatically deducting representation fees from nonmembers.

But the world did not change for Belgau and others who affirmatively signed up to be union members. *Janus* repudiated agency fees imposed on nonmembers, not union dues collected from members, and left intact "labor-relations systems exactly as they are." *Id.* at 2485 n. 27. Belgau and fellow union-member employees claim that, despite their agreement to the contrary, deduction of union dues violated the First Amendment. Their claim against the union fails under 42 U.S.C. § 1983 for lack of state action, a threshold requirement. Their First Amendment claim for prospective relief against Washington state also fails because Employees affirmatively consented to deduction of union dues. Neither state law nor the collective bargaining agreement compels involuntary dues deduction and neither violates the First Amendment. We affirm the district court's dismissal of the case.

BACKGROUND

The putative class action plaintiffs Melissa Belgau, Michael Stone, Richard Ostrander, Miriam Torres, Katherine Newman, Donna Bybee, and Gary Honc (collectively, "Employees") work for Washington state and belong to a bargaining unit that is exclusively represented by the Washington Federation of State Employees, AFSCME Council 28 ("WFSE"). *See* RCW 41.80.080(2)–(3). Washington employees are not required to join a union to get or keep their jobs, though around 35,000 of the 40,000 employees in the bargaining unit are WFSE members. *See* RCW 41.80.050.

Employees became union members within three months of starting work. They signed membership agreements authorizing their employer, Washington state, to deduct union dues from their bi-weekly paychecks and transmit them to WFSE.

At the time Employees signed the membership cards, union dues were between 1.37% and 1.5% of base wages. They had the option of declining union membership and paying fair-share representation (or agency) fees, which were approximately 65–79% of union dues. Agency fees covered the cost incurred by the union in representing the interests of all employees—members and nonmembers alike—in the bargaining unit over the terms of employment. *See Abood v. Detroit Bd. of Educ.*, 431 U.S. 209, 232, 235

(1977), *overruled by Janus*, 138 S. Ct. 2448. The monies could not be used for First Amendment activities that were "not germane to [the union's] duties as collective-bargaining representative." *Id*. at 235.

Joining the union conferred rights and benefits. Employees could vote on the ratification of collective bargaining agreements, vote or run in WFSE officer elections, serve on bargaining committees, and otherwise participate in WFSE's internal affairs. Employees also enjoyed members-only benefits, including discounts on goods and services, access to scholarship programs, and the ability to apply for disaster/hardship relief grants.

Based on the authorization in the membership agreements, Washington deducted union dues from Employees' paychecks. Article 40 of the 2017–2019 collective bargaining agreement ("CBA") between Washington and WFSE required Washington to deduct "the membership dues from the salary of employees who request such deduction ... on a Union payroll deduction authorization card," and to "honor the terms and conditions" of these membership cards. Washington law also directed Washington to collect the dues on behalf of WFSE from union members who authorized the deduction. *See* RCW 41.80.100(3)(a).[1]

[1] Citations are to the section numbers in effect at the time of the deductions. The current version of RCW 41.80.100, which became effective on July 28, 2019, removes the authority for collecting representation fees but leaves intact the language

In 2017, WFSE circulated a revised membership agreement. The revised card, a single-page document, headlined: "Yes!" the signatory "want[s] to be a union member." A series of voluntary authorizations followed. The signatory "voluntarily authorize[ed]" and "direct[ed]" Washington to deduct union dues and remit them to WFSE. The signatory agreed that the "voluntary authorization" will be "irrevocable for a period of one year." The signatory reiterated and confirmed these voluntary authorizations above the signature line. Employees were not required to sign the revised cards to keep their jobs or remain as WFSE members. Employees signed the revised cards.

After the Supreme Court decided *Janus* in June 2018, Washington and WFSE promptly amended the operative 2017–2019 CBA. These July 2018 and August 2018 Memos of Understanding removed Washington's authority to deduct an "agency shop fee, non-association fee, or representation fee" from nonmember paychecks. However, the updated provision did not change Washington's obligation to collect "membership dues" from those who authorized the deduction and to "honor the terms and conditions of each employee's signed membership cards."

After the *Janus d*ecision, Employees notified WFSE that they no longer wanted to be union members or pay dues. Per this request, WFSE terminated Employees' union memberships. However, pursuant to the terms of the revised membership

---

about collecting membership dues. *See* Washington Laws of 2019, ch. 230 §§ 15, 18.

agreements, Washington continued to deduct union dues from Employees' wages until the irrevocable one-year terms expired. The dues were last collected from Employees when the one-year terms expired in April 2019.

In August 2018, Employees filed a putative class action against the state defendants—Washington State Governor Jay Inslee, and state agency directors and secretaries David Schumacher, John Weisman, Cheryl Strange, Roger Millar, and Joel Sacks (collectively, "Washington")—and WFSE alleging that the dues deductions violated their First Amendment rights and unjustly enriched WFSE. Employees sought injunctive relief against Washington from continued payroll deduction of union dues, and compensatory damages and other relief against WFSE for union dues paid thus far. The district court granted summary judgment for Washington and WFSE and dismissed the case.

ANALYSIS

I. THE § 1983 CLAIM AGAINST THE UNION FAILS FOR LACK OF STATE ACTION

The gist of Employees' claim against the union is that it acted in concert with the state by authorizing deductions without proper consent in violation of the First Amendment. The fallacy of this approach is that it assumes state action sufficient to invoke a constitutional analysis. To establish a claim under 42 U.S.C. § 1983, Employees must show that WFSE

deprived them of a right secured by the Constitution and acted "under color of state law." *Collins v. Womancare*, 878 F.2d 1145, 1147 (9th Cir. 1989). The Supreme Court has long held that "merely private conduct, however discriminatory or wrongful," falls outside the purview of the Fourteenth Amendment. *Blum v. Yaretsky*, 457 U.S. 991, 1002 (1982) (citation omitted).

The state action inquiry boils down to this: is the challenged conduct that caused the alleged constitutional deprivation "fairly attributable" to the state? *Naoko Ohno v. Yuko Yasuma*, 723 F.3d 984, 993 (9th Cir. 2013); *see Blum*, 457 U.S. at 1004 ("constitutional standards are invoked only when it can be said that the State is *responsible* for the specific conduct of which the plaintiff complains"); *Flagg Bros., Inc. v. Brooks*, 436 U.S. 149, 156 (1978) (the challenged unconstitutional conduct must be "properly attributable to the State"). The answer here is simple: no.

We employ a two-prong inquiry to analyze whether Washington'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). The first prong—"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' "—is not met here. *Ohno*, 723 F.3d at 994 (quoting *Lugar*, 457 U.S. at 937). It is important to unpack the essence of Employees' constitutional challenge: they do not generally contest the state's authority to deduct dues according to a private agreement. Rather, the claimed constitutional harm is that the agreements were signed without a constitutional waiver of rights. 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. *Id*.

Nor can Employees prevail at the second step—"whether the party charged with the deprivation could be described in all fairness as a state actor." *Id.* As a private party, the union is generally not bound by the First Amendment, *see United Steelworker* [sic] *of Am. v. Sadlowski*, 457 U.S. 102, 121 n.16 (1982), unless it has acted "in concert" with the state "in effecting a particular deprivation of constitutional right," *Tsao v. Desert Palace, Inc.*, 698 F.3d 1128, 1140 (9th Cir. 2012) (citations omitted). A joint action between a state and a private party may be found in two scenarios: 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." *Ohno*, 723 F.33d [sic] at 996. Neither exists here.[2]

No Coercion or Oversight. The state's role here was to permit the private choice of the parties, a role that is neither significant nor coercive. *See Am. Mfrs. Mut. Ins. Co. v. Sullivan*, 526 U.S. 40, 54 (1999) (requiring "significant assistance"); *Lugar*, 457 U.S. at 937 (requiring "significant aid"). The private party cannot be treated like a state actor where the government's involvement was only to provide "mere approval or acquiescence," "subtle encouragement," or "permission of a private choice." *See Sullivan*, 526 U.S. at 52-54.

WFSE and Employees entered into bargained-for agreements without any direction, participation, or oversight by Washington. "The decision" 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." *Id*. at 52 (citation omitted); *see Pinhas v. Summit Health, Ltd*., 894 F.2d 1024, 1034 (9th Cir. 1989) ("Only private actors were responsible for the [challenged] decision" where "the decision ultimately turned on the judgments made by private parties according to professional standards that are not established by the State." (quotation marks and citation omitted)). Therefore, when

---

[2] Nor does WFSE qualify as a state actor under other tests the Supreme Court has articulated–the public function, the state compulsion, and the governmental nexus tests. *See Desert Palace*, 398 F.3d at 1140.

Employees "signed" the membership cards that authorized the dues deductions, they "did not do so because of any state action." *Duffield v. Robertson Stephens & Co.*, 144 F.3d 1182, 1201 (9th Cir. 1998), *overruled on other grounds by E.E.O.C. v. Luce, Forward, Hamilton & Scripps*, 345 F.3d 742 (9th Cir. 2003); *see Canlis v. San Joaquin Sheriff's Posse Comitatus*, 641 F.2d 711, 717 (9th Cir. 1981) ("purely private" decisions, "exclusively from within the organization itself," do not make WFSE a state actor).

Although Washington was required to enforce the membership agreement by state law, it had no say in shaping the terms of that agreement. The state "cannot be said to provide 'significant assistance' to the *underlying* acts that (Employees) contends [sic] constituted the core violation of its [sic] First Amendment rights" if the "law *requires*" Washington to enforce the decisions of others "without inquiry into the merits" of the agreement. *Ohno*, 723 F.3d at 996-97. Washington's "mandatory indifference to the underlying merits" of the authorization "refutes any characterization" of WFSE as a joint actor with Washington. *Id*. at 997.

Ministerial Processing. At best, Washington'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 Washington and WFSE joint actors. *Sullivan*, 526 U.S. at 54. 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. *Id*. at 53.

No Symbiotic Relationship. Nor did Washington "insinuate[ ] itself into a position of interdependence with" WFSE. *Ohno*, 723 F.3d at 996 (citation omitted). 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." *Sawyer v. Johansen*, 103 F.3d 140, 140 (9th Cir. 1996); *Collins*, 878 F.2d at 1154. Thus, no significant interdependence exists unless the "government in any meaningful way accepts benefits derived from the allegedly unconstitutional actions." *See Ohno*, 723 F.3d at 997. Here Washington received no benefits as a passthrough for the dues collection. The state remitted the total amount to WFSE and kept nothing for itself. Far from acting in concert, the parties opposed one another at the collective bargaining table. *See Nat"l Collegiate Athletic Ass'n v. Tarkanian*, 488 U.S. 179, 196 (1988) (where the private actor "acted much more like adversaries than like partners," the private actor is "properly viewed as ... at odds with the State"). Because neither Washington's role in the alleged unconstitutional conduct nor its relationship with WFSE justify characterizing WFSE as a state actor, Employees cannot establish the threshold state action requirement.

We are not persuaded by Employees' attempt to avoid the state action analysis by framing their grievances as a direct challenge to government action. This approach does not square with their theory of allegedly insufficient consent for dues deduction, rather than a challenge to the law or the CBA. As we have observed, "[i]f every private right were transformed into a governmental action just by raising a direct constitutional challenge, the distinction between private and governmental action would be obliterated." *Roberts v. AT&T Mobility LLC*, 877 F.3d 833, 839 (9th Cir. 2017) (citation omitted).

Neither are we swayed by Employees' attempt to fill the state-action gap by equating authorized dues deduction with compelled agency fees. The actual claim is aimed at deduction of dues without a constitutional waiver, not a deduction of agency fees, which did not occur.[3] *See Blum*, 457 U.S. at 1004 (state action analysis is aimed at "the *specific conduct* of which the plaintiff complains" (emphasis added)).

At bottom, Washington's role was to enforce a private agreement. *See Roberts*, 877 F.3d at 844 ("there is no state action simply because the state enforces [a] private agreement"). Because the private dues agreements do not trigger state action and

---

[3] Our conclusion that state action is absent in the deduction and the transfer of union dues does not implicate the Seventh Circuit's analysis on the collection of agency fees. *See Janus v. Am. Federation of State, C[n]ty. and Municipal Employees, Council 31*, 942 F.3d 352, 361 (7th Cir. 2019) (*"Janus II"*).

independent constitutional scrutiny, the district court properly dismissed the claims against WFSE.[4]

II. EMPLOYEES HAVE NO FIRST AMENDMENT CLAIM AGAINST THE STATE

A. MOOTNESS

Employees' sole remaining claim against Washington is for an injunction prohibiting the continued deduction of dues despite signed deduction authorizations. When Employees filed the complaint, Washington was still deducting union dues from their payrolls; however, the deductions ceased when the one-year payment commitment periods expired. A live dispute "must be extant at all stages of review, not merely at the time the complaint is filed." *Preiser v. Newkirk*, 422 U.S. 395, 401 (1975) (citations omitted). Thus, any prospective injunction would not provide relief for Employees' mooted claim. *See Ruiz v. City of Santa Maria*, 160 F.3d 543, 549 (9th Cir. 1998) ("Claims for injunctive relief become moot when the challenged activity ceases" and "the alleged violations could not reasonably be expected to recur" (citation omitted)). But we are not deprived of jurisdiction because the claim falls within an exception to mootness.

In the class action context, a "controversy may exist ... between a named defendant and a member of

---

[4] The district court also properly dismissed the unjust enrichment claim against the union in light of the contractual agreement between the parties. *See Young v. Young*, 164 Wash. 2d 477, 484-85 (2008).

the class represented by the named plaintiff, even though the claim of the named plaintiff has become moot." *Sosna v. Iowa*, 419 U.S. 393, 402 (1975). The Court extended this principle to situations where, as here, the district court has not ruled on class certification. *See Gerstein v. Pugh*, 420 U.S. 103, 110 n.11 (1975). A claim qualifies for this "limited" exception if "the pace of litigation and the inherently transitory nature of the claims at issue conspire to make [mootness] requirement difficult to fulfill." *United States v. Sanchez-Gomez*, 138 S. Ct. 1532, 1539 (2018).

Such an inherently transitory, pre-certification class-action claim falls within the "capable of repetition yet evading review" mootness exception if (1) "the duration of the challenged action is 'too short' to allow full litigation before it ceases," *Johnson v. Rancho Santiago Cmty. Coll. Dist.*, 623 F.3d 1011, 1019 (9th Cir. 2010), and (2) there is a reasonable expectation that the named plaintiffs could themselves "suffer repeated harm" or "'it is certain that other persons similarly situated' will have the same complaint," *Pitts v. Terrible Herbst, Inc.*, 653 F.3d 1081, 1089–90 (9th Cir. 2011) (quoting *Gerstein*, 420 U.S. at 110 n.11). Employees' claim satisfies both conditions.

The challenged action—continued payroll deduction of union dues after an employee objects to union membership—is capped at a period of one year, which is too short for the judicial review to "run its course." *See Johnson*, 623 F.3d at 1019 (three years is

"too short"). Because Washington continued to deduct union dues until the one-year terms expired, other persons similarly situated could be subjected to the same conduct. For these reasons, we exercise jurisdiction over Employees' claim against Washington.

B. THE FIRST AMENDMENT

Employees do not claim that joining a union was a condition of their job; they chose to join WFSE. Employees do not offer a serious argument that they were coerced to sign the membership cards; they voluntarily authorized union dues to be deducted from their payrolls. Employees do not argue they were later required to sign the revised union cards; they signed those documents and made the commitment to pay dues for one year. These facts speak to a contractual obligation, not a First Amendment violation. Employees instead argue that the Court's decision in *Janus* voided the commitment they made and now requires the state to insist on strict constitutional waivers with respect to deduction of union dues. This argument ignores the facts and misreads *Janus*.

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. *See Cohen v. Cowles Media Co.*, 501 U.S. 663, 671 (1991); *Erie Telecomms., Inc. v. City of Erie, Pa.*, 853 F.2d 1084, 1[0]89–90 (3d

Cir. 1988) (distinguishing a First Amendment challenge from a claim to enforce "contractual obligations under the franchise and access agreements"). Nor does the First Amendment provide a right to "disregard promises that would otherwise be enforced under state law." *Cohen*, 501 U.S. at 671; *cf. Dietemann v. Time, Inc.*, 449 F. 2d 245, 249 (9th Cir. 1971) ("The First Amendment is not a license to trespass, to steal, or to intrude by electronic means into the precincts of another's home or office.").

Janus did not alter these basic tenets of the First Amendment. The dangers of compelled speech animate *Janus*, 138 S. Ct. at 2463–64. The Court underscored that the pernicious nature of compelled speech extends to "[c]ompelling individuals to mouth support for views they find objectionable" by forcing them to subsidize that speech. *Id.* at 2463. For that reason, the Court condemned the practice of "automatically deduct[ing]" agency fees from nonmembers who were "not asked" and "not required to consent before the fees are deducted." *Id.* at 2460–61.

Employees, who are union members, experienced no such compulsion. Under Washington law, Employees were free to "join" WFSE or "refrain" from participating in union activities. *See* RCW 41.80.050. Washington and WFSE did not force Employees to sign the membership cards or retain membership status to get or keep their public-sector jobs. Employees repeatedly stated that they "voluntarily authorize[d]" Washington to deduct union dues from

their wages, and that the commitment would be "irrevocable for a period of one year." Washington honored the terms and conditions of a bargained-for contract by deducting union dues only from the payrolls of Employees who gave voluntary authorization to do so. *See* RCW 41.80.100(3)(a). No fact supports even a whiff of compulsion.

That Employees had the option of paying less as agency fees pre-*Janus*, or that *Janus* made that lesser amount zero by invalidating agency fees, does not establish coercion. Employees' choice was not between paying the higher union dues or the lesser agency fees. Choosing to pay union dues cannot be decoupled from the decision to join a union. The membership card Employees signed, titled "Payroll Deduction Authorization," begins with the statement: "Yes! I want to be a union member." This choice to voluntarily join a union and the choice to resign from it are contrary to compelled speech. *See Gallo Cattle Co. v. Cal. Milk Advisory Bd.*, 185 F.3d 969, 975 & n.7 (9th Cir. 1999); *see also Bauchman for Bauchman v. W. High Sch.*, 132 F.3d 542, 557–58 (10th Cir. 1997) ("a choice whether or not to sing songs she believe [sic] infringed upon" her First Amendment right "negates" "coercion or compulsion"); *Kidwell v. Transp. Commc'ns Int'l Union*, 946 F.2d 283, 292–93 (4th Cir. 1991) ("Where the employee has a choice of union membership and the employee chooses to join, the union membership money is not coerced."). By joining the union and receiving the benefits of membership, Employees also agreed to bear the financial burden of membership.

Janus does not address this financial burden of union membership. The Court explicitly cabined the reach of *Janus* by explaining that the "[s]tates can keep their labor-relations systems exactly as they are—only they cannot force nonmembers to subsidize public-sector unions." 138 S. Ct. at 2485 n.27. Nor did *Janus* recognize members' right to pay nothing to the union. The Court "was not concerned in the abstract with the deduction of money from employees' paychecks pursuant to an employment contract" nor did it give "an unqualified constitutional right to accept the benefits of union representation without paying." *Janus II*, 942 F.3d at 357–58. We join the swelling chorus of courts recognizing that *Janus* does not extend a First Amendment right to avoid paying union dues.[5]

---

[5] *See Mendez v. Cal. Teachers Ass'n, et al.*, 419 F. Supp. 3d 1182, 1186 (N.D. Cal. 2020) ("As every court to consider the issue has concluded, *Janus* does not preclude enforcement of union membership and dues deduction authorization agreements ...."); *Allen v. Ohio Civil Serv. Emps. Ass'n AFSCME, Local 11*, 2020 WL 1322051, at *12 (S.D. Ohio Mar. 20, 2020) (noting "the unanimous post-*Janus* district court decisions holding that employees who voluntarily chose to join a union ... cannot renege on their promises to pay union dues"). *See, e.g.*, *Fisk v. Inslee*, 759 F. App'x 632, 633 (9th Cir. 2019); *Creed v. Alaska State Emps. Ass'n/AFSCME Local 52*, 2020 WL 4004794, at *5–10 (D. Alaska July 15, 2020); *Molina v. Pa. Soc. Serv. Union*, 2020 WL 2306650, at *7–8 (M.D. Pa. May 8, 2020); *Durst v. Or. Educ. Ass'n*, 2020 WL 1545484, at *4 (D. Or. Mar. 31, 2020); *Bennett v. Am. Fed'n of State, C*[*n*]*ty., and Mun. Emps., Council 31, AFL-CIO et al.*, 2020 WL 1549603, at *3–5 (C.D. Ill. Mar. 30, 2020); *Loescher v. Minn. Teamsters Pub. & Law Enf't Emps.' Union, Local No. 320 and Indep. Sch. Dist. No. 831*, 2020 WL 912785, at *7 (D. Minn. Feb. 26, 2020); *Quirarte v. United Domestic Workers AFSCME*

In an effort to circumvent the lack of compulsion, Employees define the relevant First Amendment right as the freedom not to pay union dues without "consent that amount [sic] to the waiver of a First Amendment right." 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." *Janus*, 138 S. Ct. at 2486. This approach misconstrues *Janus*. The Court considered whether a waiver could be presumed for the deduction of agency fees only after concluding that the practice of automatically deducting agency fees from nonmembers violates the First Amendment. It was in this context that the Court mandated that nonmembers "freely," "clearly," and "affirmatively" waive their First Amendment rights before any payment can be taken from them. *Id*. The Court discussed constitutional waiver *because* it concluded that nonmembers' First Amendment right had been infringed, and in no way created a new First

---

Local 3930, 2020 WL 619574, at *5–6 (S.D. Cal. Feb. 10, 2020); *Hendrickson v. AFSCME Council 18*, 2020WL 365041, at *5–6 (D.N.M. Jan. 22, 2020); *Hernandez v. AFSCME Cal.*, 424 F. Supp. 3d 912, 923–24 (E.D. Cal. 2019); *Smith v. Super*[.] *Ct., C*[*n*]*ty. of Contra Costa*, 2018 WL 6072806, at *1 (N.D. Cal. Nov. 16, 2019); *Oliver v. Serv. Emps. Int'l Union Local 668*, 2019 WL 5964778 (E.D. Pa. Nov. 12, 2019); *Anderson v. SEIU*, 2019 WL 4246688, at *2 (D. Or. Sept. 4, 2019); *Seager v. United Teachers L.A.*, 2019 WL 3822001, at *2 (C.D. Cal. Aug. 14, 2019); *O'Callaghan v. Regents of Univ. of Cal.*, 2019 WL 2635585, at *3 (C.D. Cal. June 10, 2019); *Babb v. Cal. Teachers Ass'n*, 378 F. Supp. 3d 857, 877 (C.D. Cal. 2019); *Cooley v. Cal. Statewide Law Enf't Ass'n*, 2019 WL 331170, at *2 (E.D. Cal. Jan. 25, 2019).

Amendment waiver requirement for union members before dues are deducted pursuant to a voluntary agreement.

We note that there is an easy remedy for Washington 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. Employees demonstrated the freedom do so, subject to a limited payment commitment period. 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.

AFFIRMED.

Appendix J

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Const. amend. 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.

Cal. Educ. Code § 45060 (2018)

(a) Except as provided in Section 45061, the governing board of each public school employer, when drawing an order for the salary payment due to a certificated employee of the employer, shall reduce the order by the amount which it has been requested in a revocable written authorization by the employee to deduct for the purpose of paying the dues of the employee for membership in any local professional organization or in any statewide professional organization, or in any other professional organization affiliated or otherwise connected with a statewide professional organization which authorizes the statewide organization to receive membership dues on its behalf, or to deduct for the purpose of paying dues in, or for any other service, program, or committee provided or sponsored by, any certified or recognized employee organization, of which the employee is a bargaining unit member,

whose membership consists, in whole or in part, of employees of the public school employer, and which has as one of its objectives improvements in the terms or conditions of employment for the advancement of the welfare of the employees. Any revocation of a written authorization shall be in writing and shall be effective provided the revocation complies with the terms of the written authorization.

(b) Unless otherwise provided in an agreement negotiated pursuant to Chapter 10.7 (commencing with Section 3540) of Division 4 of Title 1 of the Government Code, the governing board shall, no later than the 10th day of each pay period for certificated employees, draw its order upon the funds of the employer in favor of the organization designated by the employee for an amount equal to the total of the dues or other deductions made with respect to that organization for the previous pay period and shall transmit the total amount to that organization no later than the 15th day of each pay period for certificated employees. When timely transmittal of dues or other payments by a county is necessary for a public school employer to comply with the provisions of this section, the county shall act in a timely manner. The governing board may deduct from the amount transmitted to the organization on whose account the dues or other payments were deducted the actual reasonable costs of making the deduction.

(c) The revocable written authorization shall remain in effect until expressly revoked in writing by the employee, pursuant to the terms of the written

authorization. Whenever there is a change in the amount required for the payment to the organization, the employee organization shall provide the employee with adequate and necessary data on the change at a time sufficiently prior to the effective date of the change to allow the employee an opportunity to revoke the written authorization, if desired and if permitted by the terms of the written authorization. The employee organization shall provide the public school employer with notification of the change at a time sufficiently prior to the effective date of the change to allow the employer an opportunity to make the necessary adjustments and with a copy of the notification of the change which has been sent to all concerned employees.

(d) The governing board shall not require the completion of a new deduction authorization when a dues or other change has been effected or at any other time without the express approval of the concerned employee organization.

(e) The governing board shall honor the terms of the employee's written authorization for payroll deductions. Employee requests to cancel or change authorizations for payroll deductions for employee organizations shall be directed to the employee organization rather than to the governing board. The employee organization shall be responsible for processing these requests. The governing board 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 school employer for any claims made by the employee for deductions made in reliance on that information.

(f) A certified or recognized employee organization that certifies that it has and will maintain individual employee authorizations shall not be required to submit to the governing board of a public school employer a copy of the employee's written authorization in order for the payroll deductions described in this section to be effective, unless a dispute arises about the existence or terms of the written authorization. The employee organization shall indemnify the public school employer for any claims made by the employee for deductions made in reliance on its notification.

Or. Rev. Stat. 243.806(6)(7) (2019)

(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 provide 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.