Case No. 20-56045

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Jonathan Savas, *et al.*,

Plaintiffs-Appellants,

v.

California Statewide Law Enforcement Agency, *et al.*,

Defendants-Appellees

On Appeal from the United States District Court
for the Southern District of California
No. 3:20-cv-00034-DMS-DEB, Hon. Dana M. Sabraw

APPELLANTS' PETITION FOR REHEARING EN BANC

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RULE 35 STATEMENT

In *Janus v. AFSCME, Council 31*, 138 S. Ct. 2448 (2018), the Supreme Court held it violates the First Amendment for states and unions to compel employees to subsidize union speech pursuant to a union security agreement. Notwithstanding *Janus*, the State of California and a union are compelling dissenting employees to subsidize union speech pursuant to a "maintenance of membership" agreement that requires employees who became union members to remain dues-paying union members for the four year duration of the agreement. Also notwithstanding *Janus*, a panel of this Court held this "maintenance of membership requirement does not implicate the First Amendment." Panel Op., 5 (attached as Exhibit A).

The Court should rehear this case *en banc* because the panel opinion: (1) conflicts with *Janus*; (2) conflicts with the Seventh Circuit's decisions in *Janus v. AFSCME, Council 31*, 942 F.3d 352, 361 (7th Cir. 2019) ("*Janus II*") and *Hudson v. Chicago Teachers Union Local No.* 1, 743 F.2d 1187, 1191 (7th Cir. 1984); and (3) presents issues of exceptional importance, namely whether it violates the First Amendment for California to force dissenting employees to remain full union members and to subsidize a union's speech for four years.

BACKGROUND

California law authorizes unions to enter into two types of "organizational security" agreements with the State that require employees to support a union financially:

"maintenance of membership" agreements and "fair share fee" agreements. Cal. Gov. Code § 3515.7(a). The former requires all employees who are or become union members to remain union members for the duration of the agreement, unless they withdraw from the union 30 days prior to the expiration of the agreement. *Id*. at § 3513(i). The latter requires all employees who are not union members to pay fees to the union. *Id*. at § 3513(k). The State of California enforces both forms of organizational security by "deduct[ing] the amount specified by the recognized employee organization from the salary or wages of every employee for the membership fee or the fair share fee." *Id*. at § 3515.7(b).

Both forms of organizational security are unconstitutional under the First Amendment. In 1977, the Supreme Court held it violates the First Amendment for a government employer and union to require employees to pay full union dues as a condition of their employment. *Abood v. Detroit Bd. of Ed.*, 431 U.S. 209, 232-37 (1977), overruled by *Janus*, 138 S. Ct at 2486. *Abood* held the most the Constitution could tolerate is requiring employees to pay reduced union fees that exclude union expenses for political activities and other conduct unrelated to collective bargaining. *Id*. These reduced fees became known as "fair share" or "agency" fees.

In 2018, the Supreme Court in *Janus* overruled *Abood* and held agency fee requirements also violate the First Amendment. 134 S. Ct. at 2486. The Court recognized that "compelled subsidization of private speech seriously impinges on First

Amendment rights" and is subject to at least exacting constitutional scrutiny. *Id.* at 2464. The Court found agency fee requirements fail that scrutiny. *Id*. at 2465-69.

The Court held that "[n]either an agency fee nor any other payment to the union may be deducted from a nonmember's wages, nor may any other attempt be made to collect such a payment, unless the employee affirmatively consents to pay." *Id*. at 2486. The Court further explained that, because "nonmembers are waiving their First Amendment rights" by agreeing to pay, establishing that employees consent to pay requires proof those employees waived their constitutional rights. *Id*. "[T]o be effective, the waiver must be freely given and shown by 'clear and compelling' evidence.'" *Id*. (quoting *Curtis Publishing Co. v. Butts*, 388 U.S. 130, 145 (1967)).

Undaunted by *Janus*, in July 2019 the State of California and the California State Law Enforcement Agency ("CSLEA") entered into a maintenance of membership agreement effective until July 2023 that states:

> A written authorization for CSLEA dues deductions in effect on the effective date of this Contract or thereafter submitted shall continue in full force and effect during the life of this Contract; provided, however, that any employee may withdraw from CSLEA by sending a signed withdrawal letter to CSLEA within thirty (30) calendar days prior to the expiration of this Contract.

Excerpts of Record, ECF No. 17 ("ER") 33. Employees subject to this union security agreement are required, as a condition of their employment, to remain members of, and pay full dues to, CSLEA for the four-year term of the agreement—i.e., from July 2019 until July 2023. *Id*.

Appellants Jonathan Savas et al. ("Lifeguards") are state employees who work or worked as lifeguards for the California Department of Parks and Recreation. ER 29. At various times between 2004 and 2019, they signed one of two forms that authorize membership in CSLEA and authorize the State to deduct union dues from their wages. ER 29-30. Neither form states the signatory agreed to remain a union member for the duration of a collective bargaining agreement. One of the forms, however, states that "[p]er the Unit 7 contract and State law, there are limitations on the time period in which an employee can withdraw as a member." ER 30.

On or around September 2019, the Lifeguards notified CSLEA that they resigned their union membership. ER 32. CLSEA refused to honor their resignations because of its maintenance of membership agreement with the State. *Id*. Since September 2019, the State and CSLEA have compelled the Lifeguards, over their objections and as a condition of their employment, to remain members of CSLEA and to pay full union dues to CSLEA. ER 32-33. On information and belief, the State and CSLEA will continue to force the Lifeguards who remain employed with the State to remain full dues-paying members of CSLEA until at least June 2023. *Id*.

The Lifeguards filed a class action lawsuit against the State and CSLEA alleging their maintenance of membership requirement compels the Lifeguards and similarly situated employees to subsidize union speech in violation of the First Amendment.

ER 36-38. The district court dismissed the Lifeguards' constitutional claims for failure to state a claim. ER 6-16. On April 28, 2022, in an unpublished opinion, a panel of this Court "affirm[ed] the district court's holding that the Lifeguards have failed to state a plausible claim because the maintenance of membership requirement does not implicate the First Amendment." Panel Op. 5.

The panel opinion declares "the holding in *Janus* applied to nonunion members only and because the Lifeguards are union members, *Janus* is inapplicable here." Panel Op. 2. The panel found the Lifeguards to be union members, notwithstanding their notices of resignation, because they supposedly "entered into a contract with the union through which they agreed to be bound by certain limitations on when they could resign that membership." *Id.* at 3-4.

The panel held the "Court's decision in *Belgau v. Inslee*, [975 F.3d 940 (9th Cir. 2020)] controls" this case and that "[t]he claims against CSLEA also fail for lack of stat [sic] action under *Belgau*." Panel Op. 2, 5 n.2. According to the panel, "the only potentially relevant difference [between this case and *Belgau*] is that the irrevocability period in *Belgau* was one year whereas here it is four." *Id.* at 4. The panel saw no "plausible reason why an irrevocability period of one year is constitutionally permissible, but four years would not be." *Id*. at 4-5. On these grounds, the panel found no constitutional infirmity with a maintenance of membership agreement that requires employees to financially support a union and its speech for four years.

ARGUMENT

A. The Panel Opinion Conflicts With *Janus*.

1. The State and CSLEA's maintenance of membership requirement is unconstitutional under *Janus* because it compels dissenting employees to subsidize union speech for several years.

The maintenance of membership requirement the panel upheld is indistinguishable from the agency fee requirement *Janus* held unconstitutional. California law deems both maintenance-of-membership and agency-fee requirements to be forms of union "organizational security." Cal. Gov. Code § 3515.7(a). Both forms of union security require certain employees, as a condition of their employment, to support a union financially by means of state deductions of union payments from their wages. *See id*. at §§ 3513(i), 3513(k), & 3515.7(b). When enforced against employees who oppose supporting the union, both requirements compel the employees to subsidize union speech against their wishes. This compulsion violates 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); *see Janus*, 138 S. Ct. at 2486.

If anything, maintenance of membership requirements inflict a *greater* First Amendment injury than the agency fee requirement *Janus* held unconstitutional. Agency fee requirements compel nonconsenting employees to pay reduced union fees that exclude monies used for some political purposes, and do not require that

employees be union members. *See Janus*, 138 S. Ct. at 2460-61. California and CSLEA's maintenance of membership requirement compels the Lifeguards and other dissenting employees to remain *full union members* against their will—which itself violates their associational rights—and to pay *full union dues* that include monies used for partisan political purposes. ER 33; Cal. Gov. Code § 3513(i).

The Supreme Court recognized decades prior to *Janus*, in *Abood*, that it violates the First Amendment for government employers and unions to require dissenting employees pay full union dues. 431 U.S. at 232-37, overruled by *Janus*, 138 S. Ct. at 2486; *see Debont v. City of Poway*, 1998 WL 415844, at *6 (S.D. Cal. Apr. 14, 1998) (holding plaintiff's First Amendment challenge to a maintenance of membership requirement was likely to succeed); *McCahon v. Pa. Tpk. Comm'n*, 491 F. Supp. 2d 522, 527-28 (M.D. Pa. 2007) (same). If maintenance of membership requirements could not survive constitutional scrutiny even under *Abood*, then the requirements certainly cannot survive scrutiny under *Janus*.

Janus firmly established that states and unions violate the First Amendment by compelling nonconsenting employees to subsidize a union and its speech. 138 S. Ct. at 2468. California and CSLEA's maintenance of membership requirement compels employees who do not want to be union members to continue to subsidize CSLEA and its speech for several years. The panel's holding that this "requirement does not implicate the First Amendment" cannot be reconciled with *Janus*.

2. The panel opinion's three rationales for holding maintenance of membership requirements constitutional are untenable.

(a). The panel opinion tries to brush away *Janus* by asserting that "the holding in *Janus* applied to nonunion members only and because the Lifeguards are union members, *Janus* is inapplicable here." Panel Op., 2. This reasoning is unavailing because the State and CSLEA are unlawfully compelling the Lifeguards to remain union members notwithstanding their notices of resignation.

States and unions cannot strip employees of their First Amendment rights under *Janus* by forcing those employees to remain union members against their wishes. One constitutional violation cannot justify another. California is not free to violate the Lifeguards' First Amendment right to not subsidize CSLEA's speech because the State also is compelling the Lifeguards to remain CSLEA members in violation of their associational rights. The fact that a maintenance of membership requirement compels dissenting employees to remain members of a union is a reason why the requirement is unconstitutional. It is not the requirement's saving grace.

(b). The panel opinion next claims the Lifeguards contractually consented to the maintenance of membership requirement in the dues deduction forms. Panel Op. 3-4. The claim not only is unfounded, but also is based on the wrong legal standard because *Janus* requires that courts use a constitutional-waiver analysis to determine if employees consented to pay for union speech. 138 S. Ct. at 2486.

First, the Lifeguards never contractually agreed to remain dues-paying members of CSLEA for the duration of the 2019-2023 collective bargaining agreement. The dues deduction form some Lifeguards signed merely states that "[p]er the Unit 7 contract and State law, there are limitations on the time period in which an employee can withdraw as a member." ER 30. This language only *supports* the Lifeguards' position that the "the Unit 7 contract and State law" limits the Lifeguards' right to stop associating with CSLEA. The language also *refutes* the panel's contrary conclusion that "a maintenance of membership requirement is not invalidated by the First Amendment because the limitation stems from a private agreement." Panel Op. 4. The form makes clear this limitation stems not from any private agreement, but from the State and CLSEA's collective bargaining agreement and from State law.

The forms' reference to undefined limitations in "the Unit 7 contract and State law" does not establish the Lifeguards contractually agreed to abide by any limit later included in the Unit 7 contract or found in State law. "In order to uphold the validity of terms incorporated by reference it must be clear that the parties to the agreement had knowledge of and assented to the incorporated terms." *Lamb v. Emhart Corp.*, 47 F.3d 551, 558 (2d Cir. 1995); *see* 11 Williston on Contracts § 30:25 (4th ed.) (similar). A vague allusion to the "Unit 7 contract and State law" does not clearly establish knowledge of, or assent to, the maintenance of membership requirement at issue here. Indeed, that requirement was entered into in July 2019,

years after most Lifeguards signed dues deduction forms. ER 29-30, 32.

Second, the panel's contract-law analysis is wrongheaded because *Janus* requires a constitutional-waiver analysis. 138 S. Ct. at 2486. The need for that waiver analysis is particularly apparent here. The State and CSLEA cannot prohibit the Lifeguards from exercising their First Amendment rights under *Janus* for four years unless the Lifeguards agreed to waive their constitutional rights.

Janus held that "a waiver cannot be presumed" and that, "to be effective, [a] waiver must be freely given and shown by 'clear and compelling' evidence." 138 S. Ct. at 2486 (quoting *Curtis Publ'g*, 388 U.S. at 145). The Court cited to three precedents holding an effective waiver requires proof of an "'intentional relinquishment or abandonment of a known right or privilege." *Coll. Savings Bank v. Fla. Prepaid Postsecondary Educ. Expense Bd.*, 527 U.S. 666, 682 (1999) (quoting *Johnson v. Zerbst*, 304 U.S. 458, 464 (1938)); *see Curtis Publ'g*, 388 U.S. at 143–45 (applying this standard to an alleged waiver of First Amendment rights).

This Court has similarly held that "First Amendment rights may be waived upon clear and convincing evidence that the waiver is knowing, voluntary and intelligent." *Leonard v. Clark*, 12 F.3d 885, 889 (9th Cir. 1994). Even where these prerequisites are satisfied, a waiver is unenforceable "'if the interest in its enforcement is outweighed in the circumstances by a public policy harmed by enforcement of the agreement.'" *Id.* at 890 (quoting *Davies v. Grossmont Union Sch. Dist.*, 930 F.2d

1390, 1396 (9th Cir. 1991)).

The State and CSLEA cannot satisfy these exacting criteria for proving the Lifeguards waived their First Amendment right to stop subsidizing CSLEA's speech for several years. There is no evidence the Lifeguards knew of their First Amendment rights under *Janus* or intelligently chose to waive those rights. Even if such evidence existed, any purported waiver would be unenforceable as against public policy because a four-year prohibition on employees' exercising their First Amendment rights under *Janus* is unconscionable. The panel opinion's failure to conduct the waiver analysis *Janus* requires is just one more reason why the opinion conflicts with *Janus*.

(c). Finally, the panel was wrong to find that *Belgau* controls this case because, quite simply, *Belgau* did not involve a maintenance of membership requirement or other type of union security agreement. *Belgau* concerned a restriction on when employees could stop dues deductions found *solely* in employees' dues deduction forms. *Belgau*, 975 F.3d at 945-46. The Court found that a state, by enforcing what the Court deemed to be a private agreement between the union and employees, was not itself compelling the employees to support the union financially in violation of their First Amendment rights. *Id.* at 950-52. The Court distinguished *Janus* on the grounds that, in *Janus*, a state was compelling employees to subsidize a union pursuant to an agency fee requirement. *Id*. at 952.

Whatever its merits,[1] *Belgau's* holding is inapposite here because the State of California *is* compelling dissenting employees to financially support union speech with its maintenance of membership requirement. The State is not a third-party merely enforcing terms of a private contract between a union and employees. The State itself a party to a union security agreement with CLSEA that compels the Lifeguards to remain dues-paying members of CSLEA as a condition of their employment until July 2023. ER 33. This agreement supplies the state compulsion the Court found to be lacking in *Belgau*, but to be present in *Janus*. 975 F.3d at 950-52.

This case is controlled by *Janus*, and not by *Belgau*, because this case concerns a union security agreement. The panel erred by concluding otherwise.

B. The Panel Opinion's State-Action Holding Conflicts with *Janus* and Seventh Circuit Precedents.

This case involves the same state action as *Janus*: a state and union compelling employees to financially support a union, by means of state deductions of union payments from the employees' wages, pursuant to a union security agreement. *See* 138 S. Ct. at 2486. The Supreme Court's holding that this state action is unconstitutional, and that "States and public-sector unions may no longer extract agency fees from nonconsenting employees," presupposes that "public-sector unions" involved in such extractions are state actors. *Id*.

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[1] The Lifeguards do not concede that *Belgau* was correctly decided.

On remand in *Janus*, the Seventh Circuit made explicit what the Supreme Court's decision implied: there is state action when a state "deduct[s] fair-share fees from the employees' paychecks and transfer[s] that money to the union . . . ." *Janus II*, 942 F.3d at 361. The Seventh Circuit reached the same conclusion decades earlier, explaining both that "when a public employer assists a union in coercing public employees to finance political activities, that is state action" and that "when a private entity such as 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*, 743 F.2d at 1191.

The panel holding that "[t]he claims against CSLEA also fail for lack of stat [sic] action under *Belgau*," Panel Op., 5 n.2, conflicts with *Janus*, *Janus II*, and *Hudson*. The holding also is not supported by *Belgau*, which (again) did not concern a union security agreement. In contrast, this case, *Janus*, and *Hudson* all involve union security agreements. The Court in *Belgau* expressly stated that its state action holding "does not implicate" the holding in *Janus II*. 975 F.3d at 948 n.3. The panel's remarkable holding that there is no state action when a union and state enter into and enforce a maintenance of membership agreement has no basis in this Court's precedents, but defies both logic and Supreme Court precedent.

C. This Case Is Exceptionally Important Because the Panel Opinion Sanctions a Severe Restriction on First Amendment Rights.

This case is worthy of en banc review because the panel approved an egregious violation of First Amendment freedoms: a state and union compelling dissenting employees both to subsidize and to remain members of a union for four years. Even after that four year period, the employees can escape subsequent maintenance-of-membership requirements only "by sending a signed withdrawal letter to CSLEA within thirty (30) calendar days prior to the expiration of this Contract." ER 33. In effect, the State of California and CSLEA allow employees to exercise their First Amendment right under *Janus* for only one 30 day period every four years.

This draconian restriction violates fundamental speech and associational rights. 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 (quoting *W. Va. Bd. of Educ. v. Barnette*, 319 U.S. 624, 642 (1943)) (emphasis omitted). The Court recognized that, just as "[c]ompelling individuals to mouth support for views they find objectionable violates that cardinal constitutional command," *id.* at 2463, "[c]ompelling 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 A Bill for Establishing Religious Freedom, 2 *Papers of Thomas Jefferson* 545 (J. Boyd ed. 1950)). The sole effect of a maintenance of membership requirement is to compel employees who no longer want to contribute money to propagate union speech to continue to do so.

"The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." *Elrod v. Burns*, 427 U.S. 347, 374 (1976) (plurality opinion). Maintenance of membership requirements deprive employees of their First Amendment freedoms not for minimal periods of time, but for years on end. Here, the State has forced the Lifeguards, against their express wishes, to financially support CSLEA's speech since September 2019. ER 32-33.

The Court would not tolerate such an impingement on First Amendment rights in similar constitutional contexts. For example, the Court in *Janus* found an individual subsidizing a public-sector union comparable to subsidizing a political party because both entities engage in speech on matters of political and public concern. 138 S. Ct. at 2484. The Court would never permit California to compel its employees to remain members of a political party, and to financially support that political party, unless the employees opt out during one 30 day period that arises every four years. Yet, the panel approved an indistinguishable requirement in this case.

Unless it is vacated, the panel opinion will encourage California and unions to continue to impose maintenance of membership requirements on employees. The California law authorizing this onerous form of union "organizational security," Cal. Gov. Code § 3515.7(a), remains on the books as a result of the panel's inexplicable failure to find the law unconstitutional under *Janus*. The Court's en banc review is needed to establish what should be obvious under *Janus*: that, just like agency fee requirements, maintenance of membership requirements that compel dissenting employees to subsidize union speech violate the First Amendment.

CONCLUSION

The Court should grant the petition for rehearing en banc.

Dated: May 12, 2022

Respectfully submitted,

/s/ William L. Messenger
William L. Messenger

An Attorney for Appellants

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

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9th Cir. Case Number(s) 20-56045

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EXHIBIT A

Memorandum Opinion in *Savas v. California State Law Enforcement Agency*, Case 20-56045 (9th Cir. Apr. 28, 2022)

NOT FOR PUBLICATION

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UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JONATHAN SAVAS; et al., Plaintiffs-Appellants, v. CALIFORNIA STATE LAW ENFORCEMENT AGENCY, a labor organization; et al., Defendants-Appellees.	No. 20-56045 D.C. No. 3:20-cv-00032-DMS-DEB MEMORANDUM*

Appeal from the United States District Court
for the Southern District of California
Dana M. Sabraw, Chief District Judge, Presiding

Argued and Submitted February 8, 2022
Portland, Oregon

Before: PAEZ and NGUYEN, Circuit Judges, and TUNHEIM,** District Judge.

Plaintiffs-Appellants Jonathan Savas, et al. (the "Lifeguards") appeal the district court's dismissal for failure to state a claim on their 42 U.S.C. § 1983

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

** The Honorable John R. Tunheim, Chief United States District Judge for the District of Minnesota, sitting by designation.

claims against Defendants-Appellees California Statewide Law Enforcement Agency ("CSLEA" or "union") and Betty Yee and Xavier Becerra in their official capacities (the "State Defendants"). The Lifeguards are union members of CSLEA. They allege that CSLEA and the State Defendants violated their First Amendment rights by enforcing a maintenance of membership requirement that limited the period within which the Lifeguards could resign their union membership. We have jurisdiction under 28 U.S.C. § 1291.

This Court's decision in *Belgau v. Inslee* controls. 975 F.3d 940 (9th Cir. 2020). The Lifeguards, who agreed to become union members, argued that the maintenance of membership requirement, located in the collective bargaining agreement and incorporated into their membership applications, is unconstitutional under *Janus v. AFSCME, Council 31*, 138 S. Ct. 2448 (2018).

"Neither an agency fee nor any other payment to the union may be deducted from a nonmember's wages, nor may any other attempt be made to collect such a payment, unless the employee affirmatively consents to pay." *Janus*, 138 S. Ct. at 2486. The Lifeguards do not argue that union membership was a requirement of employment and agree that they voluntarily chose to join the union. The district court correctly concluded that the holding in *Janus* applied to nonunion members only and because the Lifeguards are union members, *Janus* is inapplicable here.

The Lifeguards cannot escape this conclusion by arguing they become nonmembers once they make their resignation known to the union. A member of a union continues to be bound by the requirements of their membership application, including their duty to pay dues, even if they decide that they no longer want the benefits of union membership. *See N.L.R.B. v. U.S. Postal Serv.*, 827 F.2d 548, 554 (9th Cir. 1987) ("A party's duty to perform . . . is not excused merely because he decides that he no longer wants the consideration for which he has bargained.").

The Lifeguards have made no serious argument that they were compelled to join the union. Though the Lifeguards had to choose, at the time they joined, between an agency fee and union membership, the Lifeguards still made the affirmative choice to become members. Furthermore, any assertion of compulsion is undermined by the fact that the Lifeguards had the opportunity to resign their membership during the June 2019 opt-out window, after the decision in *Janus* had rendered agency fees unconstitutional.

As the Court explained in *Belgau*, "[t]he First Amendment does not support [a union member's] right to renege on their promise to join and support the union." *Belgau*, 975 F.3d at 950. The Lifeguards entered into a contract with the union through which they agreed to be bound by certain limitations on when they could

resign that membership.[1] The contractual term that bound the Lifeguards to the maintenance of membership requirement was neither uncertain, indefinite, or ambiguous. The fact that the maintenance of membership requirement appeared in a separate document does not render the term unenforceable. *Poublon v. C.H. Robinson Co.*, 846 F.3d 1251, 1269 (9th Cir. 2017) ("Under California law, a contract and a document incorporated by reference into the contract are read together as a single document."). When "legal obligations are self-imposed, state law, not the First Amendment, normally governs." *Belgau*, 975 F.3d at 950 (quoting *Cohen v. Cowles Media Co.*, 501 U.S. 663, 671 (1991)) (cleaned up). Thus, a maintenance of membership requirement is not invalidated by the First Amendment because the limitation stems from a private agreement.

Belgau requires this conclusion. There are no meaningful distinctions between this case and *Belgau* that persuade us a different outcome is warranted. The only potentially relevant difference is that the irrevocability period in *Belgau* was one year whereas here it is four. But the Lifeguards have failed to present any

[1] This conclusion presumes that there was a valid contract between the Lifeguards and CSLEA. The district court held that a contract existed between the Lifeguards and the CSLEA via the membership applications. We must accept this finding unless we have a "definite and firm conviction that a mistake has been committed." *Concrete Pipe & Prods. of Cal., Inc. v. Const. Laborers Pension Trust for S. Cal.*, 508 U.S. 602, 622 (1993). As the Lifeguards have not provided more than brief allegations that the district court committed clear error, no mistake was committed. Thus, there was a valid contract between the Lifeguards and CSLEA.

plausible reason why an irrevocability period of one year is constitutionally permissible, but four years would not be. Thus, we affirm the district court's holding that the Lifeguards have failed to state a plausible claim because the maintenance of membership requirement does not implicate the First Amendment.[2]

AFFIRMED.

[2] The claims against CSLEA also fail for lack of stat action under *Belgau*.