No. 20-1120

In the Supreme Court of the United States

MELISSA BELGAU, ET AL.,

PETITIONERS,

v.

JAY INSLEE, ET AL.,

RESPONDENTS.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

STATE RESPONDENTS' BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

When a State employee has voluntarily joined a union and affirmatively authorized union dues to be deducted from her paycheck, does a State violate the First Amendment by making that deduction?

Does a union engage in state action when it enters into a voluntary contract with a state employee who is under no obligation to join the union?

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INTRODUCTION

This Petition is fatally flawed on three levels: it shows no conflict with this Court's rulings, it shows no conflict in the lower courts, and the lead question presented is moot. The Court should deny review.

Washington State deducts union dues from its employees' salaries only if an employee affirmatively and voluntarily authorizes the deductions. That practice is entirely consistent with *Janus v. American Federation of State, County, and Municipal Employees, Council 31*, 138 S. Ct. 2448 (2018), and the First Amendment. *Janus* held that States cannot compel employees to pay agency fees or presume employees wish to pay such fees without their express direction. No such compulsion or presumption is present here. Petitioners affirmatively and voluntarily signed membership agreements with their union. In those agreements, they expressly assigned a portion of their wages as union dues in exchange for membership benefits and authorized the State to deduct those amounts from their paychecks for specified periods of time.

Petitioners seek to avoid the membership agreements they freely entered by fabricating a holding not found in *Janus*. They argue that voluntary affirmative authorization to dues deductions is not enough to establish "consent." Instead, they argue, the State should have insisted that Petitioners provide a statement that they knew that they had a constitutional right to decline the deduction of union dues but wished to authorize them anyway. This claim finds no basis in *Janus* and defies a reasonable understanding of "consent," both of

which require only affirmative and voluntary authorization. The membership agreements Petitioners signed clearly state their affirmative authorization to have union dues deducted and that the authorizations were "voluntary" and "not a condition of employment." This complies with the First Amendment's requirement of affirmative consent. Nothing in *Janus* precludes a State from honoring its employee's specific direction to deduct moneys from the employee's paychecks for union dues or for other organizations, such as charities and voluntary professional associations.

The decision below is not only entirely consistent with *Janus*, but also with decisions of lower courts. Petitioners do not even allege a circuit split as to their first question presented, and every circuit to consider the question has agreed with the decision below. Petitioners claim a conflict with the Seventh Circuit as to their second question presented, but they ignore important differences between the cases, and even if they were correct it would have no impact on the outcome of this case.

Finally, even if there were a conflict with *Janus* or a circuit split, this case would be an unworkable vehicle because the first question presented is moot. That question is premised on Petitioners' request for an injunction stopping the State from deducting union dues from them without what they argue is a sufficient waiver under *Janus*. But the State stopped collecting dues from each Petitioner over two years ago, so there is nothing to enjoin. And Petitioners never sought or obtained class certification. State Respondents respectfully request that this Court deny certiorari.

STATEMENT OF THE CASE

A. The State Makes Union Dues Payroll Deductions Only After an Employee Has Affirmatively Requested and Authorized Those Deductions

Petitioners are Washington State employees who are represented by the Washington Federation of State Employees (WFSE) for purposes of collective bargaining with the State pursuant to Washington law. Pet. App. 86a, ¶ 3; App. 12a-13a (Wash. Rev. Code § 41.80.080(2)-(3)). Employees represented by WFSE are not required to become WFSE members or pay union dues as a condition of employment. Pet. App. 87a, ¶ 8; App. 11a (Wash. Rev. Code § 41.80.050). An employee who has elected to join WFSE may resign from membership at any time. Pet. App. 87a, ¶ 9. An employee who chooses to join WFSE agrees to pay union dues in exchange for membership rights and members-only benefits. Pet. App. 89a, ¶¶ 17-18. The decision to join the union and sign a membership card is completely voluntary. Pet. App. 87a, ¶ 8; App. 11a (Wash. Rev. Code § 41.80.050).

State law and the Collective Bargaining Agreement (CBA) between the State of Washington and WFSE require the State to make union deductions when authorized by an employee, and to "honor the terms and conditions" of each employee's signed membership card. Pet. App. 67a; App. 15a (Former Wash. Rev. Code § 41.80.100(3)(a) (2018)) (requiring State to deduct dues amounts upon employees' authorization); Pet. App. 54a. But neither state law nor the CBA dictate what the terms

and conditions of each employee's membership card should be, as that is between the union and its members. *See* App. 31a (Wash. Rev. Code § 41.80.110(1)(b)) (prohibiting employer from interfering with formation or administration of employee organizations). Contrary to Petitioners' suggestions in their petition, the State plays no role in the formation or execution of union membership agreements. *See generally* Pet. App. 85a-93a (stipulated facts).

The State's deduction of union dues requested by its employees is similar to other payroll deductions employees authorize. For example, employees may authorize payroll deductions to support certain charities or voluntary professional organizations. App. 1a-5a (Wash. Rev. Code § 41.04.036, .230). Employees also may select health insurance plans that involve employee contributions through payroll deduction. *See, e.g.*, App. 33a-46a (Wash. Admin. Code §§ 182-08-197, -198); *see also* App. 2a (Wash. Rev. Code § 41.04.230) (generally addressing payroll deductions); App. 47a (Wash. Admin. Code § 182-08-199) (limiting employees who elect to enroll in medical Flexible Spending Account, Dependent Care Assistance Program, or both from terminating deductions outside of annual enrollment window).

Before June 27, 2018, WFSE-represented employees who had elected not to join WFSE were required to pay a lesser "representation fee" intended to defray the costs of WFSE's activities in fulfilling its statutory duty to represent "the interests of all the

employees in the bargaining unit." Pet. App. 88a; App. 13a (Wash. Rev. Code § 41.80.080(3)); App. 14a (Former Wash. Rev. Code § 41.80.100(1) (2018)).[1] This amount ranged from approximately 65.3% to 78.8% of the amount of union dues, Pet. App. 88a, ¶¶ 14-15, and could be applied by the union to "collective-bargaining, contract administration, and grievance-adjustment purposes," but not "for the expression of political views, on behalf of political candidates, or toward the advancement of other ideological causes not germane to its duties as collective-bargaining representative." *Abood v. Detroit Bd. of Educ.*, 431 U.S. 209, 232, 235 (1977). This representation fee requirement was in accordance with state law and this Court's decision in *Abood*.

After this Court overruled *Abood* and invalidated compelled representation fees in *Janus*, the State immediately stopped deducting representation fees. Pet. App. 88a, ¶ 14. The authority for the State to collect representation fees was repealed by the Washington Legislature in the first legislative session following *Janus*. App. 7a-10a (2019 Wash. Sess. Laws 1131-34 (ch. 230, §§ 15, 18)). After *Janus*, the only union deductions the State makes from its employees' paychecks are those explicitly and

[1] The session law attached to the Petition at pages 56a-65a includes none of the strikethroughs or underlines that would demonstrate what was deleted or added to the law as it existed prior to the amendment. A correct version of 2018 Wash. Sess. Laws 1454-58 (ch. 247), showing the legislature's additions and deletions, is found at pages 17a-28a in the attached appendix.

affirmatively authorized by the employee. *See, e.g.*, Pet. App. 88a, ¶ 14; Pet. App. 66a-73a (CBA provision in effect following *Janus* and governing Petitioners' deductions); Pet. App. 54a (Wash. Rev. Code § 41.80.100 (current)).

B. Petitioners Affirmatively and Voluntarily Authorized and Requested the Deduction of Membership Dues

Each of the Petitioners elected to join the union, sign membership cards, pay higher union member dues amounts, and obtain the benefits of union membership. Pet. App. 87a-89a. Accordingly, they did not pay representation fees. Pet. App. 87a-89a.

Each of the Petitioners signed membership cards "voluntarily authoriz[ing] and direct[ing]" the State to deduct from their paychecks the amount of union dues certified by WFSE. App. 78a-86a; Pet. App. 83a, 87a, ¶ 9. The most recent membership card each Petitioner signed provided that the authorization for deductions was completely voluntary, but, once entered, was binding for a one-year term, just as federal law authorizes for federal employees, postal employees, and employees covered by the National Labor Relations Act and the Railway Labor Act. *See* 5 U.S.C. § 7115(a)-(b); 29 U.S.C. § 186(c)(4); 39 U.S.C. § 1205; 45 U.S.C. § 152, Eleventh (b). The cards said:

> This **voluntary** authorization and assignment shall be irrevocable for a period of one year from the date of execution or until the termination date of the collective bargaining agreement (if there is one) between the Employer and the Union, whichever occurs sooner . . . regardless

> of whether I am or remain a member of the Union . . . . **I recognize that my authorization of dues deduction, and the continuation of such authorization from one year to the next, is voluntary and not a condition of my employment**.

Pet. App. 83a; App. 78a-86a (emphasis added).

Petitioners' membership cards entitled them to membership rights such as the ability to vote on ratification of a collective bargaining agreement and in union officer elections, run for union office, have the opportunity to serve on bargaining committees, and participate in the union's internal affairs. Pet. App. 89a, ¶ 17. WFSE members also receive access to members-only benefits, including discounts on goods and services; access to scholarship programs; free legal advice; discounted dental benefits; annual family campouts; access to the Union Sportsman's Alliance; and access to the American Federation of State, County, and Municipal Employees Free College program. Pet. App. 89a, ¶ 18.

As requested and directed by each Petitioner in their union membership agreements, the State deducted union dues from each Petitioner's paycheck. Pet. App. 90a, ¶¶ 22-23. Petitioners repeatedly misrepresent the record when they argue that the State deducts union dues based on "evidence of union membership alone." Pet. at i, 9, 12-14. Rather, state law and the CBA authorize the State to deduct union dues only based on an employee's affirmative authorization. Pet. App. 66a-73a; App. 14a (Former Wash. Rev. Code § 41.80.100 (2018)). Consistent with that restriction, the State deducted union dues only

after each Petitioner signed a membership card that stated explicitly that the Petitioner voluntarily authorized the deduction, directed the State to make the deduction, and acknowledged both that the deduction was not a condition of employment and was irrevocable for the specified time period. Pet. App. 83a; App. 78a-86a

C. Petitioners Later Opted to Leave Union Membership, and the State Ceased Deducting Union Dues from Petitioners After Their Authorizations Expired

In 2018, Petitioners each communicated in writing that they objected to union membership and the payment of any union dues or fees. Pet. App. 89a, ¶ 20. WFSE processed Petitioners' membership resignations, and they are no longer union members. Pet. App. 89a, ¶ 21. Pursuant to Petitioners' direction contained in their membership cards, however, and in accordance with the CBA (Pet. App. 66a-73a) and state law (App. 15a (Former Wash. Rev. Code § 41.80.100(3) (2018)), the State honored the agreement entered into by each Petitioner and continued to deduct an amount equal to union dues from each Petitioner's wages and remit it to WFSE until the expiration of the one-year term agreed to in each Petitioner's most recent authorization (App. 78a-86a). Pet. App. 90a, ¶¶ 22-23. All of the Petitioners' one-year obligations concluded by April 2019, and the State ceased collecting their deductions without any further need for action on their part. Pet. App. 90a, ¶¶ 22-23; App. 78a-86a. None of the Petitioners will experience any further union deductions unless they voluntarily authorize them again. Pet. App. 89a-90a, ¶¶ 21-23.

D. The Lower Courts Held that Washington's Practice of Deducting Union Dues Based on Voluntary Authorizations Complies with the First Amendment

After this Court decided *Janus* in June 2018, Petitioners filed this lawsuit, claiming that the union deductions they had previously authorized were unconstitutional because their written membership agreements were insufficient "waivers" of their First Amendment rights. Pet. App. 94a-118a; *see also* App. 74a-75a (arguing Wash. Rev. Code § 41.80.100 and CBA Article 40 "are unconstitutional as applied because they authorize and compel the State to deduct union dues from employees' wages absent the requisite consent"). Petitioners agreed the State could deduct union dues if they authorized it, but they contended that their union membership and dues authorization agreements did not constitute sufficient consent because they did not amount to knowing, voluntary, and intelligent waivers of Petitioners' rights. Pet. App. 95a-96a. Petitioners sought damages from WFSE for all of the dues they paid within the applicable statute of limitations and prospective relief against WFSE and State Respondents to prevent further dues deductions. Pet. App. 115a-16a.

Although Petitioners made class allegations in their complaint, they never moved for class certification. *See* Pet. App. 94a-118a.

For purposes of cross-motions for summary judgment, the parties agreed to a set of stipulated facts. Pet. App. 85a-93a. The most pertinent of those

facts are outlined above. The parties agreed that "[a]part from the facts set forth" in their stipulation, there were no additional facts that rendered "Plaintiffs' [i.e., Petitioners'] current cards enforceable or unenforceable," and that the parties would "not introduce additional evidence related to the merits of Plaintiffs' claims in support of or opposition to those cross-motions." Pet. App. 90a-91a.

The district court granted summary judgment to the State Defendants and WFSE, and denied summary judgment to Petitioners. Pet. App. 21a-47a. The Ninth Circuit Court of Appeals affirmed. Pet. App. 1a-20a. Both courts concluded that the State's deductions of union dues pursuant to Former Wash. Rev. Code § 41.80.100 (2018)[2] and CBA Article 40 are consistent with the First Amendment because they are made "pursuant to the Plaintiffs' explicit written instructions[.]" Pet. App. 43a-44a; *see also* Pet. App. 13a (noting challenge was to validity of consent rather than a facial challenge alleging a law or CBA directed deductions without consent).

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[2] Petitioners' lawsuit challenged the law as it existed just before and following *Janus* in 2018. Pet. App. 94a-118a. Wash. Rev. Code § 41.80.100 was amended in 2019 while the appeal was pending in the Court of Appeals, but the parties' briefing and argument addressed the law as it existed prior to the amendment, and Petitioners did not amend their lawsuit to challenge later versions of the law. *See* App. 7a (2019 Wash. Sess. Laws 1131-34 (ch. 230, § 18). In any event, both versions of the law require affirmative authorization of the employee to make union dues deductions. Pet. App. 54a (current version); App. 24a-27a (version with 2018 pre-*Janus* amendment).

Both courts also rejected Petitioners' arguments that their consent was "not valid because they had not waived their First Amendment rights under *Janus* in their authorization agreements[.]" Pet. App. 44a; *accord* Pet. App. 16a-20a. The courts emphasized that "[t]he relationship between unions and their voluntary members was not at issue in *Janus*," Pet. App. 44a, and found that "[t]he notion that Plaintiffs may have made a different choice" regarding whether to join the union and commit to limited financial obligations had they known this Court would later invalidate representation fee arrangements in *Janus* did "not void" their previous agreements. Pet. App. 44a; Pet. App. 17a-18a.

The Ninth Circuit also found that Petitioners' prospective claim (their only claim against the State) was moot. Pet. App. 14a-16a. But the court found it was "not deprived of jurisdiction because the claim falls within an exception to mootness," namely, that the case was pled as a class action. Pet. App. 14a-15a.

This petition followed.

REASONS FOR DENYING THE PETITION

Petitioners' claims against the State are moot because none of the Petitioners are subject to the dues deduction practice they challenge. Thus, this case does not allow resolution of Petitioners' first question presented.

Petitioners admit that the Ninth Circuit's decision on the merits of their claims creates no split of authority. Pet. 28. Indeed, the Ninth Circuit joined a "swelling chorus of courts recognizing that *Janus* does not extend a First Amendment right" to public

employees who have affirmatively agreed to pay union dues in voluntary union membership agreements to "avoid paying union dues." Pet. App. 18a-19a & n.5 (citing 18 decisions).[3]

Petitioners similarly demonstrate no inconsistency with this Court's First Amendment precedent. The First Amendment prohibits the State from compelling its employees to subsidize a union, but it does not prohibit the State from complying with its employees' express directions to make payroll deductions. *See Janus*, 138 S. Ct. at 2463-64. Each of the Petitioners here chose to sign voluntary membership agreements with the union that affirmatively authorized the deductions for one-year terms. Plaintiffs do not have a First Amendment right to disregard their contractual promises.

Petitioners' second question presented likewise demonstrates no inconsistency between the Ninth Circuit's state action analysis and the state action decisions of this Court or any other circuit. A private agreement between two private parties is not state

[3] More circuits have joined the chorus after the Ninth Circuit's decision. *See Hendrickson v. AFSCME, Council 18*, 992 F.3d 950, 961, (10th Cir. 2021); *Bennett v. Council 31 of the AFSCME, AFL-CIO*, 991 F.3d 724, 730-33 (7th Cir. 2021); *Fischer v. Governor of N.J.*, 842 F. App'x 741, 752-53 & n.18 (3d Cir. 2021) (unpublished); *Oliver v. Serv. Emps. Int'l Union Local 668*, 830 F. App'x 76, 80 (3d Cir. 2020) (unpublished); c*f. LaSpina v. SEIU Pa. State Council*, 985 F.3d 278, 287-88 (3d Cir. 2021) (finding plaintiff's claimed economic loss occurred because "of her decision to join the Union," not the pre-*Janus* collection of agency fees from nonmembers).

action just because it authorizes the State to make payroll deductions. And a private entity does not become a state actor by virtue of receiving voluntarily-authorized payroll deductions from a state.

A. Mootness Precludes Resolution of the First Question Presented

The Court cannot resolve Petitioners' first question presented because it is moot. *Preiser v. Newkirk*, 422 U.S. 395, 401 (1975). The only relief Petitioners seek against the State is an injunction precluding the State from deducting union dues without what they argue is a sufficient waiver under *Janus*. But none of the Petitioners have had any union dues deducted since April 2019, and none of them claim that they will have dues deducted again. The Ninth Circuit therefore correctly found that Petitioners' claims are moot, but the court nonetheless reached the merits, applying an exception to mootness for class actions. But Petitioners never sought to certify a class before their claims became moot, despite ample opportunity, so that exception is inapposite.

There is no dispute that Petitioners' claim for injunctive relief is moot. As the Ninth Circuit correctly recognized, "[a] live dispute 'must be extant at all stages of review, not merely at the time the complaint is filed.'" Pet. App. 14a (quoting *Preiser*, 422 U.S. at 401). But all of Petitioners' deductions had ceased according to the terms of their agreements by the time the Ninth Circuit reviewed this case. Pet. App. 14a. And Petitioners proffered no suggestion that their deductions would recur. "Claims for injunctive relief become moot when the challenged activity ceases" and

"'the alleged violations could not reasonably be expected to recur.'" Pet. App. 14a (quoting *Ruiz v. City of Santa Maria*, 160 F.3d 543, 549 (9th Cir. 1998)).

While this Court has recognized an exception in the context of class certification, that exception does not apply here. It applies only when a class has already been certified or the trial court would not have enough time to rule on a motion for class certification before the named plaintiff's interest expires. *County of Riverside v. McLaughlin*, 500 U.S. 44, 52 (1991) (citing *Gerstein v. Pugh*, 420 U.S. 103, 110 n.11 (1975)). Petitioners never moved for class certification. And there was no showing here that the district court could not rule on a motion for class certification between the time that Petitioners filed their action in August 2018 and when their claims became moot in April 2019. Pet. App. 8a.

The Ninth Circuit did not find otherwise. Instead, it determined Petitioners would not have had sufficient time to obtain a final appellate ruling on the merits of their claims before their claims became moot. Pet. App. 15a (citing *Johnson v. Rancho Santiago Cmty. Coll. Dist.*, 623 F.3d 1011, 1019 (9th Cir. 2010)). But that factor is relevant only to the "capable of repetition, yet evading review" exception to mootness. *See Johnson*, 623 F.3d at 1019; *Lewis v. Cont'l Bank Corp.*, 494 U.S. 472, 481 (1990). That exception applies only when the anticipated future harm is to the same plaintiff, not to putative class members of an uncertified class. *See Johnson*, 623 F.3d at 1019. That exception did not apply here, where none of the Petitioners alleged they intended to re-join WFSE and authorize further dues deductions.

In short, because Petitioners' injunctive claims are moot and do not qualify for an exception, this case is an untenable vehicle for deciding the merits of the first question presented.

B. The Ninth Circuit's Decision Is Entirely Consistent with This Court's First Amendment Precedent

Even if the Court could reach the merits, the Ninth Circuit's decision creates no conflict with this Court's First Amendment precedent. The First Amendment prohibits the State from compelling its employees to subsidize a union, but it does not prohibit the State from complying with its employees' express directions to make payroll deductions. *See Janus*, 138 S. Ct. at 2463-64. Since it is undisputed that each of the Petitioners expressly authorized, requested, and directed the State to make payroll deductions, the lower courts correctly concluded that there was no compulsion here.

1. The First Amendment prohibits payroll deductions for union dues only when they are compelled

Petitioners' compelled subsidization claim means they must establish that the State forced them to subsidize someone else's private speech; that is, they must show the State required them to pay subsidies for speech to which they object. *See United States v. United Foods, Inc.*, 533 U.S. 405, 410 (2001); *Janus*, 138 S. Ct. at 2463-64 (collecting cases). For example, in *Janus*, this Court found that the State of Illinois' practice of automatically deducting and requiring—as a condition of employment—representation fees from nonmembers' wages to be

used by the union in First Amendment activities constituted unlawful compulsion. *Janus*, 138 S. Ct. at 2486. While the Court acknowledged that representation fees could be collected from employees who "affirmatively consent[] to pay," it found such consent lacking in a system of *automatic* deductions without any prior authorization. *Id.* The touchstone was coercion or compulsion. *Id.* at 2463-64.

When someone makes a voluntary choice, however, there is no compulsion. *See Janus*, 138 S. Ct. at 2486; *see also South Dakota v. Neville*, 459 U.S. 553, 563-64 (1983) (true choice negates compulsion in context of Fifth Amendment right against self-incrimination); *Bauchman ex rel. Bauchman v. W. High Sch.*, 132 F.3d 542, 558 (10th Cir. 1997) (student not compelled to sing songs she found objectionable when she had the choice to decline to sing them). As this Court acknowledged in *Janus*, "[b]y agreeing to pay" moneys to a union, employees "are waiving" their right not to. *Janus*, 138 S. Ct. at 2486. That is what Petitioners did here when they affirmatively and voluntarily signed up to be union members and committed to pay union dues for a discrete period of time. The choice was theirs alone, without compulsion.

2. Petitioners' membership agreements directing the State to deduct union dues constitute voluntary and affirmative consent

Petitioners affirmatively chose to join the union and sign union membership agreements requesting and authorizing the deduction of union dues. Pet. App. 87a, ¶¶ 8-9. Petitioners admit that signing their union

membership agreements was not required as a condition of their employment. Pet. App. 87a, ¶¶ 8, 12. Petitioners agreed that the parties' stipulated facts constituted the entire universe of facts relevant to the validity of their membership agreements. Pet. App. 90, ¶ 25. Those stipulated facts contain no testimony or evidence indicating any coercion.

To the contrary, in their signed union membership agreements, Petitioners explicitly "voluntarily authoriz[ed] and direct[ed]" the State to deduct union dues from their paychecks for a specified period of time. App. 78a-86a. Petitioners' authorizations each state:

> "I hereby *voluntarily authorize and direct* my Employer to deduct from my pay each pay period, the amount of dues as set in accordance with the WFSE Constitution and By-Laws";
>
> I "authorize my Employer to remit such amount semi-monthly to the Union";
>
> "This *voluntary authorization and assignment shall be irrevocable for a period of one year* from the date of execution or until the termination date of the collective bargaining agreement"; and
>
> "*I recognize that my authorization of dues deductions*, and the continuation of such authorization from one year to the next, is *voluntary and not a condition of my employment*."

App. 78a-86a (emphases added). Petitioners were under no obligation to join the union or to commit to paying union dues for a specified period of time, but,

having exercised their right to do so, the State cannot be said to have "compelled" Petitioners to subsidize the union simply by honoring the terms of their own agreements.

Where employees affirmatively authorize their employer to make payroll deductions and remit them to an organization to support associational activities, and such authorization is not a condition of employment, there is no compulsion that implicates the First Amendment. In the case of becoming a union member and paying union membership dues, there has always been such a choice in Washington. Washington law expressly protects its employees' choice to join or refrain from joining the union. App. 11a, 31a (Wash. Rev. Code § 41.80.050, .110(1)(c)).

If Petitioners had chosen not to join the union, it is true that they would have been required to pay representation fees until this Court's decision in *Janus*. But Petitioners affirmatively chose to associate with the union, avail themselves of union benefits and privileges, and pay *higher* union dues instead. Petitioners did not claim or present evidence that they would have exercised a different choice if they had not been required to pay representation fees at the time. *See* Pet. App. 85a-93a. But even if they did make that argument, that does not mean their agreement was involuntary or otherwise invalid. *See Brady v. United States*, 397 U.S. 742 (1970) (defendant not allowed to rescind plea agreement where it was entered into to avoid application of a statute providing for the death penalty which was

later invalidated); *Dingle v. Stevenson*, 840 F.3d 171, 175 (4th Cir. 2016) (voluntariness is evaluated "under the law as it existed at the time"). Contracts are "a bet on the future," in which parties "gain a present benefit in return for the risk that [they] may have to forego future favorable legal developments." *Dingle*, 840 F.3d at 175. Here, rather than choosing lesser mandatory representation fees, which ceased after *Janus*, Petitioners availed themselves of union membership benefits and privileges in exchange for a limited financial commitment to pay more in union dues, which extended briefly beyond *Janus*.

In sum, at the time they signed their union membership agreements, Petitioners had the very real choice to affirmatively join WFSE and pay full membership dues for membership benefits, or to pay lower representation fees for representation services the union is statutorily required to provide to non-members. Pet. App. 88a, ¶¶ 14-15. Here, Petitioners agreed to pay union dues in order to receive the full benefits and privileges of union membership. They were not compelled to enter into those agreements.

3. The State's process complies with *Janus*

Petitioners urge that, regardless of whether they acted voluntarily, their express authorization and direction to the State to deduct union dues is not a sufficient basis upon which the State can make dues deductions. Instead, relying on a single passage from *Janus*, they claim the State may do so only after Petitioners have sufficiently "waived" their constitutional rights. *E.g.*, Pet. at 11. Petitioners'

argument misapplies *Janus* and takes an overly-rigid view of what constitutes a "waiver" that is unsupported by this Court's case law.

The question presented and addressed in *Janus* was whether nonmembers—i.e., individuals who have not affirmatively chosen to join a union or to enter into a contract to pay dues in exchange for member benefits—could be forced to pay union representation fees as a condition of public employment. *Janus*, 138 S. Ct. at 2460. As part of its answer to that question, the Court addressed whether deducting payments from those individuals who had not affirmatively opted into such deductions constituted unlawful compulsion, or whether the state and the union could presume the individuals' consent absent objection. *Janus*, 138 S. Ct. at 2486. On that specific sub-question, the Court held:

> 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. *By agreeing to pay, nonmembers are waiving their First Amendment rights*, and such a waiver cannot be presumed.

Id. (emphases added). Thus, following *Janus*, states may no longer presume that non-union members consent to union deductions just because they have not objected. *Id.* Rather, they must insist on affirmative consent.

Unlike the state defendant in *Janus*, the State here was not presuming consent; it was acting upon Petitioners' express written consent, authorization, and direction to deduct union dues. App. 78a-86a. Because *Janus* does not forbid the State from deducting union dues from employees who, like Petitioners, have affirmatively joined the union and *voluntarily* agreed to pay membership dues, the process here complies with *Janus*.

According to *Janus*, the crux of compelled subsidization claims is compulsion, and affirmative consent negates such compulsion. *Janus*, 138 S. Ct. at 2486. The Court stated, "[n]either an agency fee nor any other payment to the union may be deducted from a nonmember's wages . . . *unless the employee affirmatively consents to pay*." *Id.* (emphasis added). So, the standard for First Amendment compliance in this context is met at least where "employees clearly and affirmatively consent before any money is taken from them[.]" *Id.* Consent must, of course, be "freely given," and documented. *Id.* But, as the Court concluded, "[*b*]*y agreeing to pay*, nonmembers are waiving their First Amendment rights[.]" *Id.* (emphasis added). Thus, according to *Janus*, as long as deductions are made pursuant to an employee's affirmative agreement to pay, the employer complies with the First Amendment by making the deductions. *Id.*

In *Janus*, this Court cited a number of cases for the proposition that consent cannot be presumed, but must reflect an employee's affirmative agreement to pay. *See Janus*, 138 S. Ct. at 2486 (citing *Johnson v. Zerbst,* 304 U.S. 458, 464 (1938); *Knox v. SEIU, Local 1000*, 567 U.S. 298, 312-13 (2012); *Curtis Publ'g Co. v.*

Butts, 388 U.S. 130, 145 (1967) (plurality opinion); *Coll. Sav. Bank v. Fla. Prepaid Postsecondary Educ. Expense Bd.*, 527 U.S. 666, 680-82 (1999)). Petitioners attempt to rely on these cases for the broader proposition that an affirmative dues deduction request is not a sufficient "waiver" unless it explicitly acknowledges the constitutional right not to authorize the deductions. Pet. at 12. But this Court derived no such proposition in *Janus*, and should not do so here. What this Court held in *Janus* is that waiver of a constitutional right cannot be presumed based on inaction, but "[b]y agreeing to pay" moneys to the union, employees are affirmatively "waiving" their constitutional right not to pay. *Janus*, 138 S. Ct. at 2486. The Court never suggested that a waiver in this context must be of the same type required in a custodial interrogation. *Id.*

None of the waiver cases cited by *Janus* involved an individual who affirmatively engaged in constitutionally-protected activity or affirmatively assumed an obligation, like joining a voluntary association and making a limited financial commitment associated with that membership. *See Johnson*, 304 U.S. at 464-65 (considering whether criminal defendant's failure to request counsel constituted waiver); *Knox*, 567 U.S. at 312-13 (critiquing whether failure to object could be implied consent); *Curtis Publ'g Co.*, 388 U.S. at 145 (considering whether a party waived legal arguments by not asserting them); *Coll. Sav. Bank*, 527 U.S. at 676 (analyzing whether state constructively waived sovereign immunity). And the Court has declined to find unconstitutional coercion in circumstances indicating far less meaningful consent than

Petitioners offered here. *See, e.g.*, *Estelle v. Williams,* 425 U.S. 501, 507-13 (1976) (constitutional right not to be compelled to wear jail clothes in court not violated where defendant was wearing jail clothing and did not object).

As this Court has cautioned, "'[w]aiver' is a vague term used for a great variety of purposes, good and bad, in the law." *Schneckloth v. Bustamonte*, 412 U.S. 218, 235-36 (1973) (quoting *Green v. United States*, 355 U.S. 184, 191 (1957)). Thus, the Court's precedent does "not reflect an uncritical demand for a knowing and intelligent waiver in every situation where a person has failed to invoke a constitutional protection." *Schneckloth*, 412 U.S. at 235. Rather, the "knowing, voluntary, and intelligent" waiver standard enunciated in *Johnson* is most aptly applied "in the context of the safeguards of a fair criminal trial." *Id.* at 235 (discussing *Johnson*, 304 U.S. 458). But to require that kind of strict waiver with respect to all other constitutional rights is to "generalize from the broad rhetoric" of some decisions, "and to ignore the substance of the differing constitutional guarantees." *Id.* at 246.

Here, employees have a First Amendment right to associate and financially support a union and a corresponding right to refrain from such activities. *See Wooley v. Maynard*, 430 U.S. 705, 714 (1977) (holding freedom of speech "includes both the right to speak freely and the right to refrain from speaking"); *Roberts v. U.S. Jaycees*, 468 U.S. 609, 623 (1984) (recognizing freedom to associate and freedom not to associate). The affirmative free exercise of one right clearly reflects the employee's choice to decline the other, and that is all that should be required to establish consent

in this context. *See Wooley*, 430 U.S. at 714 ("The right to speak and the right to refrain from speaking are complementary components of the broader concept of 'individual freedom of mind.'") (quoting *W. Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624, 637 (1943)). In any event, the clear and unambiguous terms of Petitioners' union membership agreements advised them that their authorizations were voluntary and not required as a condition of employment. This was more than sufficient to advise Petitioners of their right not to sign the authorizations.

Petitioners ultimately ask this Court to extend *Janus* to hold that States like Washington were required to stop dues deductions for the millions of public employees who had affirmatively chosen to be union members and had signed dues authorizations before *Janus*. But this Court was explicit that, while States may no longer "force nonmembers to subsidize public-sector unions," "States can keep their labor-relations systems exactly as they are[.]" *Janus*, 138 S. Ct. at 2485 n.27.

The State's process fully complies with the standard articulated in *Janus*. The State deducts union dues amounts only upon an employee's affirmative and voluntary authorization. App. 15a (Former Wash. Rev. Code § 41.80.100(3)(a) (2018)); App. 29a-30a (Wash. Rev. Code § 41.80.100); Pet. App. 66a-67a (deductions made from "employees who request such deduction"). Such consent is, moreover, established where Petitioners' signed membership agreements unequivocally "authorize and direct" the State to make dues deductions, and specifically

recognize that the authorization is "voluntary and not a condition of . . . employment." *E.g.*, App. 82a. The State's process for deducting union dues based on Petitioners' express authorizations meets—if not exceeds—the requirements set forth in *Janus*.

4. Petitioners' waiver argument would have broad implications beyond the context of union dues or fees

The ramifications of Petitioners' arguments are significant. Petitioners argue that an employer cannot rely on its employees' express direction and request to direct a specific portion of their paychecks to an organization engaged in expressive activity without first insisting on a formal waiver of those employees' constitutional right *not* to request the deduction. That waiver, Petitioners argue, must explain to the employees that they have a constitutional right not to make the request they are making, and, despite this right, provide that they wish to waive their right and make the request anyway.

The potential impacts from this argument are far-reaching. For example, Washington State employees may direct that a certain amount of their paychecks be remitted to charitable organizations, such as the United Way. App. 4a-5a (Wash. Rev. Code § 41.04.230(9)). According to Petitioners, an employee-signed request to make the deduction would be insufficient, even if the request expressly states that it is voluntary and not a condition of employment. The same would apply to any professional organization the employee directed contributions towards, *see* App. 3a (Wash. Rev. Code § 41.04.230(5)) (authorizing deductions for professional organiza-

tions), or even to health insurance programs, which could have First Amendment implications. Requiring an employer to refuse to comply with an employee's express wishes and instead insist on a "constitutional waiver" (as defined by Petitioners) of the employee's right to do the opposite would substantially distort the meaning of "consent" and the common practice of voluntary payroll deductions.

5. The Ninth Circuit's opinion correctly applies *Cohen v. Cowles Media*

The Ninth Circuit's decision also correctly applies the principle that there is no First Amendment right to renege on voluntary promises. *See* Pet. App. at 16a (applying *Cohen v. Cowles Media Co.*, 501 U.S. 663, 671-72 (1991)). While Petitioners' primary argument is that they never provided sufficient consent for the State to deduct union dues, they secondarily argue that even if they had consented earlier, they also had the unqualified right to revoke their authorizations, regardless of their contractual obligations. Pet. at 15-17. This argument is inconsistent with *Cohen*.

Because any costs Petitioners were subjected to by virtue of their union membership agreements were self-imposed, there was no First Amendment issue with holding them to the terms of those agreements—even though Petitioners could have declined such deductions in the first place. *Cohen*, 501 U.S. at 671-72. Enforcement of private contractual promises does not "offend the First Amendment simply because" the promise restricts First Amendment protected activity. *Id.* at 669.

In *Cohen*, two newspapers promised a source they would keep the source's identity confidential in exchange for information—something the newspapers clearly had a First Amendment right to disclose absent a promissory obligation not to. *Cohen*, 501 U.S. at at 665-66, 668-69. But where the newspapers' promise not to reveal the source was self-imposed, the source's later estoppel action to enforce that promise could not be avoided just because it would restrict or punish First Amendment protected activity. *Id.* at 665.

Like in *Cohen*, the State's deduction of union dues pursuant to Plaintiffs' voluntary self-imposed agreements "simply requires those making promises to keep them." *Id.* at 671. The "First Amendment does not confer" a "constitutional right to disregard promises that would otherwise be enforced under state law[.]" *Id.* at 672. The Ninth Circuit correctly rejected Petitioners' attempt here to avoid otherwise-enforceable promises to pay union dues for limited periods of time based on the First Amendment.

In sum, the Ninth Circuit's decision faithfully applies this Court's First Amendment precedent. It correctly recognizes, consistent with *Janus*, that the State may not compel its employees to financially support a union, nor may it presume consent in the absence of affirmative voluntary authorization. But it also correctly recognizes that neither *Janus* nor any other case requires the State to ignore its employees' express direction and authorization to make deductions.

C. The Ninth Circuit's Factbound Application of the State Action Doctrine Creates No Conflict with Decisions of This Court or Lower Courts

Petitioners also argue the Court should take review based on the Ninth Circuit's state action analysis. But the Ninth Circuit did not dismiss any claims against the State based on lack of state action, and its state action analysis with respect to the union is narrower than Petitioners suggest. The Ninth Circuit fully addressed and rejected the merits of Petitioners' claims that the State had a policy or practice of deducting union dues without affirmative consent. Pet. App. 14a-20a. To the extent Petitioners sought to invalidate their private agreements with WFSE on the basis that it affected their First Amendment rights, however, the Ninth Circuit correctly determined that the First Amendment does not confer a right to avoid otherwise enforceable promises between private parties.

Neither state law nor the CBA authorize or compel the State to make union deductions without valid consent, as both require employee "authorization," which necessarily requires a positive and legally valid agreement to the deduction. App. 15a (Former Wash. Rev. Code § 41.80.100(3)(a) (2018)); App. 29a-30a (Wash. Rev. Code § 41.80.100); Pet. App. 66a-67a (deductions made from "employees who request such deduction"). If an authorization is coerced or otherwise invalid, it cannot be a legal authorization that the State could rely on. Thus, state

law and the CBA both comply with the First Amendment's restriction that States may deduct union dues or fees only with an employee's voluntary and affirmative consent.

Petitioners do not take serious issue with this general premise—they do not dispute that the State may constitutionally make voluntary payroll deductions requested in union membership agreements, but they contend that *these specific agreements* are invalid because they did not sufficiently "waive" Petitioners' constitutional rights. Thus, Petitioners are really seeking to invalidate and prevent enforcement of their private contracts with the union.

But the deductions Plaintiffs agreed to are self-imposed—they are not caused or required by state law or action. The undisputed evidence established that the State plays no role in the content or formation of the agreements between the union and its members. Petitioners admitted that "WFSE drafted the cards," "WFSE asked the [Petitioners] to sign the cards," and "[a]part from the facts set forth in [the parties'] stipulation," no "additional facts exist now that make the [Petitioners'] current cards enforceable or unenforceable." Pet. App. 87a, ¶ 10; 90a, ¶ 25. The law and the CBA provision providing for deductions upon employee authorization are purposefully and conspicuously silent on what the terms and conditions of those authorizations must contain. Pet. App. 66a-73a; App. 29a-30a (Wash. Rev. Code § 41.80.100). Neither specifies or requires union membership agreements to set forth the terms of membership—including the authorization of dues deductions—in any specific way. State law and the First Amendment in fact, restrict the State from interjecting itself into

membership issues in a voluntary association. App. 31a (Wash. Rev. Code § 41.80.110(1)(b)); *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449, 462 (1958) ("This Court has recognized the vital relationship between freedom to associate and privacy in one's associations.").

The lower courts correctly concluded that Petitioners failed to demonstrate state action with respect to their attempt to invalidate their private agreements with the union (rather than challenge the State's authority to enforce the agreements). Like the Fourteenth Amendment, Section 1983 "excludes from its reach '"merely private conduct[.]"'" *Am. Mfrs. Mut. Ins. Co. v. Sullivan*, 526 U.S. 40, 50 (1999) (quoting *Blum v. Yaretsky*, 457 U.S. 991, 1002 (1982)); *Lugar v. Edmondson Oil Co.*, 457 U.S. 922, 937 (1982)). Here, there is no dispute that the State can deduct union dues if Petitioners entered into valid contractual agreements with WFSE to authorize such deductions. And the question, according to Petitioners, is whether the agreements are valid "waivers" of their rights not to authorize the deductions. Thus, the heart of Petitioners' challenge is to the validity of their private agreements with WFSE. Those agreements are not state action, for the reasons set forth in WFSE's Brief in Opposition and in the lower courts' opinions. Petitioners' arguments to the contrary would potentially make any private organization a state actor just because the organization receives voluntary payroll deductions from state employees.

Petitioners cannot indirectly challenge their private contracts by attempting to characterize their claim as a direct challenge to Wash. Rev. Code § 41.80.100 or CBA Article 40 rather than to the

validity of their agreements with the union. *Am. Mfrs. Mut. Ins. Co.*, 526 U.S. at 50 (quoting *Lugar*, 457 U.S. at 937). This Court has reiterated that "'[f]aithful adherence to the "state action" requirement . . . requires careful attention to the gravamen of the plaintiff's complaint.'" *Id.* at 51 (quoting *Blum*, 457 U.S. at 1003). Here, Petitioners agree that state law and the CBA may be constitutionally applied if Petitioners sufficiently "waived" their rights not to financially support the union in their union membership agreements. The ultimate challenge, therefore, is whether these specific agreements are valid and enforceable. But state law does not dictate or otherwise influence the terms of these agreements. The agreements themselves are not state action subject to constitutional waiver analysis.

Petitioners also fail to establish a conflict with the Seventh Circuit's decision on remand in *Janus*. *See* Pet. at 19-20; *Janus v. AFSCME, Council 31*, 942 F.3d 352 (7th Cir. 2019). The state action at issue in *Janus*—a state law and collective bargaining agreement that required employees to pay representtation fees as a condition of employment—is entirely distinguishable from Petitioners' obligations here, which stemmed from their own voluntary agreements with WFSE. Even if the Ninth Circuit's analysis on this issue did conflict with the Seventh Circuit's, the ultimate outcome would be the same, because the Ninth Circuit resolved the merits of Petitioners' claims against them. Pet. App. 16a-20a.

Ultimately, Petitioners and amici overstate the breadth and effect of the Ninth Circuit's state action analysis. The Ninth Circuit did not dismiss any claims against the State based on lack of state action,

including for its role to deduct union dues. Pet. App. 8a-16a. Rather, the court addressed the merits of Petitioners' First Amendment challenge and concluded that the State's actions did not violate the First Amendment. Pet. App. 16a-20a. As explained above, this was entirely consistent with *Janus* and other First Amendment precedent and does not warrant certiorari.

D. This Case is a Poor Vehicle for Addressing New and Theoretical Arguments Not Grounded in the Facts

Petitioners fail to establish that this case presents important questions of federal law that warrant resolution by this Court. Instead, Petitioners and amici fault the Ninth Circuit for not addressing challenges that Petitioners never made and that are not presented by the facts of this case.

For example, Petitioners argue that the Ninth Circuit did not scrutinize the "ten-day escape period" contained in their most recent union membership agreements. Pet. at 16. They and amici suggest that if such provisions prevent former union members from withdrawing their dues deduction authorizations outside a specific ten-day window each year, then such provisions are unenforceable. But none of Petitioners were prevented from terminating their dues deductions based on the failure to do so within a specific ten-day window. Each of Petitioners' dues deductions were halted upon completion of their one-year authorized commitments, even though Petitioners communicated their intent to rescind their authorizations outside of that window. Pet. App. 89a-90a, ¶¶ 20, 23. Petitioners present no evidence

about how the revocation provision has been construed or applied by the State and the union other than how it applied in their case. Petitioners present no evidence about what membership cards look like following 2018. And Petitioners made no argument to the Ninth Circuit about the ten-day window.

Petitioners also complain that amendments to the law authorizing the State to make dues deductions improperly authorize the State to rely on information provided by the union rather than requiring the State to demand authorizations from employees directly. Pet. at 27, 30. But there has been no evidence that the union is providing inaccurate or incomplete information regarding employee authorizations. And each of the Petitioners concede that they signed the membership cards that expressly and voluntarily provided written authorization for the State to make the deductions at issue. Pet. App. 87a, ¶ 9. Petitioners' lawsuit, moreover, challenged only the law as it existed before the amendment they discuss, which expressly provided that the authority for deduction was premised "[u]pon written authorization of an employee[.]" App. 15a (Former Wash. Rev. Code § 41.80.100(3)(a) (2018)); *see* Pet. App. 94a-118a (Amended Complaint); *see also* Pet. App. 7a (noting 2018 version of RCW 41.80.100 in effect at time of Petitioners' deductions).

Petitioners' arguments about the effect that the prior mandatory representation fees could have had on the voluntary choice to pay higher union fees also is of fleeting significance. As Petitioners' own circumstances demonstrate, at most the State continued to deduct union dues for one year after *Janus* was decided, based on express time-limited

commitments. Pet. App. 90a, ¶ 23. It has now been nearly three years since this Court decided *Janus*. Any employee who signed a membership card before *Janus* has had at least two opportunities to withdraw the authorization. And all Petitioners have done so.

The Court should decline Petitioners' invitation to address issues not presented by the facts of this case and arguments not made to the lower courts.

CONCLUSION

The petition for a writ of certiorari should be denied.

RESPECTFULLY SUBMITTED.

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APPENDIX

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RCW 41.04.036

Salary and wage deductions for contributions to charitable agencies—Deduction and payment to United Fund or Washington state combined fund drive—Rules, procedures.

Any official of the state or of any of its political subdivisions authorized to disburse funds in payment of salaries or wages of public officers or employees is authorized, upon written request of the officer or employee, to deduct from the salary or wages of the officer or employee the amount of money designated by the officer or employee for payment to the United Fund or the Washington state combined fund drive.

The moneys so deducted shall be paid over promptly to the United Fund or the Washington state combined fund drive designated by the officer or employee. Subject to any rules adopted by the office of financial management, the official authorized to disburse the funds in payment of salaries or wages may prescribe any procedures necessary to carry out RCW 41.04.035 and 41.04.036.

RCW 41.04.230

Payroll deductions authorized.

Any official of the state authorized to disburse funds in payment of salaries and wages of public officers or employees is authorized, upon written request of the officer or employee, to deduct from the salaries or wages of the officers or employees, the amount or amounts of subscription payments, premiums, contributions, or continuation thereof, for payment of the following:

(1) Credit union deductions: PROVIDED, That twenty-five or more employees of a single state agency or a total of one hundred or more state employees of several agencies have authorized such a deduction for payment to the same credit union. An agency may, in its own discretion, establish a minimum participation requirement of fewer than twenty-five employees.

(2) Parking fee deductions: PROVIDED, That payment is made for parking facilities furnished by the agency or by the department of enterprise services. Deductions shall be pretax, to the extent possible, for qualified parking and transit benefits as allowed under the federal internal revenue code.

(3) U.S. savings bond deductions: PROVIDED, That a person within the particular agency shall be appointed to act as trustee. The trustee will receive all contributions; purchase and deliver all bond certificates; and keep such records and furnish such bond or security as will render full accountability for all bond contributions.

(4) Board, lodging or uniform deductions when such board, lodging and uniforms are furnished by the

state, or deductions for academic tuitions or fees or scholarship contributions payable to the employing institution.

(5) Dues and other fees deductions: PROVIDED, That the deduction is for payment of membership dues to any professional organization formed primarily for public employees or college and university professors: AND PROVIDED, FURTHER, That twenty-five or more employees of a single state agency, or a total of one hundred or more state employees of several agencies have authorized such a deduction for payment to the same professional organization.

(6) Labor, employee, or retiree organization dues, and voluntary employee contributions to any funds, committees, or subsidiary organizations maintained by labor, employee, or retiree organizations, may be deducted in the event that a payroll deduction is not provided under a collective bargaining agreement under the provisions of chapter 41.80 RCW: PROVIDED, That each labor, employee, or retiree organization chooses only one fund for voluntary employee contributions: PROVIDED, FURTHER, That twenty-five or more officers or employees of a single agency, or a total of one hundred or more officers or employees of several agencies have authorized such a deduction for payment to the same labor, employee, or retiree organization: PROVIDED, FURTHER, That labor, employee, or retiree organizations with five hundred or more members in state government may have payroll deduction for employee benefit programs.

(7) Insurance contributions to the authority for payment of premiums under contracts authorized by the state health care authority. However, enrollment or assignment by the state health care authority to participate in a health care benefit plan, as required by RCW 41.05.065(8), shall authorize a payroll deduction of premium contributions without a written consent under the terms and conditions established by the public employees' benefits board.

(8) Deductions to a bank, savings bank, or savings and loan association if (a) the bank, savings bank, or savings and loan association is authorized to do business in this state; and (b) twenty-five or more employees of a single agency, or fewer, if a lesser number is established by such agency, or a total of one hundred or more state employees of several agencies have authorized a deduction for payment to the same bank, savings bank, or savings and loan association.

Deductions from salaries and wages of public officers and employees other than those enumerated in this section or by other law, may be authorized by the director of financial management for purposes clearly related to state employment or goals and objectives of the agency and for plans authorized by the state health care authority.

(9) Contributions to the Washington state combined fund drive.

The authority to make deductions from the salaries and wages of public officers and employees as provided for in this section shall be in addition to such other authority as may be provided by law: PROVIDED, That the state or any department,

division, or separate agency of the state shall not be liable to any insurance carrier or contractor for the failure to make or transmit any such deduction.

Former RCW 41.80.050 (2018)

41.80.050 Rights of employees. 41.80.050 Rights of employees. Except as may be specifically limited by this chapter, employees shall have the right to self-organization, to form, join, or assist employee organizations, and to bargain collectively through representatives of their own choosing for the purpose of collective bargaining free from interference, restraint, or coercion. Employees shall also have the right to refrain from any or all such activities except to the extent that they may be required to pay a fee to an exclusive bargaining representative under a union security provision authorized by this chapter.

WASHINGTON LAWS, 2019

CHAPTER 230

[Substitute House Bill 1575]

PUBLIC EMPLOYEE COLLECTIVE BARGAINING--REPRESENTATION--VARIOUS PROVISIONS

* * * * *

Sec. 15. RCW 41.80.050 and 2002 c 354 s 306 are each amended to read as follows:

Except as may be specifically limited by this chapter, employees shall have the right to self-organization, to form, join, or assist employee organizations, and to bargain collectively through representatives of their own choosing for the purpose of collective bargaining free from interference, restraint, or coercion. Employees shall also have the right to refrain from any or all such activities ((~~except to the extent that they may be required to pay a fee to an exclusive bargaining representative under a union security provision authorized by this chapter~~)).

* * * * *

Sec. 18. RCW 41.80.100 and 2018 c 247 s 5 are each amended to read as follows:

(1) ((~~A collective bargaining agreement may contain a union security provision requiring as a condition of employment the payment, no later than the thirtieth day following the beginning of employment or July 1, 2004, whichever is later, of an agency shop fee to the employee organization that is the exclusive bargaining representative for the~~

~~bargaining unit in which the employee is employed. The amount of the fee shall be equal to the amount required to become a member in good standing of the employee organization. Each employee organization shall establish a procedure by which any employee so requesting may pay a representation fee no greater than the part of the membership fee that represents a pro rata share of expenditures for purposes germane to the collective bargaining process, to contract administration, or to pursuing matters affecting wages, hours, and other conditions of employment.~~

~~(2) An employee who is covered by a union security provision and who asserts a right of nonassociation based on bona fide religious tenets, or teachings of a church or religious body of which the employee is a member, shall, as a condition of employment, make payments to the employee organization, for purposes within the program of the employee organization as designated by the employee that would be in harmony with his or her individual conscience. The amount of the payments shall be equal to the periodic dues and fees uniformly required as a condition of acquiring or retaining membership in the employee organization minus any included monthly premiums for insurance programs sponsored by the employee organization. The employee shall not be a member of the employee organization but is entitled to all the representation rights of a member of the employee organization.~~

~~(3)(a)~~)) Upon ((~~written~~)) authorization of an employee within the bargaining unit and after the certification or recognition of the bargaining unit's exclusive bargaining representative, the employer must deduct from the payments to the employee the

monthly amount of dues as certified by the secretary of the exclusive bargaining representative and must transmit the same to the treasurer of the exclusive bargaining representative.

(((~~(b)~~))) (2)(a) If the employer and the exclusive bargaining representative of a bargaining unit enter into a collective bargaining agreement that((:

~~(i) Includes a union security provision authorized under subsection (1) of this section, the employer must enforce the agreement by deducting from the payments to bargaining unit members the dues required for membership in the exclusive bargaining representative, or, for nonmembers thereof, a fee equivalent to the dues; or~~

~~(ii)~~))) includes requirements for deductions of other payments ((~~other than the deduction under (b)(i) of this subsection~~)), the employer must make such deductions upon ((~~written~~)) authorization of the employee.

(((~~(4) Employee organizations that before July 1, 2004, were entitled to the benefits of this section shall continue to be entitled to these benefits.~~)) (b) An employee's written, electronic, or recorded voice authorization to have the employer deduct membership dues from the employee's salary must be made by the employee to the exclusive bargaining representative. If the employer receives a request for authorization of deductions, the employer shall as soon as practicable forward the request to the exclusive bargaining representative.

(c) Upon receiving notice of the employee's authorization, the employer shall deduct from the

employee's salary membership dues and remit the amounts to the exclusive bargaining representative.

(d) The employee's authorization remains in effect until expressly revoked by the employee in accordance with the terms and conditions of the authorization.

(e) An employee's request to revoke authorization for payroll deductions must be in writing and submitted by the employee to the exclusive bargaining representative in accordance with the terms and conditions of the authorization.

(f) After the employer receives confirmation from the exclusive bargaining representative that the employee has revoked authorization for deductions, the employer shall end the deduction no later than the second payroll after receipt of the confirmation.

(g) The employer shall rely on information provided by the exclusive bargaining representative regarding the authorization and revocation of deductions.

RCW 41.80.050 ***[current]***

Rights of employees.

Except as may be specifically limited by this chapter, employees shall have the right to self-organization, to form, join, or assist employee organizations, and to bargain collectively through representatives of their own choosing for the purpose of collective bargaining free from interference, restraint, or coercion. Employees shall also have the right to refrain from any or all such activities.

RCW 41.80.080 *[current]*

Representation—Elections—Cross-check procedures—Rules.

(1) The commission shall determine all questions pertaining to representation and shall administer all elections and cross-check procedures, and be responsible for the processing and adjudication of all disputes that arise as a consequence of elections and cross-check procedures. The commission shall adopt rules that provide for at least the following:

(a) Secret balloting;

(b) Consulting with employee organizations;

(c) Access to lists of employees, job classification, work locations, and home mailing addresses;

(d) Absentee voting;

(e) Procedures for the greatest possible participation in voting;

(f) Campaigning on the employer's property during working hours; and

(g) Election observers.

(2) (a) If an employee organization has been certified as the exclusive bargaining representative of the employees of a bargaining unit, the employee organization may act for and negotiate master collective bargaining agreements that will include within the coverage of the agreement all employees in the bargaining unit as provided in

RCW 41.80.010(2)(a). However, if a master collective bargaining agreement is in effect for the exclusive bargaining representative, it shall apply to the bargaining unit for which the certification has been issued. Nothing in this section requires the parties to engage in new negotiations during the term of that agreement.

(b) This subsection (2) does not apply to exclusive bargaining representatives who represent employees of institutions of higher education.

(3) The certified exclusive bargaining representative shall be responsible for representing the interests of all the employees in the bargaining unit. This section shall not be construed to limit an exclusive representative's right to exercise its discretion to refuse to process grievances of employees that are unmeritorious.

(4) No question concerning representation may be raised if:

(a) Fewer than twelve months have elapsed since the last certification or election; or

(b) A valid collective bargaining agreement exists covering the unit, except for that period of no more than one hundred twenty calendar days nor less than ninety calendar days before the expiration of the contract.

Former RCW 41.80.100 (2018)

41.80.100 Union security provision—Fees and dues—Right of nonassociation. (1) A collective bargaining agreement may contain a union security provision requiring as a condition of employment the payment, no later than the thirtieth day following the beginning of employment or July 1, 2004, whichever is later, of an agency shop fee to the employee organization that is the exclusive bargaining representative for the bargaining unit in which the employee is employed. The amount of the fee shall be equal to the amount required to become a member in good standing of the employee organization. Each employee organization shall establish a procedure by which any employee so requesting may pay a representation fee no greater than the part of the membership fee that represents a pro rata share of expenditures for purposes germane to the collective bargaining process, to contract administration, or to pursuing matters affecting wages, hours, and other conditions of employment.

(2) An employee who is covered by a union security provision and who asserts a right of nonassociation based on bona fide religious tenets, or teachings of a church or religious body of which the employee is a member, shall, as a condition of employment, make payments to the employee organization, for purposes within the program of the employee organization as designated by the employee that would be in harmony with his or her individual conscience. The amount of the payments shall be equal to the periodic dues and fees uniformly required as a condition of acquiring or retaining membership in the employee organization minus any included

monthly premiums for insurance programs sponsored by the employee organization. The employee shall not be a member of the employee organization but is entitled to all the representation rights of a member of the employee organization.

(3) (a) Upon written authorization of an employee within the bargaining unit and after the certification or recognition of the bargaining unit's exclusive bargaining representative, the employer must deduct from the payments to the employee the monthly amount of dues as certified by the secretary of the exclusive bargaining representative and must transmit the same to the treasurer of the exclusive bargaining representative.

(b) If the employer and the exclusive bargaining representative of a bargaining unit enter into a collective bargaining agreement that:

(i) Includes a union security provision authorized under subsection (1) of this section, the employer must enforce the agreement by deducting from the payments to bargaining unit members the dues required for membership in the exclusive bargaining representative, or, for nonmembers thereof, a fee equivalent to the dues; or

(ii) Includes requirements for deductions of payments other than the deduction under (b)(i) of this subsection, the employer must make such

deductions upon written authorization of the employee.

(4) Employee organizations that before July 1, 2004, were entitled to the benefits of this section shall continue to be entitled to these benefits.

WASHINGTON LAWS, 2018

CHAPTER 247

[House Bill 2751]

UNION DUES AND FEES--DEDUCTION--AUTHORIZATION

AN ACT Relating to the deduction of union dues and fees; and amending RCW 28B.52.045, 41.56.110, 41.59.060, 41.76.045, 41.80.100, and 49.39.080.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 28B.52.045 and 1987 c 314 s 8 are each amended to read as follows:

(1) ((~~Upon filing with the employer the voluntary written authorization of a bargaining unit employee under this chapter, the employee organization which is the exclusive bargaining representative of the bargaining unit shall have the right to have deducted from the salary of the bargaining unit employee the periodic dues and initiation fees uniformly required as a condition of acquiring or retaining membership in the exclusive bargaining representative. Such employee authorization shall not be irrevocable for a period of more than one year. Such dues and fees shall be deducted from the pay of all employees who have given authorization for such deduction, and shall be transmitted by the employer to the employee organization or to the depository designated by the employee organization.~~

~~(2)~~)) (a) A collective bargaining agreement may include union security provisions, but not a closed shop. ((~~If an agency shop or other union security provision is agreed to, the employer shall enforce any such provision by deductions from the salary of bargaining unit employees affected thereby and shall transmit such funds to the employee organization or to the depository designated by the employee organization.~~

~~(3)~~)) (b) Upon written authorization of an employee within the bargaining unit and after the certification or recognition of the bargaining unit's exclusive bargaining representative, the employer must deduct from the payments to the employee the monthly amount of dues as certified by the secretary of the exclusive bargaining representative and must transmit the same to the treasurer of the exclusive bargaining representative.

(c) If the employer and the exclusive bargaining representative of a bargaining unit enter into a collective bargaining agreement that:

(i) Includes a union security provision authorized under (a) of this subsection, the employer must enforce the agreement by deducting from the payments to bargaining unit members the dues required for membership in the exclusive bargaining representative, or, for nonmembers thereof, a fee equivalent to the dues; or

(ii) Includes requirements for deductions of payments other than the deduction under (c)(i) of this subsection, the employer must make such deductions upon written authorization of the employee.

(2) An employee who is covered by a union security provision and who asserts a right of nonassociation based on bona fide religious tenets or teachings of a church or religious body of which such employee is a member shall pay to a nonreligious charity or other charitable organization an amount of money equivalent to the periodic dues and initiation fees uniformly required as a condition of acquiring or retaining membership in the exclusive bargaining representative. The charity shall be agreed upon by the employee and the employee organization to which such employee would otherwise pay the dues and fees. The employee shall furnish written proof that such payments have been made. If the employee and the employee organization do not reach agreement on such matter, the commission shall designate the charitable organization.

Sec. 2. RCW 41.56.110 and 1973 c 59 s 1 are each amended to read as follows:

(1) Upon the written authorization of ((~~any public~~)) an employee within the bargaining unit and after the certification or recognition of ((~~such~~)) the bargaining unit's exclusive bargaining representative, the ((~~public~~)) employer shall deduct from the ((~~pay of such public~~)) payments to the employee the monthly amount of dues as certified by the secretary of the exclusive bargaining

representative and shall transmit the same to the treasurer of the exclusive bargaining representative.

(2) If the employer and the exclusive bargaining representative of a bargaining unit enter into a collective bargaining agreement that:

(a) Includes a union security provision authorized under RCW 41.56.122, the employer must enforce the agreement by deducting from the payments to bargaining unit members the dues required for membership in the exclusive bargaining representative, or, for nonmembers thereof, a fee equivalent to the dues; or

(b) Includes requirements for deductions of payments other than the deduction under (a) of this subsection, the employer must make such deductions upon written authorization of the employee.

Sec. 3. RCW 41.59.060 and 1975 1st ex.s. c 288 s 7 are each amended to read as follows:

(1) Employees shall have the right to self-organization, to form, join, or assist employee organizations, to bargain collectively through representatives of their own choosing, and shall also have the right to refrain from any or all of such activities except to the extent that employees may be required to pay a fee to any employee organization under an agency shop agreement authorized in this chapter.

(2) ((~~The exclusive bargaining representative shall have the right to have deducted from the salary of employees, upon receipt of an appropriate authorization form which shall not be irrevocable for~~

~~a period of more than one year, an amount equal to the fees and dues required for membership. Such fees and dues shall be deducted monthly from the pay of all appropriate employees by the employer and transmitted as provided for by agreement between the employer and the exclusive bargaining representative, unless an automatic payroll deduction service is established pursuant to law, at which time such fees and dues shall be transmitted as therein provided. If an agency shop provision is agreed to and becomes effective pursuant to RCW 41.59.100, except as provided in that section, the agency fee equal to the fees and dues required of membership in the exclusive bargaining representative shall be deducted from the salary of employees in the bargaining unit.~~)) (a) Upon written authorization of an employee within the bargaining unit and after the certification or recognition of the bargaining unit's exclusive bargaining representative, the employer must deduct from the payments to the employee the monthly amount of dues as certified by the secretary of the exclusive bargaining representative and must transmit the same to the treasurer of the exclusive bargaining representative.

(b) If the employer and the exclusive bargaining representative of a bargaining unit enter into a collective bargaining agreement that:

(i) Includes a union security provision authorized under RCW 41.59.100, the employer must enforce the agreement by deducting from the

payments to bargaining unit members the dues required for membership in the exclusive bargaining representative, or, for nonmembers thereof, a fee equivalent to the dues; or

(ii) Includes requirements for deductions of payments other than the deduction under (b)(i) of this subsection, the employer must make such deductions upon written authorization of the employee.

Sec. 4. RCW 41.76.045 and 2002 c 356 s 12 are each amended to read as follows:

(1) ((~~Upon filing with the employer the voluntary written authorization of a bargaining unit faculty member under this chapter, the employee organization which is the exclusive bargaining representative of the bargaining unit shall have the right to have deducted from the salary of the bargaining unit faculty member the periodic dues and initiation fees uniformly required as a condition of acquiring or retaining membership in the exclusive bargaining representative. Such employee authorization shall not be irrevocable for a period of more than one year. Such dues and fees shall be deducted from the pay of all faculty members who have given authorization for such deduction, and shall be transmitted by the employer to the employee organization or to the depository designated by the employee organization.~~

~~(2)~~))) (a) A collective bargaining agreement may include union security provisions, but not a closed shop. ((~~If an agency~~

~~shop or other union security provision is agreed to, the employer shall enforce any such provision by deductions from the salary of bargaining unit faculty members affected thereby and shall transmit such funds to the employee organization or to the depository designated by the employee organization.~~

~~(3)~~)) (b) Upon written authorization of an employee within the bargaining unit and after the certification or recognition of the bargaining unit's exclusive bargaining representative, the employer must deduct from the payments to the employee the monthly amount of dues as certified by the secretary of the exclusive bargaining representative and must transmit the same to the treasurer of the exclusive bargaining representative.

(c) If the employer and the exclusive bargaining representative of a bargaining unit enter into a collective bargaining agreement that:

(i) Includes a union security provision authorized under (a) of this subsection, the employer must enforce the agreement by deducting from the payments to bargaining unit members the dues required for membership in the exclusive bargaining representative, or, for nonmembers thereof, a fee equivalent to the dues; or

(ii) Includes requirements for deductions of payments other than the deduction under (c)(i) of this subsection,

the employer must make such deductions upon written authorization of the employee.

(2) A faculty member who is covered by a union security provision and who asserts a right of nonassociation based on bona fide religious tenets or teachings of a church or religious body of which such faculty member is a member shall pay to a nonreligious charity or other charitable organization an amount of money equivalent to the periodic dues and initiation fees uniformly required as a condition of acquiring or retaining membership in the exclusive bargaining representative. The charity shall be agreed upon by the faculty member and the employee organization to which such faculty member would otherwise pay the dues and fees. The faculty member shall furnish written proof that such payments have been made. If the faculty member and the employee organization do not reach agreement on such matter, the dispute shall be submitted to the commission for determination.

Sec. 5. RCW 41.80.100 and 2002 c 354 s 311 are each amended to read as follows:

(1) A collective bargaining agreement may contain a union security provision requiring as a condition of employment the payment, no later than the thirtieth day following the beginning of employment or July 1, 2004, whichever is later, of an agency shop fee to the employee organization that is the exclusive bargaining representative for the bargaining unit in which the employee is employed. The amount of the fee shall be equal to the amount required to become a member in good standing of the

employee organization. Each employee organization shall establish a procedure by which any employee so requesting may pay a representation fee no greater than the part of the membership fee that represents a pro rata share of expenditures for purposes germane to the collective bargaining process, to contract administration, or to pursuing matters affecting wages, hours, and other conditions of employment.

(2) An employee who is covered by a union security provision and who asserts a right of nonassociation based on bona fide religious tenets, or teachings of a church or religious body of which the employee is a member, shall, as a condition of employment, make payments to the employee organization, for purposes within the program of the employee organization as designated by the employee that would be in harmony with his or her individual conscience. The amount of the payments shall be equal to the periodic dues and fees uniformly required as a condition of acquiring or retaining membership in the employee organization minus any included monthly premiums for insurance programs sponsored by the employee organization. The employee shall not be a member of the employee organization but is entitled to all the representation rights of a member of the employee organization.

(3) ((~~Upon filing with the employer the written authorization of a bargaining unit employee under this chapter, the employee organization that is the exclusive bargaining representative of the bargaining unit shall have the exclusive right to have deducted from the salary of the employee an amount equal to the fees and dues uniformly required as a condition of acquiring or retaining membership in the employee~~

~~organization. The fees and dues shall be deducted each pay period from the pay of all employees who have given authorization for the deduction and shall be transmitted by the employer as provided for by agreement between the employer and the employee organization.~~)) (a) Upon written authorization of an employee within the bargaining unit and after the certification or recognition of the bargaining unit's exclusive bargaining representative, the employer must deduct from the payments to the employee the monthly amount of dues as certified by the secretary of the exclusive bargaining representative and must transmit the same to the treasurer of the exclusive bargaining representative.

(b) If the employer and the exclusive bargaining representative of a bargaining unit enter into a collective bargaining agreement that:

(i) Includes a union security provision authorized under subsection (1) of this section, the employer must enforce the agreement by deducting from the payments to bargaining unit members the dues required for membership in the exclusive bargaining representative, or, for nonmembers thereof, a fee equivalent to the dues; or

(ii) Includes requirements for deductions of payments other than the deduction under (b)(i) of this subsection, the employer must make such

deductions upon written authorization of the employee.

(4) Employee organizations that before July 1, 2004, were entitled to the benefits of this section shall continue to be entitled to these benefits.

Sec. 6. RCW 49.39.080 and 2010 c 6 s 9 are each amended to read as follows:

(1) Upon the written authorization of ((~~any symphony musician~~)) an employee within the bargaining unit and after the certification or recognition of the bargaining unit's exclusive bargaining representative, the employer must deduct from the ((~~pay of the symphony musician~~)) payments to the employee the monthly amount of dues as certified by the secretary of the exclusive bargaining representative and must transmit the ((~~dues~~)) same to the treasurer of the exclusive bargaining representative.

(2) If the employer and the exclusive bargaining representative of a bargaining unit enter into a collective bargaining agreement that:

(a) Includes a union security provision authorized under RCW 49.39.090, the employer must enforce the agreement by deducting from the payments to bargaining unit members the dues required for membership in the exclusive bargaining representative, or, for nonmembers thereof, a fee equivalent to the dues; or

(b) Includes requirements for deductions of payments other than the deduction under (a) of this subsection, the employer must make

such deductions upon written authorization of the employee.

Passed by the House February 12, 2018.
Passed by the Senate February 28, 2018.
Approved by the Governor March 23, 2018.
Filed in Office of Secretary of State March 26, 2018.

RCW 41.80.100 ***[current]***

Employee authorization of membership dues and other payments—Revocation.

(1) Upon authorization of an employee within the bargaining unit and after the certification or recognition of the bargaining unit's exclusive bargaining representative, the employer must deduct from the payments to the employee the monthly amount of dues as certified by the secretary of the exclusive bargaining representative and must transmit the same to the treasurer of the exclusive bargaining representative.

(2) (a) If the employer and the exclusive bargaining representative of a bargaining unit enter into a collective bargaining agreement that includes requirements for deductions of other payments, the employer must make such deductions upon authorization of the employee.

(b) An employee's written, electronic, or recorded voice authorization to have the employer deduct membership dues from the employee's salary must be made by the employee to the exclusive bargaining representative. If the employer receives a request for authorization of deductions, the employer shall as soon as practicable forward the request to the exclusive bargaining representative.

(c) Upon receiving notice of the employee's authorization, the employer shall deduct from the employee's salary membership

dues and remit the amounts to the exclusive bargaining representative.

(d) The employee's authorization remains in effect until expressly revoked by the employee in accordance with the terms and conditions of the authorization.

(e) An employee's request to revoke authorization for payroll deductions must be in writing and submitted by the employee to the exclusive bargaining representative in accordance with the terms and conditions of the authorization.

(f) After the employer receives confirmation from the exclusive bargaining representative that the employee has revoked authorization for deductions, the employer shall end the deduction no later than the second payroll after receipt of the confirmation.

(g) The employer shall rely on information provided by the exclusive bargaining representative regarding the authorization and revocation of deductions.

RCW 41.80.110

Unfair labor practices enumerated.

(1) It is an unfair labor practice for an employer:

(a) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed by this chapter;

(b) To dominate or interfere with the formation or administration of any employee organization or contribute financial or other support to it: PROVIDED, That subject to rules adopted by the commission, an employer shall not be prohibited from permitting employees to confer with it or its representatives or agents during working hours without loss of time or pay;

(c) To encourage or discourage membership in any employee organization by discrimination in regard to hire, tenure of employment, or any term or condition of employment;

(d) To discharge or discriminate otherwise against an employee because that employee has filed charges or given testimony under this chapter;

(e) To refuse to bargain collectively with the representatives of its employees.

(2) It is an unfair labor practice for an employee organization:

(a) To restrain or coerce an employee in the exercise of the rights guaranteed by this

chapter: PROVIDED, That this subsection shall not impair the right of an employee organization to prescribe its own rules with respect to the acquisition or retention of membership in the employee organization or to an employer in the selection of its representatives for the purpose of bargaining or the adjustment of grievances;

(b) To cause or attempt to cause an employer to discriminate against an employee in violation of subsection (1)(c) of this section;

(c) To discriminate against an employee because that employee has filed charges or given testimony under this chapter;

(d) To refuse to bargain collectively with an employer.

(3) The expressing of any views, arguments, or opinion, or the dissemination thereof to the public, whether in written, printed, graphic, or visual form, shall not constitute or be evidence of an unfair labor practice under this chapter, if such expression contains no threat of reprisal or force or promise of benefit.

WAC 182-08-197

When must a newly eligible employee, or an employee who regains eligibility for the employer contribution, elect public employees benefits board (PEBB) benefits and complete required forms?

An employee who is newly eligible or who regains eligibility for the employer contribution toward public employees benefits board (PEBB) benefits enrolls as described in this section.

(1) When an employee is newly eligible for PEBB benefits:

(a) An employee must complete the required forms indicating their enrollment elections, including an election to waive PEBB medical provided the employee is eligible to waive PEBB medical and elects to waive as described in WAC 182-12-128. The required forms must be returned to the employee's employing agency or contracted vendor. Their employing agency or contracted vendor must receive the forms no later than thirty-one days after the employee becomes eligible for PEBB benefits under WAC 182-12-114.

(i) An employee may enroll in supplemental life and supplemental long-term disability (LTD) insurance up to the guaranteed issue coverage amount without evidence of insurability if the required forms are returned to the employee's employing agency or contracted vendor as required. An

employee may apply for enrollment in supplemental life and supplemental LTD insurance over the guaranteed issue coverage amount at any time during the calendar year by submitting the required form to the contracted vendor for approval. An employee may enroll in supplemental accidental death and dismemberment (AD&D) insurance at anytime during the calendar year without evidence of insurability by submitting the required form to the contracted vendor.

(ii) If an employee is eligible to participate in the salary reduction plan (see WAC 182-12-116), the employee will automatically enroll in the premium payment plan upon enrollment in PEBB medical allowing medical premiums to be taken on a pretax basis. To opt out of the premium payment plan, a new employee must complete the required form and return it to their state agency. The form must be received by their state agency no later than thirty-one days after the employee becomes eligible for PEBB benefits.

(iii) If an employee is eligible to participate in the salary reduction plan (see WAC 182-12-116), the employee may enroll in the state's medical flexible spending arrangement (FSA) or dependent care assistance program (DCAP) or both, except as limited by

subsection (4) of this section. To enroll in these PEBB benefits, the employee must return the required form to their state agency. The form must be received by the state agency no later than thirty-one days after the employee becomes eligible for PEBB benefits.

(b) If a newly eligible employee's employing agency, or the authority's contracted vendor in the case of life insurance and AD&D insurance, does not receive the employee's required forms indicating medical, dental, life insurance, AD&D insurance, and LTD insurance elections, and the employee's tobacco use status attestation within thirty-one days of the employee becoming eligible, their enrollment will be as follows for those elections not received within thirty-one days:

(i) A medical plan determined by the health care authority (HCA);

(ii) A dental plan determined by the HCA;

(iii) Basic life insurance;

(iv) Basic AD&D insurance;

(v) Basic LTD insurance;

(vi) Dependents will not be enrolled; and

(vii) A tobacco use premium surcharge will be incurred as described in WAC 182-08-185 (1)(b).

(2) The employer contribution toward PEBB benefits ends according to WAC 182-12-131. When an employee's employment ends, participation in the salary reduction plan ends.

(3) When an employee regains eligibility for the employer contribution toward PEBB benefits, including following a period of leave described in WAC 182-12-133(1), or after being between periods of leave as described in WAC 182-12-142 (1) and (2), or 182-12-131 (3)(e), PEBB medical and dental begin on the first day of the month the employee is in pay status eight or more hours.

(a) An employee must complete the required forms indicating their enrollment elections, including an election to waive PEBB medical if the employee chooses to waive PEBB medical as described in WAC 182-12-128. The required forms must be returned to the employee's employing agency except as described in (d) of this subsection. Forms must be received by the employing agency, life insurance contracted vendor, or AD&D contracted vendor, if required, no later than thirty-one days after the employee regains eligibility, except as described in (a)(i) and (b) of this subsection:

(i) An employee who self-paid for supplemental life insurance or supplemental AD&D coverage after losing eligibility will maintain that level of coverage upon return;

(ii) An employee who was eligible to continue supplemental life or

supplemental AD&D but discontinued that supplemental coverage must submit evidence of insurability to the contracted vendor if they choose to reenroll when they regain eligibility for the employer contribution;

(iii) An employee who was eligible to continue supplemental LTD insurance but discontinued that supplemental coverage must submit evidence of insurability for supplemental LTD insurance to the contracted vendor when they regain eligibility for the employer contribution.

(b) An employee in any of the following circumstances does not have to return a form indicating supplemental LTD insurance elections. Their supplemental LTD insurance will be automatically reinstated effective the first day of the month they are in pay status eight or more hours:

(i) The employee continued to self-pay for their supplemental LTD insurance after losing eligibility for the employer contribution;

(ii) The employee was not eligible to continue supplemental LTD insurance after losing eligibility for the employer contribution.

(c) If an employee's employing agency, or contracted vendor accepting forms directly, does not receive the required forms within

thirty-one days of the employee regaining eligibility, the employee's enrollment for those elections not received will be as described in subsection (1)(b)(i) through (vii) of this section, except as described in (a)(i) and (b) of this subsection.

(d) If an employee is eligible to participate in the salary reduction plan (see WAC 182-12-116) the employee may enroll in the medical FSA or DCAP or both, except as limited by subsection (4) of this section. To enroll in these PEBB benefits, the employee must return the required form to the contracted vendor or their state agency. The contracted vendor or employee's state agency must receive the form no later than thirty-one days after the employee becomes eligible for PEBB benefits.

(4) If an employee who is eligible to participate in the salary reduction plan (see WAC 182-12-116) is hired into a new position that is eligible for PEBB benefits in the same year, the employee may not resume participation in DCAP or medical FSA until the beginning of the next plan year, unless the time between employments is thirty days or less and within the current plan year. The employee must notify their new state agency of the transfer by providing the new state agency's personnel, payroll, or benefits office the required form no later than thirty-one days after the employee's first day of work with the new state agency.

(5) An employee's PEBB benefits elections remain the same when an employee transfers from one employing agency to another employing agency

without a break in PEBB benefits for one month or more. This includes movement of an employee between any entities described in WAC 182-12-111 and participating in PEBB benefits. PEBB benefits elections also remain the same when an employee has a break in employment that does not interrupt their employer contribution toward PEBB benefits.

WAC 182-08-198

When may a subscriber change health plans?

A subscriber may change health plans at the following times:

(1) During the annual open enrollment: A subscriber may change health plans during the public employees benefits board (PEBB) annual open enrollment period. A subscriber must submit the required enrollment forms to change their health plan. An employee submits the enrollment forms to their employing agency. Any other subscriber submits the enrollment forms to the PEBB program. The required enrollment forms must be received no later than the last day of the annual open enrollment. Enrollment in the new health plan will begin January 1st of the following year.

(2) During a special open enrollment: A subscriber may revoke their health plan election and make a new election outside of the annual open enrollment if a special open enrollment event occurs. A special open enrollment event must be an event other than an employee gaining initial eligibility for PEBB benefits as described in WAC 182-12-114 or regaining eligibility for PEBB benefits as described in WAC 182-08-197. The change in enrollment must be allowable under Internal Revenue Code and Treasury regulations, and correspond to and be consistent with the event that creates the special open enrollment for the subscriber, the subscriber's dependent, or both. To disenroll from a medicare advantage plan or medicare advantage-prescription drug plan, the change in enrollment must be allowable under 42 C.F.R. Sec. 422.62(b) and 42 C.F.R. Sec. 423.38(c). To make a

health plan change, a subscriber must submit the required enrollment forms (and a completed disenrollment form, if required). The forms must be received no later than sixty days after the event occurs, except as described in (i) of this subsection. An employee submits the enrollment forms to their employing agency. Any other subscriber submits the enrollment forms to the PEBB program. In addition to the required forms, a subscriber must provide evidence of the event that created the special open enrollment. New health plan coverage will begin the first day of the month following the later of the event date or the date the form is received. If that day is the first of the month, the change in enrollment begins on that day.

Exception: When a subscriber or their dependent is enrolled in a medicare advantage or medicare advantage-prescription drug plan, they may disenroll during a special enrollment period as allowed under Title 42 C.F.R. The new medical plan coverage will begin the first day of the month following the date the medicare advantage plan disenrollment form is received.

If the special open enrollment is due to the birth, adoption, or assumption of legal obligation for total or partial support in anticipation of adoption of a child, health plan coverage will begin the month in which the birth, adoption, or assumption of legal obligation for total or partial support in anticipation of adoption occurs. If the special open enrollment is due to the enrollment of an extended dependent or a dependent with a disability, the change in health plan coverage will begin the first day of the month following the later of the event date or eligibility

certification. Any one of the following events may create a special open enrollment:

(a) Subscriber acquires a new dependent due to:

(i) Marriage or registering a state registered domestic partnership;

(ii) Birth, adoption, or when the subscriber has assumed a legal obligation for total or partial support in anticipation of adoption; or

(iii) A child becoming eligible as an extended dependent through legal custody or legal guardianship.

(b) Subscriber or a subscriber's dependent loses other coverage under a group health plan or through health insurance coverage, as defined by the Health Insurance Portability and Accountability Act (HIPAA);

(c) Subscriber has a change in employment status that affects the subscriber's eligibility for their employer contribution toward their employer-based group health plan;

(d) The subscriber's dependent has a change in their own employment status that affects their eligibility for the employer contribution under their employer-based group health plan;

Note: As used in (d) of this subsection, "employer contribution" means contributions made by the dependent's current or former employer toward health coverage as described in Treasury Regulation 26 C.F.R. 54.9801-6.

(e) Subscriber or a subscriber's dependent has a change in residence that affects health plan availability. If the subscriber moves and the subscriber's current health plan is not available in the new location the subscriber must select a new health plan, otherwise there will be limited accessibility to network providers and covered services;

Exception: A dental plan is considered available if a provider is located within fifty miles of the subscriber's new residence.

(f) A court order requires the subscriber or any other individual to provide insurance coverage for an eligible dependent of the subscriber (a former spouse or former state registered domestic partner is not an eligible dependent);

(g) Subscriber or a subscriber's dependent enrolls in coverage under medicaid or a state children's health insurance program (CHIP), or the subscriber or a subscriber's dependent loses eligibility for coverage under medicaid or CHIP;

(h) Subscriber or a subscriber's dependent becomes eligible for state premium assistance subsidy for PEBB health plan coverage from medicaid or CHIP;

(i) Subscriber or a subscriber's dependent enrolls in coverage under medicare,

or the subscriber or a subscriber's dependent loses eligibility for coverage under medicare, or enrolls in or terminates enrollment in a medicare advantage-prescription drug or a Part D plan. If the subscriber's current medical plan becomes unavailable due to the subscriber's or a subscriber's dependent's enrollment in medicare, the subscriber must select a new medical plan as described in WAC 182-08-196(2).

(i) A subscriber enrolled in PEBB retiree insurance coverage or an eligible subscriber enrolled in Consolidated Omnibus Budget Reconciliation Act (COBRA) coverage has six months from the date of their or their dependent's enrollment in medicare Part B to enroll in a PEBB medicare supplement plan for which they or their dependent is eligible. The forms must be received by the PEBB program no later than six months after the enrollment in medicare Part B for either the subscriber or the subscriber's dependent;

(ii) A subscriber enrolled in PEBB retiree insurance coverage or an eligible subscriber enrolled in Consolidated Omnibus Budget Reconciliation Act (COBRA) coverage has seven months to enroll in a medicare advantage or medicare advantage-prescription drug plan that begins three months before they or their dependent first enrolled in both medicare Part A and Part B and

ends three months after the month of medicare eligibility. A subscriber may also enroll themselves or their dependent in a medicare advantage or medicare advantage-prescription drug plan before their last day of the medicare Part B initial enrollment period. The forms must be received by the PEBB program no later than the last day of the month prior to the month the subscriber or the subscriber's dependent enrolls in the medicare advantage or medicare advantage-prescription drug plan.

(j) Subscriber or a subscriber's dependent's current medical plan becomes unavailable because the subscriber or enrolled dependent is no longer eligible for a health savings account (HSA). The authority may require evidence that the subscriber or subscriber's dependent is no longer eligible for an HSA;

(k) Subscriber or a subscriber's dependent experiences a disruption of care for active and ongoing treatment, that could function as a reduction in benefits for the subscriber or the subscriber's dependent. A subscriber may not change their health plan election if the subscriber's or dependent's physician stops participation with the subscriber's health plan unless the PEBB program determines that a continuity of care issue exists. The PEBB program will consider but not limit its consideration to the following:

(i) Active cancer treatment such as chemotherapy or radiation therapy;

(ii) Treatment following a recent organ transplant;

(iii) A scheduled surgery;

(iv) Recent major surgery still within the postoperative period; or

(v) Treatment for a high-risk pregnancy.

(3) If the employee is having premiums taken from payroll on a pretax basis, a medical plan change will not be approved if it would conflict with provisions of the salary reduction plan authorized under RCW 41.05.300.

WAC 182-08-199

When may an employee enroll, or revoke an election and make a new election under the premium payment plan, medical flexible spending arrangement (FSA), or dependent care assistance program (DCAP)?

An employee who is eligible to participate in the salary reduction plan as described in WAC 182-12-116 may enroll, or revoke their election and make a new election under the premium payment plan, medical flexible spending arrangement (FSA), or dependent care assistance program (DCAP) at the following times:

(1) When newly eligible under WAC 182-12-114 and enrolling as described in WAC 182-08-197(1).

(2) During annual open enrollment: An eligible employee may elect to enroll in or opt out of participation under the premium payment plan during the annual open enrollment by submitting the required form to their employing agency. An eligible employee may elect to enroll or reenroll in the medical FSA, DCAP, or both during the annual open enrollment by submitting the required forms to their employing agency or applicable contracted vendor as instructed. All required forms must be received no later than the last day of the annual open enrollment. The enrollment or new election becomes effective January 1st of the following year.

Note: Employees enrolled in a consumer directed health plan (CDHP) with a health savings account (HSA) cannot also enroll in a medical FSA in the same plan year. Employees who elect both will only be enrolled in the CDHP with a HSA.

(3) During a special open enrollment: An employee who is eligible to participate in the salary reduction plan may enroll or revoke their election and make a new election under the premium payment plan, medical FSA, or DCAP outside of the annual open enrollment if a special open enrollment event occurs. The enrollment or change in election must be allowable under Internal Revenue Code (IRC) and Treasury regulations, and correspond to and be consistent with the event that creates the special open enrollment. To make a change or enroll, the employee must submit the required form to their employing agency. The employing agency must receive the required form and evidence of the event that created the special open enrollment no later than sixty days after the event occurs.

For purposes of this section, an eligible dependent includes any person who qualifies as a dependent of the employee for tax purposes under IRC 26 U.S.C. Sec. 152 without regard to the income limitations of that section. It does not include a state registered domestic partner unless the state registered domestic partner otherwise qualifies as a dependent for tax purposes under IRC 26 U.S.C. Sec. 152.

(a) Premium payment plan. An employee may enroll or revoke their election and elect to opt out of the premium payment plan when any of the following special open enrollment events occur, if the requested change corresponds to and is consistent with the event. The enrollment or election to opt out will be effective the first day of the month following the later of the event date or the date the required

form is received. If that day is the first of the month, the enrollment or change in election begins on that day. If the special open enrollment is due to the birth, adoption, or assumption of legal obligation for total or partial support in anticipation of adoption of a child, the enrollment or change in election will begin the first of the month in which the event occurs.

(i) Employee acquires a new dependent due to:

- Marriage;
- Registering a state registered domestic partnership when the dependent is a tax dependent of the employee;
- Birth, adoption, or when the employee has assumed a legal obligation for total or partial support in anticipation of adoption; or
- A child becoming eligible as an extended dependent through legal custody or legal guardianship.

(ii) Employee's dependent no longer meets public employee benefits board (PEBB) eligibility criteria because:

- Employee has a change in marital status;

- Employee's domestic partnership with a state registered domestic partner who is a tax dependent is dissolved or terminated;
- An eligible dependent child turns age twenty-six or otherwise does not meet dependent child eligibility criteria;
- An eligible dependent ceases to be eligible as an extended dependent or as a dependent with a disability; or
- An eligible dependent dies.

(iii) Employee or an employee's dependent loses other coverage under a group health plan or through health insurance coverage, as defined by the Health Insurance Portability and Accountability Act (HIPAA);

(iv) Employee has a change in employment status that affects the employee's eligibility for their employer contribution toward their employer-based group health plan;

(v) The employee's dependent has a change in their own employment status that affects their eligibility for the employer contribution under their employer-based group health plan;

Note: As used in (a)(v) of this subsection, "employer contribution" means contributions made by the dependent's current or former employer toward health coverage as described in Treasury Regulation 26 C.F.R. 54.9801-6.

(vi) Employee or an employee's dependent has a change in enrollment under an employer-based group health plan during its annual open enrollment that does not align with the PEBB annual open enrollment;

(vii) Employee or an employee's dependent has a change in residence that affects health plan availability;

(viii) Employee's dependent has a change in residence from outside of the United States to within the United States, or from within the United States to outside of the United States and that change in residence resulted in the dependent losing their health insurance;

(ix) A court order requires the employee or any other individual to provide insurance coverage for an eligible dependent of the subscriber (a former spouse or former state registered domestic partner is not an eligible dependent);

(x) Employee or an employee's dependent enrolls in coverage under medicaid or a state children's health insurance program (CHIP), or the subscriber or a subscriber's dependent

loses eligibility for coverage under medicaid or CHIP;

(xi) Employee or an employee's dependent becomes eligible for state premium assistance subsidy for PEBB medical plan coverage from medicaid or CHIP;

(xii) Employee or an employee's dependent enrolls in coverage under medicare or the employee or an employee's dependent loses eligibility for coverage under medicare;

(xiii) Employee or an employee's dependent's current medical plan becomes unavailable because the employee or enrolled dependent is no longer eligible for a health savings account (HSA). The health care authority (HCA) requires evidence that the employee or employee's dependent is no longer eligible for an HSA;

(xiv) Employee or an employee's dependent experiences a disruption of care for active and ongoing treatment, that could function as a reduction in benefits for the employee or the employee's dependent. The employee may not change their health plan election if the employee's or dependent's physician stops participation with the employee's health plan unless the PEBB program determines that a continuity of care issue exists. The PEBB program

will consider but not limit its consideration to the following:

- Active cancer treatment such as chemotherapy or radiation therapy;
- Treatment following a recent organ transplant;
- A scheduled surgery;
- Recent major surgery still within the postoperative period; or
- Treatment for a high-risk pregnancy.

(xv) Employee or employee's dependent becomes eligible and enrolls in a TRICARE plan, or loses eligibility for a TRICARE plan.

If the employee is having premiums taken from payroll on a pretax basis, a medical plan change will not be approved if it would conflict with provisions of the salary reduction plan authorized under RCW 41.05.300.

(b) Medical FSA. An employee may enroll or revoke their election and make a new election under the medical FSA when any one of the following special open enrollment events occur, if the requested change corresponds to and is consistent with the event. The enrollment or new election will be effective the first day of the month following the later of the event date or the date the required

form and evidence of the event that created the special open enrollment is received by the employing agency. If that day is the first of the month, the enrollment or change in election begins on that day. If the special open enrollment is due to the birth, adoption, or assumption of legal obligation for total or partial support in anticipation of adoption of a child, the enrollment or change in election will begin the first of the month in which the event occurs.

(i) Employee acquires a new dependent due to:

- Marriage;
- Registering a state registered domestic partnership if the domestic partner qualifies as a tax dependent of the employee;
- Birth, adoption, or when the employee has assumed a legal obligation for total or partial support in anticipation of adoption; or
- A child becoming eligible as an extended dependent through legal custody or legal guardianship.

(ii) Employee's dependent no longer meets PEBB eligibility criteria because:

- Employee has a change in marital status;

- Employee's domestic partnership with a state registered domestic partner who qualifies as a tax dependent is dissolved or terminated;
- An eligible dependent child turns age twenty-six or otherwise does not meet dependent child eligibility criteria;
- An eligible dependent ceases to be eligible as an extended dependent or as a dependent with a disability; or
- An eligible dependent dies.

(iii) Employee or an employee's dependent loses other coverage under a group health plan or through health insurance coverage, as defined by the HIPAA;

(iv) Employee or an employee's dependent has a change in employment status that affects the employee's or a dependent's eligibility for the medical FSA;

(v) A court order requires the employee or any other individual to provide insurance coverage for an eligible dependent of the subscriber (a former spouse or former state registered domestic partner is not an eligible dependent);

(vi) Employee or an employee's dependent enrolls in coverage under medicaid or a state children's health insurance program (CHIP), or the employee or an employee's dependent loses eligibility for coverage under medicaid or CHIP;

(vii) Employee or an employee's dependent enrolls in coverage under medicare.

(c) DCAP. An employee may enroll or revoke their election and make a new election under the DCAP when any one of the following special open enrollment events occur, if the requested change corresponds to and is consistent with the event. The enrollment or new election will be effective the first day of the month following the later of the event date or the date the required form and evidence of the event that created the special open enrollment is received by the employing agency. If that day is the first of the month, the enrollment or change in election begins on that day. If the special open enrollment is due to the birth, adoption, or assumption of legal obligation for total or partial support in anticipation of adoption of a child, the enrollment or change in election will begin the first of the month in which the event occurs.

(i) Employee acquires a new dependent due to:

- Marriage;

- Registering a state registered domestic partnership if the domestic partner qualifies as a tax dependent of the employee;
- Birth, adoption, or when the subscriber has assumed a legal obligation for total or partial support in anticipation of adoption; or
- A child becoming eligible as an extended dependent through legal custody or legal guardianship.

(ii) Employee or an employee's dependent has a change in employment status that affects the employee's or a dependent's eligibility for DCAP;

(iii) Employee or an employee's dependent has a change in enrollment under an employer-based group health plan during its annual open enrollment that does not align with the PEBB annual open enrollment;

(iv) Employee changes dependent care provider; the change to the DCAP election amount can reflect the cost of the new provider;

(v) Employee or the employee's spouse experiences a change in the number of qualifying individuals as defined in IRC 26 U.S.C. Sec. 21 (b)(1);

(vi) Employee's dependent care provider imposes a change in the cost of dependent care; employee may make a change in the DCAP election amount to reflect the new cost if the dependent care provider is not a qualifying relative of the employee as defined in IRC 26 U.S.C. Sec. 152.

WAC 415-108-425

How do I determine if I have plan choice rights or transfer rights to PERS Plan 3?

(1) Definitions:

(a) "Concurrently employed" means you are employed at the same time, in eligible positions, by a Phase 1 employer and by a Phase 2 employer.

(b) "Exercising plan choice rights" means choosing Plan 2 or Plan 3 or defaulting into a plan.

(c) "Phase 1 employer" means state agencies and institutes of higher education.

(d) "Phase 2 employer" means all other employers.

(e) "Phase 1 transfer period" is the period from March 1, 2002, through and including August 31, 2002.

(f) "Phase 2 transfer period" is the period from September 1, 2002, through and including May 31, 2003.

(2) What determines if I have "plan choice rights" or "transfer rights"? Your current employment status and your employment history will be used to determine if you have plan choice rights (refer to WAC 415-02-030 for definition) or transfer rights. If your employment status changes, your rights must be reevaluated. A change in your employment status, such as separating from employment or becoming reemployed, may change your rights.

(3) Do I have "plan choice rights"?

(a) You have plan choice rights if your initial PERS membership began on or after March 1, 2002, with a Phase 1 employer in an eligible position.

(i) If you separate from employment and did not exercise your plan choice rights, you retain plan choice rights if you are reemployed in an eligible position with a Phase 1 employer.

(ii) If you separate from employment and did not exercise your plan choice rights, and you are not employed by a Phase 2 employer during Phase 2, you retain plan choice rights if you begin another period of employment in an eligible position with a Phase 2 employer after May 31, 2003.

(b) You have plan choice rights if your initial PERS membership began on or after September 1, 2002, with a Phase 2 employer in an eligible position. If you separate from employment and did not exercise your plan choice rights, you retain plan choice rights if you begin another period of employment in an eligible position with a Phase 1 or Phase 2 employer.

(c) You have plan choice rights if you transferred from membership in PERS to membership in the school employees' retirement system and then became employed

in an eligible PERS position on or after March 1, 2002, with a Phase 1 employer or on or after September 1, 2002, with a Phase 2 employer.

(4) What are "transfer rights" and how are they applied? "Transfer rights" refers to your right as a Plan 2 member to transfer into Plan 3 during an applicable transfer period to your employment type.

(a) You are not required to exercise transfer rights. If you have transfer rights, you will remain in Plan 2 unless you decide to transfer to Plan 3.

(b) If you do not transfer to Plan 3 during the Phase 1 or the Phase 2 transfer periods, you will not qualify to receive the additional transfer payment under RCW 41.40.795 or retroactive gainsharing payment under RCW 41.31A.040.

(5) Do I have transfer rights?

(a) You have transfer rights if you:

(i) Are a Plan 2 member;

(ii) Are employed in an eligible position by a Phase 1 employer during the Phase 1 transfer period; and

(iii) Were not eligible for plan choice rights under subsection (3)(a) or (c) of this section.

(b) You have transfer rights if you:

(i) Are a Plan 2 member;

(ii) Are employed in an eligible position by a Phase 2 employer during the Phase 2 transfer period; and

(iii) Were not eligible for plan choice rights under subsection (3)(b) or (c) of this section.

(6) What are "January transfer rights" and how are they applied? "January transfer rights" refers to a Plan 2 member's right to transfer to Plan 3 during any January after the close of a transfer period.

(a) If you are employed by a Phase 1 employer, in an eligible position, the first January you can transfer is January 2003.

(b) If you are employed by a Phase 2 employer, in an eligible position, the first January you can transfer is January 2004.

(c) You must earn service credit in the January in which you transfer.

(7) Do I have January transfer rights?

(a) You have January transfer rights if you were eligible for transfer rights and did not transfer to PERS Plan 3 during the transfer period that applied to you.

(b) You have January transfer rights if you:

(i) Were employed in an eligible position with a Phase 1 employer before the Phase 1 transfer period, or were employed in an eligible position by a Phase 2 employer before the Phase 2 transfer period;

(ii) Were not employed by a Phase 1 employer during the Phase 1 transfer period;

(iii) Were not employed by a Phase 2 employer during the Phase 2 transfer period; and

(iv) Are employed by a Phase 1 employer in an eligible position that you began after the Phase 1 transfer period ended, or are employed by a Phase 2 employer in an eligible position that you began after the Phase 2 transfer period ended.

(8) What happens after I become a member of a plan by choice, transfer or default? Once you choose, transfer, or default into a plan, you will remain a member of that plan regardless of whether you change employers. You will not have any additional transfer rights or plan choice rights to exercise.

(9) What rules apply to me if I am concurrently employed? If you are, or become concurrently employed during the Phase 1 transfer period in an eligible position, you will have transfer rights but must wait until the Phase 2 transfer period to transfer. If you separate from one of the employers, your membership rights must be reevaluated.

Examples: *The examples are written, for the most part, for a Phase 1 employer. Use the Phase 2 transfer period (September 1, 2002, through and including May 31, 2003) to apply the rules to a Phase 2 employer.*

Plan Choice Rights:
Example 1: Pat starts working for a state agency in an eligible position (Phase 1 employer) as of:
A. April 1, 2002. Since Pat has not previously been a member of PERS, Pat has ninety days to make a plan choice for Plan 2 or Plan 3. See subsection (3) of this section.
B. After forty-five days, Pat leaves service without making a choice, and then returns in an eligible position one year later. Pat has a new ninety day period in which to make a plan choice. See subsection (3)(a)(i) of this section.
C. Pat chooses Plan 3 within ninety days. Pat is now a Plan 3 member regardless of future employment. *See subsection (8) of this section.*
D. Instead of choosing Plan 3, Pat lets the ninety day plan choice period go by without choosing Plan 2 or Plan 3. Pat is defaulted into a plan and is now a member of that plan regardless of future employment. *See subsection (8) of this section.*
Transfer Rights:
Example 2:
A. Chris has been a Plan 2 member since 1977. Chris is working at a state agency (Phase 1 employer) as of March 1, 2002. Since Chris was a member prior to the start of Plan 3, Chris has the right to transfer to Plan 3 in the transfer period

(March 1, 2002, through August 31, 2002). See subsection (5)(a) of this section.
B. However, Chris did not make a decision to transfer prior to the close of the Phase 1 transfer period. If Chris remains employed for a Phase 1 employer, the right to transfer to Plan 3 is limited to January of each year. *See subsection (7)(a) of this section.*
C. In this variation, Chris was a Plan 2 member from March 1, 1987, through February 1, 2002. Chris returns on October 15, 2002, for a state agency (Phase 1 employer). Since Chris returned to service after the transfer period (March 1, 2002, through August 31, 2002), Chris only has the right to transfer to Plan 3 in January of each year. See subsection (7)(b) of this section.
Irrevocable Choice Rule:
Example 3: Mike starts working for a state agency (Phase 1 employer) as of April 1, 2002. Since Mike has not previously been a member of PERS, Mike has ninety days to make a plan choice for Plan 2 or Plan 3. Mike chooses Plan 3 within ninety days. Mike is now a Plan 3 member regardless of future employment. See subsection (8) of this section.
Example 4: Pat starts working for a state agency (Phase 1 employer) as of April 1, 2002. Since Pat has not previously been a member of PERS, Pat has ninety days to make a **plan choice** for Plan 2 or Plan 3. Pat chooses Plan 2 within ninety days. Pat is now a Plan 2 member who can no longer have a **plan**

choice regardless of future employment. *See subsection (8) of this section.*
Concurrent Employment in Phase 1 and 2:
Example 5: Using example 2A, Chris also accepts employment for a county (Phase 2 employer) on April 1, 2002, prior to transferring to Plan 3. Since Chris is concurrently employed at a Phase 1 and a Phase 2 employer, Chris must wait for the Phase 2 window to transfer to Plan 3. See subsection (9) of this section.

Case No. 19-35137[*]

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MELISSA BELGAU, et al., *Plaintiffs–Appellants,*

v.

JAY INSLEE, Governor, et al., *Defendants-Appellees.*

On Appeal from the United States District Court for the Western District of Washington at Tacoma, No. 3:18-cv-05620-RJB, Honorable Robert J. Bryan

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APPELLANTS' OPENING BRIEF

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[*All typos have been retained.]

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71-78), and the irrevocable authorizations Appellants signed pre-*Janus* and under the threat of dismissal or mandatory fees. *Id.* at ¶¶ 13-14, 17-19, 22-23. (ER 89-90.) The State continued to deduct full dues from appellants' wages and remit those funds to WFSE until the expiration of the one-year terms described in the irrevocable authorizations. *Id.*, at ¶ 23.[9]

Appellants filed this class action lawsuit on August 2, 2018. *See* Verified Complaint. (ER 116-150.) Appellants filed their Amended Complaint on August 23, 2018 (ER 94-115) seeking to enjoin the State from the continued deduction of union dues from their wages and seek, inter alia, compensatory damages from WFSE in the form of all dues deducted from their wages in violation of the First Amendment. *See* Amended Complaint, ¶¶ 91-94. (ER 112-113.)

The District Court, upon stipulated facts, granted summary judgment in Respondents' favor. (ER 6-28.) The Court held that "*Janus* does not apply here" and concluded that Appellants consented to dues deductions without determining whether Appellants waived their First Amendment rights. Order, 19-20. (ER 24-25.) [end of page, not end of paragraph]

[footnote 8 cont'd] recognition of the bargaining unit's exclusive bargaining representative, the employer must deduct from the payments to the employee the monthly amount of dues as certified by the secretary of the exclusive bargaining

representative and must transmit the same to the treasurer of the exclusive bargaining representative

[9] The most recent of Appellants' ten-day cancellation periods should be in April, 2019. *See* Exs. 11-17. (ER 34-39.) Any lack of dues deductions by the State moving forward does not moot this case as to the State. The Ninth Circuit held otherwise on material facts identical to this case. *See Fisk v. Inslee*, 17-35957, 2019 WL 141253, *1 (9th Cir. Jan. 9, 2019).

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The court also held that WFSE was not a state actor for the purposes of Appellants' claims. *Id.* at 17. (ER 22.) Appellants timely appealed.

SUMMARY OF ARGUMENT

In *Janus*, the Supreme Court held that the First Amendment protects public employees from compelled subsidization of union advocacy. 138 S. Ct. at 2486. Absent clear and compelling evidence of a First Amendment waiver, dues deductions violate the First Amendment. *Id.* The Supreme Court explained that the choice to subsidize union advocacy cannot be presumed because "[b]y agreeing to pay [money to a union], nonmembers are waiving their First Amendment rights, and such a waiver cannot be presumed." *Id.* The District Court erred by holding that Appellants consented to union dues deductions without conducting the constitutional waiver analysis *Janus* requires to establish such consent. Order, 18-20. (ER 23-25.) When the waiver analysis required by *Janus* is performed, it is clear that neither the State nor WFSE showed by clear and compelling evidence that Appellants consented to dues deductions by waiving their First Amendment rights. Appellants

signed the dues deduction authorizations pre-*Janus* and under the threat of mandatory nonmember union fees or dismissal. Further, the authorizations themselves do not contain a First Amendment waiver.[10]

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[10] Appellants also argue in the alternative that the authorizations fail to constitute valid contracts under contract law.

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The District Court also erred by holding WFSE was not a state actor for the purposes of Appellants' claims. State action is overwhelmingly present in this case.[11] The State's act of confiscating Appellants' money to subsidize WFSE's union advocacy without consent, at the behest of WFSE, in accordance with state law, and pursuant to the collective bargaining agreement entered between WFSE and the State, clearly establishes state action on behalf of all Respondents. *Id.*[12]

Finally, the District Court erred in dismissing Appellants' conspiracy and unjust enrichment claims based on the false premise that Appellants properly consented to dues deductions.

The District Court's decision collapses once deprived of its false premise that Appellants validly consented to dues deductions. Accordingly, this Court should reverse the District Court's decision and rule in Appellants' favor.

STANDARD OF REVIEW

The standard of review on an appeal from a grant of summary judgment is *de novo*. *See Botosan v.*

Paul McNally Realty, 216 F.3d 827, 830 (9th Cir. 2000). This

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[11] The District Court treated the State's deduction of union dues as state action (unlike its treatment of WFSE's conduct). Order, 17-20 (ER 22-25.) Respondents did not assign error to the District Court's conclusion. (Regardless, out of an abundance of caution, Appellants also argue that, under *Janus*, a state engages in state action for § 1983 purposes every time it deducts union dues from its employees' wages—whether or not valid consent was acquired.)

[12] Appellants also argue in the alternative that imposing mandatory fees or dismissal as the only alternatives to union membership at the time Appellants signed the dues deduction authorizations also constituted state action. *See infra* at 22-28.

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Court must determine, viewing the evidence in the light most favorable to the nonmoving party, whether there are any genuine issues of material fact and whether the District Court correctly applied the relevant substantive law. *See Lopez v. Smith,* 203 F.3d 1122, 1131 (9th Cir. 2000) (*en banc*).

ARGUMENT

The State's deduction of union dues from Appellants' wages is state action and unconstitutional. Neither the State nor WFSE has proven by clear and compelling evidence that Appellants consented to dues deductions by waiving their First Amendment rights. The State and WFSE have acted under color of state law to deprive Appellants of their rights, privileges, or immunities secured by the First Amendment—as applied to the

states through the Fourteenth Amendment—as required for a claim under 42 U.S.C. §1983. *See Parratt v. Taylor*, 451 U.S. 527, 535 (1981), *overruled on other grounds; Daniels v. Williams*, 474 U.S. 327 (1986). Here, RCW 41.80.100 and CBA Art. 40 (pre-amended and amended versions), Exs. 1-3 (ER 71-85), are unconstitutional as applied because they authorize and compel the State to deduct union dues from employees' wages absent the requisite consent. *See Janus*, 138 S. Ct. at 2486. The District Court erred by concluding otherwise.

* * * * *

Case No. 19-35137

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

MELISSA BELGAU, et al., *Plaintiffs–Appellants,*

v.

JAY INSLEE, Governor, et al., *Defendants-Appellees.*

On Appeal from the United States District Court
for the Western District of Washington at Tacoma,
No. 3:18-cv-05620-RJB, Honorable Robert J. Bryan

EXCERPTS OF RECORD, VOLUME II

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Counsel for Appellants Belgau, et al.,

TABLE OF CONTANTS [sic]

* * * * *

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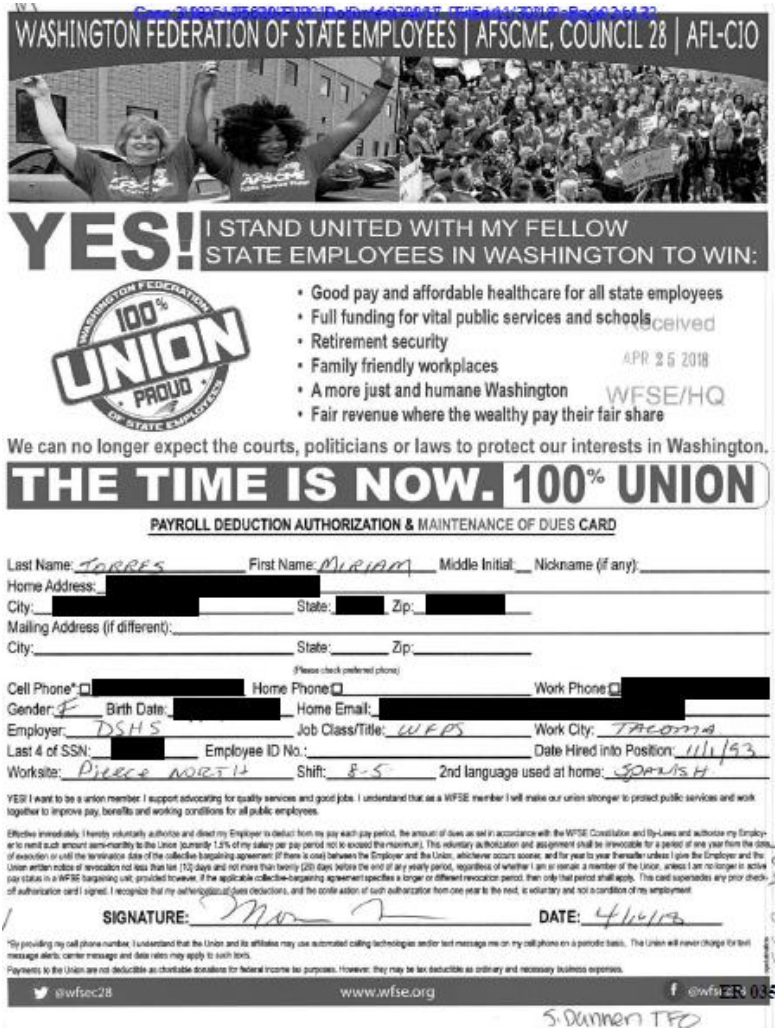
ER 034

Exhibit 17

ER 035



WASHINGTON FEDERATION OF STATE EMPLOYEES | AFSCME, COUNCIL 28 | AFL-CIO

YES! I STAND UNITED WITH MY FELLOW STATE EMPLOYEES IN WASHINGTON TO WIN:

- Good pay and affordable healthcare for all state employees
- Full funding for vital public services and schools
- Retirement security
- Family friendly workplaces
- A more just and humane Washington
- Fair revenue where the wealthy pay their fair share

Received APR 25 2018 WFSE/HQ

We can no longer expect the courts, politicians or laws to protect our interests in Washington.

THE TIME IS NOW. 100% UNION

PAYROLL DEDUCTION AUTHORIZATION & MAINTENANCE OF DUES CARD

Last Name: TORRES First Name: MIRIAM Middle Initial: Nickname (if any):
Home Address: [redacted]
City: [redacted] State: [redacted] Zip: [redacted]
Mailing Address (if different):
City: State: Zip:
(Please check preferred phone)
Cell Phone* ☐ [redacted] Home Phone ☐ Work Phone ☐ [redacted]
Gender: F Birth Date: [redacted] Home Email: [redacted]
Employer: DSHS Job Class/Title: WFPS Work City: TACOMA
Last 4 of SSN: [redacted] Employee ID No.: Date Hired into Position: 11/1/93
Worksite: PIERCE NORTH Shift: 8-5 2nd language used at home: SPANISH

YES! I want to be a union member. I support advocating for quality services and good jobs. I understand that as a WFSE member I will make our union stronger to protect public services and work together to improve pay, benefits and working conditions for all public employees.

Effective immediately, I hereby voluntarily authorize and direct my Employer to deduct from my pay each pay period, the amount of dues as set in accordance with the WFSE Constitution and By-Laws and authorize my Employer to remit such amount semi-monthly to the Union (currently 1.5% of my salary per pay period not to exceed the maximum). This voluntary authorization and assignment shall be irrevocable for a period of one year from the date of execution or until the termination date of the collective bargaining agreement (if there is one) between the Employer and the Union, whichever occurs sooner, and for year to year thereafter unless I give the Employer and the Union written notice of revocation not less than ten (10) days and not more than twenty (20) days before the end of any yearly period, regardless of whether I am or remain a member of the Union, unless I am no longer in active pay status in a WFSE bargaining unit; provided however, if the applicable collective-bargaining agreement specifies a longer or different revocation period, then only that period shall apply. This card supersedes any prior check-off authorization card I signed. I recognize that my authorization of dues deductions, and the continuation of such authorization from one year to the next, is voluntary and not a condition of my employment.

SIGNATURE: [signature] DATE: 4/6/18

*By providing my cell phone number, I understand that the Union and its affiliates may use automated calling technologies and/or text message me on my cell phone on a periodic basis. The Union will never charge for text message alerts; carrier message and data rates may apply to such texts.

Payments to the Union are not deductible as charitable donations for federal income tax purposes. However, they may be tax deductible as ordinary and necessary business expenses.

@wfsec28 www.wfse.org @wfse

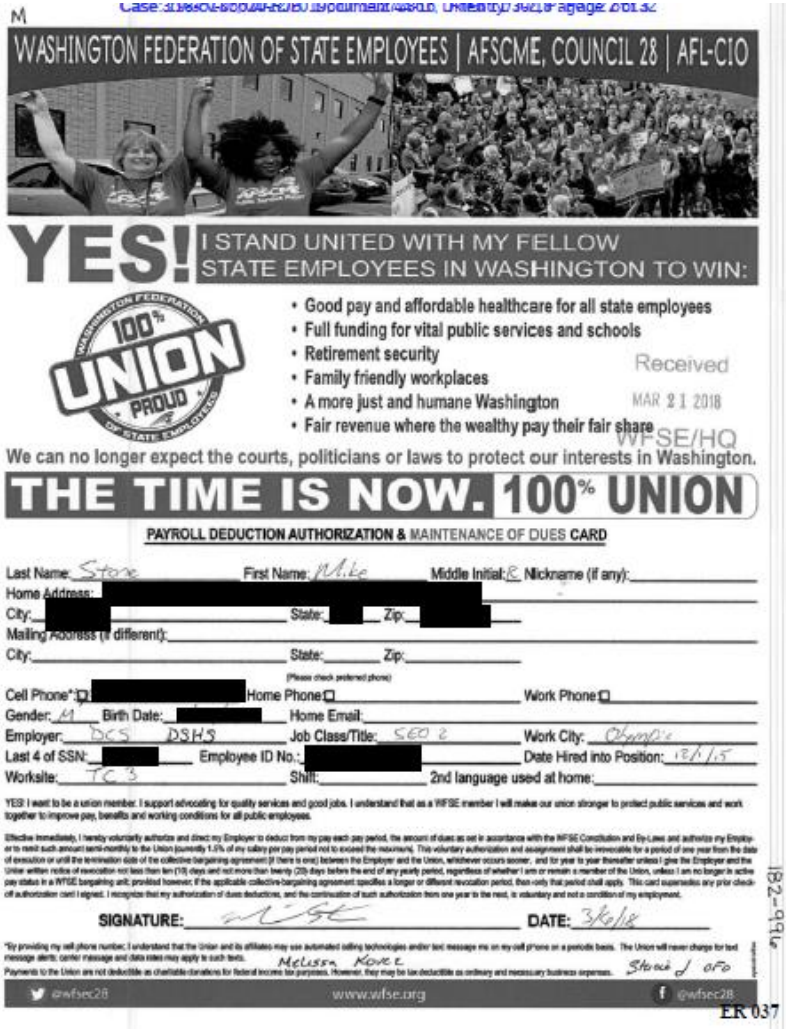
ER 035

S. Dunnen TFO

ER 036

Exhibit 16

ER 037



ER 038

NON-PROFIT ORG
US POSTAGE
PAID
OLYMPIA WA
PERMIT NO. 238

BUSINESS REPLY MAIL
FIRST-CLASS MAIL PERMIT NO 200 OLYMPIA WA

POSTAGE WILL BE PAID BY ADDRESSEE

Washington Federation of State Employees, AFSCME Council 28
1212 JEFFERSON ST STE 300
OLYMPIA WA 98501-9965

@wfsoc28 www.wfse.org @wfsoc28

DO NOT SIGN THIS SIDE IF YOU HAVE SIGNED THE OTHER SIDE

Employees in positions covered by a Washington Federation of State Employees, AFSCME, Council 28, AFL-CIO (WFSE) collective bargaining agreement containing union security must pay either dues or fees to the union.

Last Name:_____ **First Name:**_____ **MI**____ **Gender:**_____

Employer:_____ **Job Class/Title:**_____ **Work City:**_____

Last 4 of SSN:_____ **Employee ID No.:**_____ **Date Hired Into Position:**_____

Cell Phone:_____ **Work Phone:**_____ **Home Phone:**_____

No, I do not want to be a union member. I understand that I am giving up the right to participate in union activities, trainings, and events. I will be unable to vote to accept (or reject) my union contract or proposed changes in wages and benefits as a result of negotiations, and to vote in union elections or for union officers. I will not be eligible to participate in union-management meetings regarding my workplace concerns. I will not be eligible for member-only benefits.

I understand that by choosing NOT to become a WFSE union member I still must pay a union representation fee. As a non-member I authorize the deduction from my earnings each payroll period of the union representation fee in accordance with the collective bargaining agreement and as allowed by law.

NON-MEMBER SIGNATURE DATE

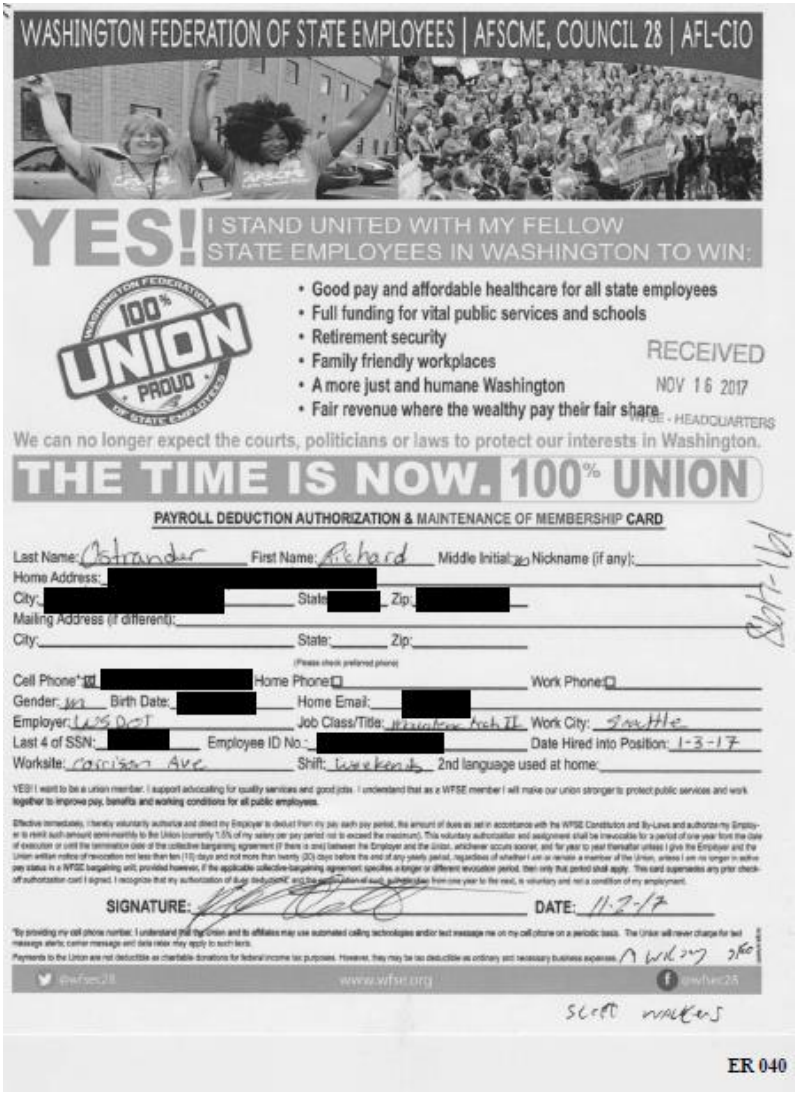
A signature on the other side of this card authorizing membership dues will supersede the signature above.

November 2017

ER 039

Exhibit 15

ER 040



WASHINGTON FEDERATION OF STATE EMPLOYEES | AFSCME, COUNCIL 28 | AFL-CIO

YES! I STAND UNITED WITH MY FELLOW STATE EMPLOYEES IN WASHINGTON TO WIN:

- Good pay and affordable healthcare for all state employees
- Full funding for vital public services and schools
- Retirement security
- Family friendly workplaces
- A more just and humane Washington
- Fair revenue where the wealthy pay their fair share

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We can no longer expect the courts, politicians or laws to protect our interests in Washington.

THE TIME IS NOW. 100% UNION

PAYROLL DEDUCTION AUTHORIZATION & MAINTENANCE OF MEMBERSHIP CARD

Last Name: Ostrander First Name: Richard Middle Initial: D Nickname (if any):
Home Address: [redacted]
City: [redacted] State: [redacted] Zip: [redacted]
Mailing Address (if different):
City: State: Zip:
(Please check preferred phone)
Cell Phone* ☒ [redacted] Home Phone ☐ Work Phone: ☐
Gender: M Birth Date: [redacted] Home Email: [redacted]
Employer: WSDOT Job Class/Title: Transportation Tech II Work City: Seattle
Last 4 of SSN: [redacted] Employee ID No.: [redacted] Date Hired into Position: 1-3-17
Worksite: Corrison Ave Shift: weekends 2nd language used at home:

YES! I want to be a union member. I support advocating for quality services and good jobs. I understand that as a WFSE member I will make our union stronger to protect public services and work together to improve pay, benefits and working conditions for all public employees.

Effective immediately, I hereby voluntarily authorize and direct my Employer to deduct from my pay, each pay period, the amount of dues as set in accordance with the WFSE Constitution and By-Laws and authorize my Employer to remit such amount semi-monthly to the Union (currently 1.5% of my salary per pay period not to exceed the maximum). This voluntary authorization and assignment shall be irrevocable for a period of one year from the date of execution or until the termination date of the collective bargaining agreement (if there is one) between the Employer and the Union, whichever occurs sooner, and for year to year thereafter unless I give the Employer and the Union written notice of revocation not less than ten (10) days and not more than twenty (20) days before the end of any yearly period, regardless of whether I am or remain a member of the Union, unless I am no longer in active pay status in a WFSE bargaining unit; provided however, if the applicable collective bargaining agreement specifies a longer or different revocation period, then only that period shall apply. This card supersedes any prior check-off authorization card I signed. I recognize that my authorization of dues deductions and this authorization from one year to the next, is voluntary and not a condition of my employment.

SIGNATURE: [signature] DATE: 11-2-17

*By providing my cell phone number, I understand that the Union and its affiliates may use automated calling technologies and/or text message me on my cell phone on a periodic basis. The Union will never charge for text message alerts; carrier message and data rates may apply to such texts.

Payments to the Union are not deductible as charitable donations for federal income tax purposes. However, they may be tax deductible as ordinary and necessary business expenses.

@wfsec28 www.wfse.org @wfsec28

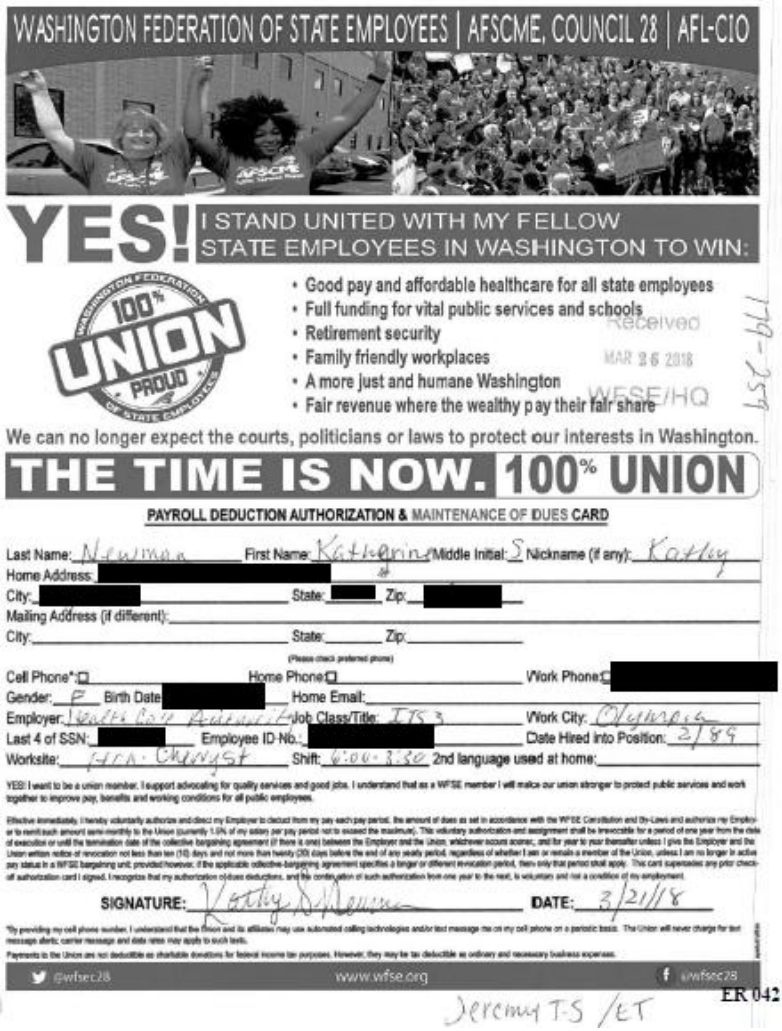
Scott Walters

ER 040

ER 041

Exhibit 14

ER 042



WASHINGTON FEDERATION OF STATE EMPLOYEES | AFSCME, COUNCIL 28 | AFL-CIO

YES! I STAND UNITED WITH MY FELLOW STATE EMPLOYEES IN WASHINGTON TO WIN:

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- Family friendly workplaces
- A more just and humane Washington
- Fair revenue where the wealthy pay their fair share

Received MAR 26 2018 WFSE/HQ

179-259

We can no longer expect the courts, politicians or laws to protect our interests in Washington.

THE TIME IS NOW. 100% UNION

PAYROLL DEDUCTION AUTHORIZATION & MAINTENANCE OF DUES CARD

Last Name: Newman First Name: Katherine Middle Initial: S Nickname (if any): Kathy

Home Address: [redacted] #

City: [redacted] State: [redacted] Zip: [redacted]

Mailing Address (if different):

City: State: Zip:

(Please check preferred phone)

Cell Phone*: ☐ Home Phone: ☐ Work Phone: ☐ [redacted]

Gender: F Birth Date: [redacted] Home Email:

Employer: Health Care Authority Job Class/Title: ITS 3 Work City: Olympia

Last 4 of SSN: [redacted] Employee ID No.: [redacted] Date Hired into Position: 2/89

Worksite: HCA - Cherry St Shift: 6:00 - 3:30 2nd language used at home:

YES! I want to be a union member. I support advocating for quality services and good jobs. I understand that as a WFSE member I will make our union stronger to protect public services and work together to improve pay, benefits and working conditions for all public employees.

Effective immediately, I hereby voluntarily authorize and direct my Employer to deduct from my pay each pay period, the amount of dues as set in accordance with the WFSE Constitution and By-Laws and authorize my Employer to remit such amount semi-monthly to the Union (currently 1.0% of my salary per pay period not to exceed the maximum). This voluntary authorization and assignment shall be irrevocable for a period of one year from the date of execution or until the termination date of the collective bargaining agreement (if there is one) between the Employer and the Union, whichever occurs sooner, and for year to year thereafter unless I give the Employer and the Union written notice of revocation not less than ten (10) days and not more than twenty (20) days before the end of any yearly period, regardless of whether I am or remain a member of the Union, unless I am no longer in active pay status in a WFSE bargaining unit; provided however, if the applicable collective-bargaining agreement specifies a longer or different revocation period, then only that period shall apply. This card supersedes any prior check-off authorization card I signed. I recognize that my authorization of dues deductions, and the continuation of such authorization from one year to the next, is voluntary and not a condition of my employment.

SIGNATURE: Kathy S Newman DATE: 3/21/18

*By providing my cell phone number, I understand that the Union and its affiliates may use automated calling technologies and/or text message me on my cell phone on a periodic basis. The Union will never charge for text message alerts; carrier message and data rates may apply to such texts.

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Jeremy T-S /ET

ER 042

ER 043

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Washington Federation of State Employees, AFSCME Council 28
1212 JEFFERSON ST STE 300
OLYMPIA WA 98501-9965

@wfsec28 www.wfse.org @wfsec28

DO NOT SIGN THIS SIDE IF YOU HAVE SIGNED THE OTHER SIDE

Employees in positions covered by a Washington Federation of State Employees, AFSCME, Council 28, AFL-CIO (WFSE) collective bargaining agreement containing union security must pay either dues or fees to the union.

Last Name:_____ **First Name:**_____ **MI** ____ **Gender:** _____

Employer: _____ **Job Class/Title:**_____ **Work City:**_____

Last 4 of SSN:_____ **Employee ID No.:**_____ **Date Hired Into Position:**_____

Cell Phone: _____ **Work Phone:** _____ **Home Phone:** _____

No, I do not want to be a union member. I understand that I am giving up the right to participate in union activities, trainings, and events. I will be unable to vote to accept (or reject) my union contract or proposed changes in wages and benefits as a result of negotiations, and to vote in union elections or for union officers. I will not be eligible to participate in union-management meetings regarding my workplace concerns. I will not be eligible for member-only benefits.

I understand that by choosing NOT to become a WFSE union member I still must pay a union representation fee. As a non-member I authorize the deduction from my earnings each payroll period of the union representation fee in accordance with the collective bargaining agreement and as allowed by law.

_____

NON-MEMBER SIGNATURE **DATE**

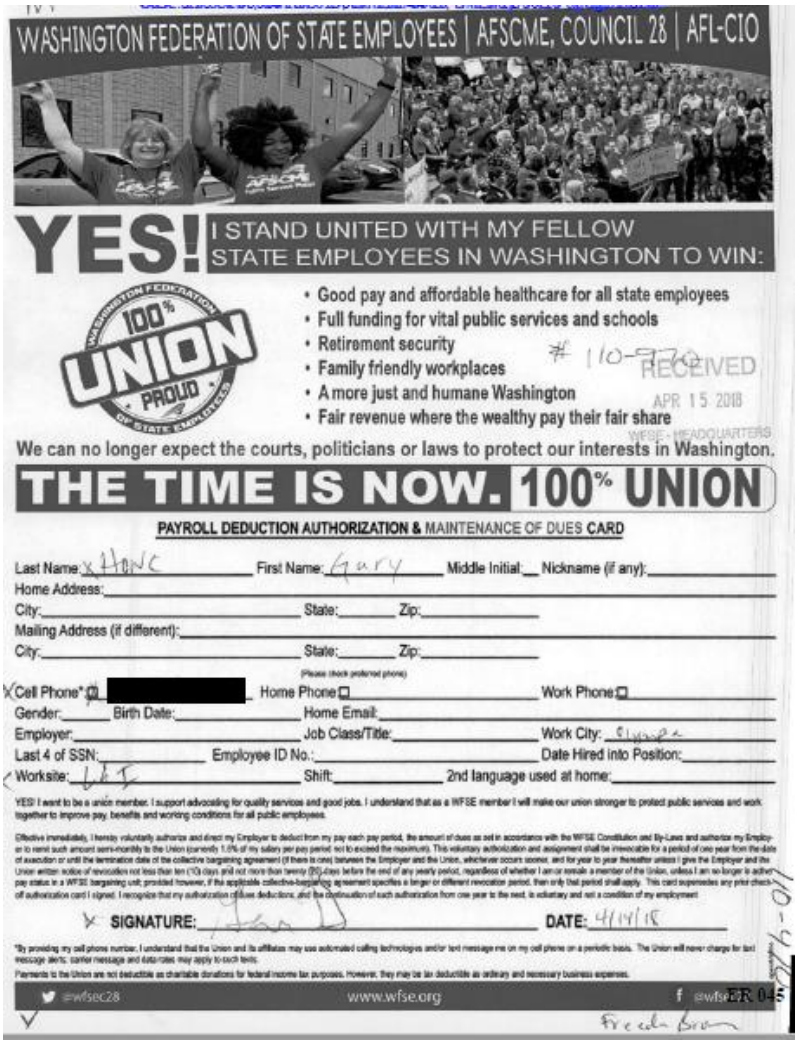
A signature on the other side of this card authorizing membership dues will supersede the signature above.

November 1, 2017

ER 044

Exhibit 13

ER 045



WASHINGTON FEDERATION OF STATE EMPLOYEES | AFSCME, COUNCIL 28 | AFL-CIO

YES! I STAND UNITED WITH MY FELLOW STATE EMPLOYEES IN WASHINGTON TO WIN:

100% UNION PROUD

- Good pay and affordable healthcare for all state employees
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- Fair revenue where the wealthy pay their fair share

110-370

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WFSE HEADQUARTERS

We can no longer expect the courts, politicians or laws to protect our interests in Washington.

THE TIME IS NOW. 100% UNION

PAYROLL DEDUCTION AUTHORIZATION & MAINTENANCE OF DUES CARD

Last Name: [illegible] First Name: Gary Middle Initial: Nickname (if any):
Home Address:
City: State: Zip:
Mailing Address (if different):
City: State: Zip:
(Please check preferred phone)
Cell Phone* [redacted] Home Phone Work Phone
Gender: Birth Date: Home Email:
Employer: Job Class/Title: Work City: Olympia
Last 4 of SSN: Employee ID No.: Date Hired into Position:
Worksite: DOT Shift: 2nd language used at home:

YES! I want to be a union member. I support advocating for quality services and good jobs. I understand that as a WFSE member I will make our union stronger to protect public services and work together to improve pay, benefits and working conditions for all public employees.

Effective immediately, I hereby voluntarily authorize and direct my Employer to deduct from my pay each pay period, the amount of dues as set in accordance with the WFSE Constitution and By-Laws and authorize my Employer to remit such amount semi-monthly to the Union (currently 1.0% of my salary per pay period; not to exceed the maximum). This voluntary authorization and assignment shall be irrevocable for a period of one year from the date of execution or until the termination date of the collective bargaining agreement (if there is one) between the Employer and the Union, whichever occurs sooner, and for year to year thereafter unless I give the Employer and the Union written notice of revocation not less than ten (10) days and not more than twenty (20) days before the end of any yearly period, regardless of whether I am or remain a member of the Union, unless I am no longer in active pay status in a WFSE bargaining unit; provided however, if the applicable collective-bargaining agreement specifies a longer or different revocation period, then only that period shall apply. This card supersedes any prior check-off authorization card I signed. I recognize that my authorization of dues deductions, and the continuation of each authorization from one year to the next, is voluntary and not a condition of my employment.

SIGNATURE: [signature] DATE: 4/14/18

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@wfsec28 www.wfse.org @wfsec28

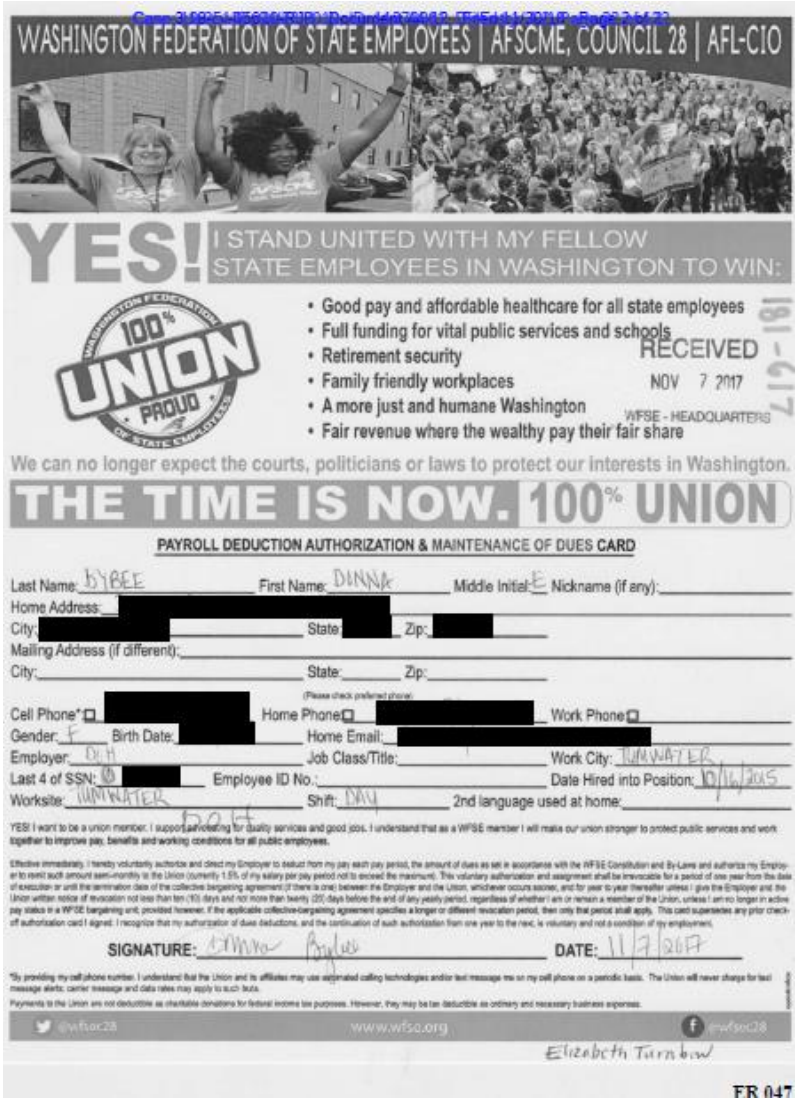
ER 045

Freeda Brown

ER 046

Exhibit 12

ER 047



WASHINGTON FEDERATION OF STATE EMPLOYEES | AFSCME, COUNCIL 28 | AFL-CIO

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THE TIME IS NOW. 100% UNION

PAYROLL DEDUCTION AUTHORIZATION & MAINTENANCE OF DUES CARD

Last Name: BYBEE First Name: DONNA Middle Initial: E Nickname (if any):
Home Address: [redacted]
City: [redacted] State: [redacted] Zip: [redacted]
Mailing Address (if different):
City: State: Zip:
(Please check preferred phone)
Cell Phone* ☐ [redacted] Home Phone ☐ [redacted] Work Phone ☐
Gender: F Birth Date: [redacted] Home Email: [redacted]
Employer: DOH Job Class/Title: Work City: TUMWATER
Last 4 of SSN: [redacted] Employee ID No.: Date Hired into Position: 10/16/2015
Worksite: TUMWATER Shift: DAY 2nd language used at home:

YES! I want to be a union member. I support participating for quality services and good jobs. I understand that as a WFSE member I will make our union stronger to protect public services and work together to improve pay, benefits and working conditions for all public employees.

Effective immediately, I hereby voluntarily authorize and direct my Employer to deduct from my pay each pay period, the amount of dues as set in accordance with the WFSE Constitution and By-Laws and authorize my Employer to remit such amount semi-monthly to the Union (currently 1.5% of my salary per pay period not to exceed the maximum). This voluntary authorization and assignment shall be irrevocable for a period of one year from the date of execution or until the termination date of the collective bargaining agreement (if there is one) between the Employer and the Union, whichever occurs sooner, and for year to year thereafter unless I give the Employer and the Union written notice of revocation not less than ten (10) days and not more than twenty (20) days before the end of any yearly period, regardless of whether I am or remain a member of the Union, unless I am no longer in active pay status in a WFSE bargaining unit, provided however, if the applicable collective-bargaining agreement specifies a longer or different revocation period, then only that period shall apply. This card supersedes any prior check-off authorization card I signed. I recognize that my authorization of dues deductions, and the continuation of such authorization from one year to the next, is voluntary and not a condition of my employment.

SIGNATURE: Donna Bybee DATE: 11/7/2017

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@wfsoc28 www.wfse.org @wfsoc28

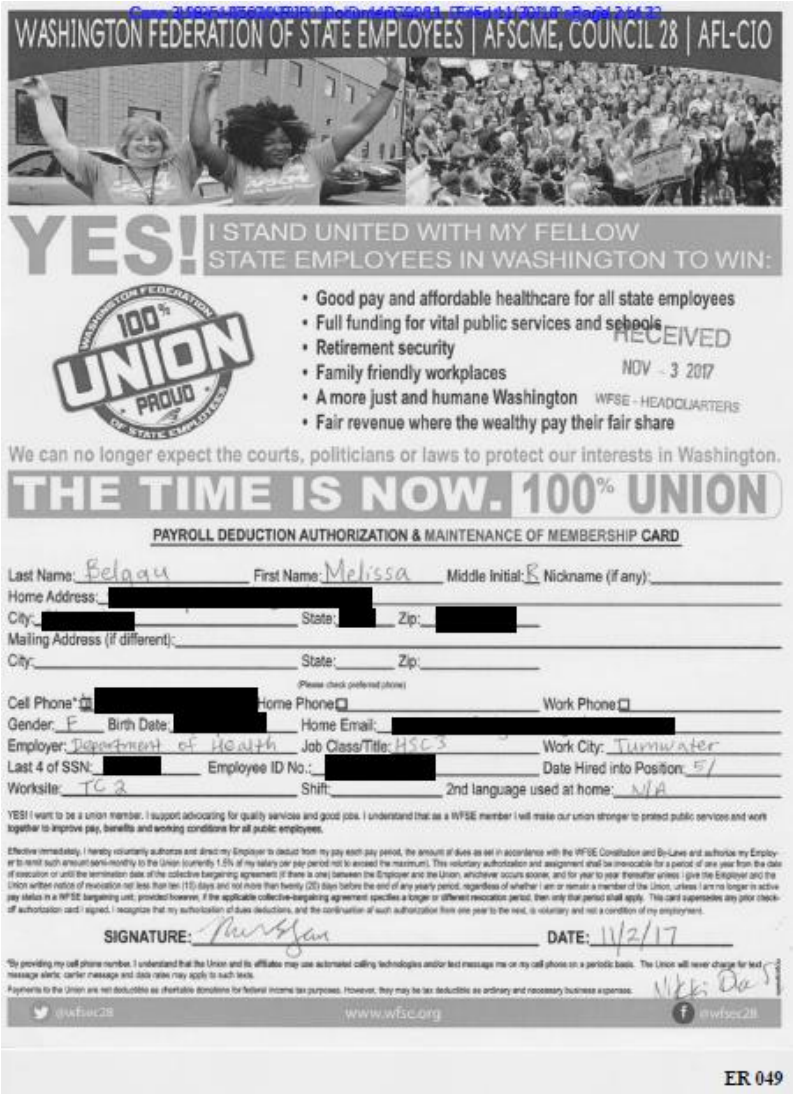
Elizabeth Turnbow

ER 047

ER 048

Exhibit 11

ER 049



WASHINGTON FEDERATION OF STATE EMPLOYEES | AFSCME, COUNCIL 28 | AFL-CIO

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THE TIME IS NOW. 100% UNION

PAYROLL DEDUCTION AUTHORIZATION & MAINTENANCE OF MEMBERSHIP CARD

Last Name: Belgau First Name: Melissa Middle Initial: R Nickname (if any):
Home Address: [redacted]
City: [redacted] State: [redacted] Zip: [redacted]
Mailing Address (if different):
City: State: Zip:
(Please check preferred phone)
Cell Phone* [redacted] Home Phone [redacted] Work Phone
Gender: F Birth Date: [redacted] Home Email: [redacted]
Employer: Department of Health Job Class/Title: HSC3 Work City: Tumwater
Last 4 of SSN: [redacted] Employee ID No.: [redacted] Date Hired into Position: 5/
Worksite: TC2 Shift: 2nd language used at home: N/A

YES! I want to be a union member. I support advocating for quality services and good jobs. I understand that as a WFSE member I will make our union stronger to protect public services and work together to improve pay, benefits and working conditions for all public employees.

Effective immediately, I hereby voluntarily authorize and direct my Employer to deduct from my pay each pay period, the amount of dues as set in accordance with the WFSE Constitution and By-Laws and authorize my Employer to remit such amount semi-monthly to the Union (currently 1.5% of my salary per pay period not to exceed the maximum). This voluntary authorization and assignment shall be irrevocable for a period of one year from the date of execution or until the termination date of the collective bargaining agreement (if there is one) between the Employer and the Union, whichever occurs sooner, and for year to year thereafter unless I give the Employer and the Union written notice of revocation not less than ten (10) days and not more than twenty (20) days before the end of any yearly period, regardless of whether I am or remain a member of the Union, unless I am no longer in active pay status in a WFSE bargaining unit, provided however, if the applicable collective-bargaining agreement specifies a longer or different revocation period, then only that period shall apply. This card supersedes any prior check-off authorization card I signed. I recognize that my authorization of dues deductions, and the continuation of such authorization from one year to the next, is voluntary and not a condition of my employment.

SIGNATURE: [signature] DATE: 11/2/17

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Nikki Da

@wfsec28 www.wfsc.org @wfsec28

ER 049

* * * * *