No. 22-____

IN THE

Supreme Court of the United States

KRISTINE KURK, *an individual*,

Petitioner,

v.

LOS RIOS CLASSIFIED EMPLOYEES ASSOCIATION, *et al.*,

Respondents.

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

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

California law requires Kristine Kurk to maintain her union membership as a condition of public employment. Kurk attempted to resign her union membership on September 13, 2018. It is undisputed that her public employer refused to honor the resignation based on California statute. It is also undisputed that the union refused to permit her to resign based on the collective bargaining agreement with her public employer, the relevant terms of which were authorized and controlled solely by the same state statute.

This system violates the freedom of association of all employees subjected thereto by compelling membership in an inherently political organization.

The question presented is:

Does the First Amendment protect a public employee's right to resign union membership at will?

PARTIES TO THE PROCEEDINGS AND RULE 29.6

Petitioner Kristine Kurk was the plaintiff-appellant in the court below. Respondents Los Rios Classified Employees Association (the "Union"), the Los Rios Community College District (the "District"), and Attorney General Rob Bonta (the "State") were defendants-appellees below. Because Kurk is not a corporation, a corporate disclosure statement is not required under Supreme Court Rule 29.6.

RULE 14.1(b)(iii) STATEMENT OF ALL RELATED CASES

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

1. *Kurk v. Los Rios Classified Employees Ass'n, et al.*, No. 2:19-cv-00548, U.S. District Court for the Eastern District of California. Judgment entered May 19, 2021.

2. *Kurk v. Los Rios Classified Employees Ass'n, et al*, No. 21-16257, U.S. Court of Appeals for the Ninth Circuit. Judgment entered August 24, 2022.

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PETITION FOR WRIT OF CERTIORARI

Petitioner Kristine Kurk respectfully petitions this Court for a Writ of Certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit in the following case: *Kurk v. Los Rios Classified Employees Association, et al.*, 21-16257, (9th Cir. Aug 2022).

OPINIONS

The district court's order granting the Respondents' motions for summary judgment is reported at 540 F. Supp. 3d 973 and reproduced at Pet.App. 4a. The Ninth Circuit's memorandum opinion affirming that order is unreported and reproduced at Pet.App. 1a.

JURISDICTION

The judgment of the Ninth Circuit in this case was entered on August 24, 2022. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS AT ISSUE

The First Amendment to the United States Constitution and California Government Code §§ 3540.1 and 3543.2 are reproduced at Pet.App. 20a-22a.

INTRODUCTION AND SUMMARY OF REASONS TO GRANT THE PETITION

Absent this Court's intervention, states may force public employees to remain union members indefinitely, simply because the employees became union members at some point – in this case, a quarter-century ago.

Whether a state may compel its employees to remain union members against their objection is an

important, and unanswered, federal question. The right to resign union membership is foundational to other employee rights, such as freedom from union discipline or compelled speech. Left unreviewed, the Ninth Circuit's decision permits a union, by statute and collective bargaining agreement ("CBA"), to force an employee like Kurk to associate with a union against her will in perpetuity.

For this reason, the petition for writ of certiorari to the Ninth Circuit should be granted.

STATEMENT OF THE CASE

California Government Code §§ 3540.1 and 3543.2 and a CBA between a union and the public employer compel objecting employees to remain members of a union pursuant to a union security clause that requires "maintenance of membership."

A. Factual background

Respondent Los Rios Classified Employees Association (the "Union") and her employer refused to let Kristine Kurk resign membership in the Union.

Kurk is an employee benefits technician employed by the Los Rios Community College District. Twenty-five years ago, Kurk authorized her employer, the District, to deduct union dues from her paycheck by signing a "Dues Check-off Form." The form contained no restrictions on resigning union membership or withdrawing authorization to dues deductions:

DUES CHECK-OFF FORM LOS RIOS CLASSIFIED EMPLOYEES ASSOCIATION (LRCEA)

TO BE COMPLETED BY ALL LOS RIOS COMMUNITY COLLEGE DISTRICT "WHITE COLLAR" BARGAINING UNIT MEMBERS (LRCCD/LRCEA CONTRACT ARTICLE 4).

KRISTINE KURK — ACCT CLERK III — D.O. — [redacted]

EMPLOYEE NAME — JOB TITLE — WORK LOCATION — SOCIAL SECURITY NO.

PAYROLL DEDUCTION OPTIONS:

* ☒ UNION MEMBERSHIP DEDUCTION: $14.00 (13.00) PER MONTH, OR CURRENTLY AUTHORIZED DUES RATE

* ☐ NON-MEMBERSHIP, AGENCY SERVICE FEE DEDUCTION: $14.00 (13.00) PER MONTH, OR CURRENTLY AUTHORIZED DUES RATE

* REGULAR EMPLOYEES, WORKING MORE THAN 50% PAY $14.00 PER MONTH FOR EACH MONTH WORKED, OR PORTION THEREOF;
* REGULAR EMPLOYEES, WORKING 50% OR LESS, PAY $10.00 (9.00) PER MONTH FOR EACH MONTH WORKED, OR PORTION THEREOF;

Kristine Kurk — 6/24/97

EMPLOYEE SIGNATURE — DATE

☐ APPLICATION FOR RELIGIOUS CONSCIENTIOUS OBJECTOR STATUS: $14.00 PER MONTH, OR CURRENTLY AUTHORIZED DUES RATE DEDUCTION TO AUTHORIZED NON-RELIGIOUS CHARITABLE ORGANIZATION -- (SEPARATE FORM).

EMPLOYEE AGREES TO PROVIDE DOCUMENTATION OF CLAIM WITHIN THIRTY (30) DAYS TO LRCEA OR AGENCY SERVICE FEE DEDUCTION BECOMES EFFECTIVE.

EMPLOYEE SIGNATURE — DATE

[redacted]

(Rev. 1/1/87)

Twenty years later, the District entered into a CBA with the Union effective from July 1, 2017, through June 30, 2020. Pet.App. 23a. Section 3.1.2 of the CBA provides that each employee who is a member of the Union on the effective date of the CBA *must remain a member* of the Union "for the duration of this Agreement and in accordance with the EERA [California Educational Employment Relations Act]." Pet.App. 23a-24a.

The EERA establishes collective bargaining in California's public school system, authorizing collective bargaining on specific subjects. These include, inter alia, wages, hours of employment, and "organizational security." Cal. Gov't Code § 3543.2(a)(1). Organizational security is defined as an arrangement pursuant to which an employee is required, as a condition of continued employment, to "maintain his

or her membership in good standing for the duration of the written agreement." Cal. Gov't Code § 3540.1(i)(1).[1]

On September 13, 2018, Kurk provided written notice to the Union that she resigned membership. Both the Union and the District prohibited her from resigning membership, relying on California Government Code §§ 3543.2 and 3540.1, which allow the state to enforce the union security provision in section 3.1.2 in the CBA. Thus, the District and Union compelled Kurk to maintain union membership, remain subject to union discipline, and pay dues for twenty-one months, until the CBA expired. Pet.App. 23a-24a.

B. Proceedings below

Kurk filed a lawsuit on March 28, 2019, under 42 U.S.C. § 1983 seeking, inter alia, injunctive and declaratory relief from Respondents' compelled association, a declaration that California Government Code § 3540.1 is unconstitutional, and damages caused by Respondents' compelled wage deductions.

After discovery, it was undisputed that the Union and the District rejected Kurk's resignation based solely on the CBA and the statute. Nevertheless, the district court denied Kurk's motion for summary judgment and granted Respondents' motions for summary judgment, without analyzing whether Kurk had a constitutional right to resign from the Union. Instead, the Court ruled that the Union was not liable because "the state was not a party to plaintiff's private agreement with [the Union]." Pet.App. 17a. The court never stated what this private agreement was, but Kurk never entered into a "private agreement" with

[1] As discussed further in Section I(C), *infra*, several other states have similar "maintenance of membership" statutes.

the Union that would compel continued membership. The "dues check-off" Kurk signed in 1997 was not an agreement to maintain union membership; nor was it an agreement with the Union at all. It was, at most, her authorization *to the District* for the method of dues deductions.

On August 24, 2022, in an unpublished opinion, the Ninth Circuit affirmed the district court's grant of summary judgment in favor of the Union and the State. Pet.App. 2a-3a. Like the district court, the Ninth Circuit disregarded that Kurk's dues check-off contained no restrictions on her right to resign union membership, and was at most a bare-bones authorization for the District to deduct union dues from her wages. Instead, the Ninth Circuit simply held that Kurk's "continued union membership and the deduction of union membership dues arose from the private membership agreement [again, never specified] between the union and Kurk" and that it did not trigger any "constitutional scrutiny" at all. Pet.App. 2a.

REASONS FOR GRANTING THE PETITION

I. WHETHER THE FIRST AMENDMENT PROTECTS A PUBLIC EMPLOYEE'S RIGHT TO RESIGN UNION MEMBERSHIP IS AN IMPORTANT FEDERAL QUESTION.

No federal court has held that a public employee has the right to resign from a union. Upon hire, an employee may forego rights to negotiate wages, hours, and working conditions in favor of a union, but the law may not compel membership in the union. If the employee decides to join the union, she still retains the right to leave the union.

Here, however, after Kurk sought to resign, a state statute and CBA compelled her to remain a member of

the Union. This violated Kurk's First Amendment right to freedom of association.

A. Whether a statutory scheme requiring maintenance of membership is unconstitutional is an important, and yet unanswered, federal question.

The First Amendment protects the right to free association, and the right to be free from coerced association. Specifically, "[d]isassociation with a public-sector union and the expression of disagreement with its positions and objectives therefore lie at 'the core of those activities protected by the First Amendment.'" *Abood v. Detroit Bd. of Ed.*, 431 U.S. 209, 258–59 (1977) (Powell, J., concurring). More generally, "the ability of like-minded individuals to associate for the purpose of expressing commonly held views may not be curtailed." *Knox v. Serv. Emps. Int'l Union, Loc. 1000*, 567 U.S. 298, 309 (2012). It is well established that the First Amendment right to associate for expressive purposes includes the right to disassociate from a particular group. *Roberts v. United States Jaycees*, 468 U.S. 609, 622 (1984) ("Freedom of association therefore plainly presupposes a freedom not to associate."). Notwithstanding Justice Powell's concurrence in *Abood*, no majority has explicitly recognized such a right to disassociate.

While no reported case has yet decided whether public sector employees have a right to disassociate from a union, in the private sector, union members have a clear right to resign union membership. Chief Justice Burger observed in *NLRB v. Granite State Joint Board, Textile Workers Union of America, Local 1029*, that "we have given special protection to the associational rights of individuals in a variety of contexts," including "in the specific context of our

national scheme of collective bargaining." 409 U.S. 213, 218 (1972) (Burger, C.J., concurring). Under § 8(a)(3) of the Taft-Hartley Act, the only aspect of union membership that can be required pursuant to a union shop agreement is the payment of dues. *See Radio Officers v. NLRB*, 347 U.S. 17 (1954) (union security agreements cannot be used for "any purpose other than to compel payment of union dues and fees"). "'Membership,' as a condition of employment, is whittled down to its financial core." *NLRB v. General Motors Corp.*, 373 U.S. 734, (1963). That is, "membership" does not require association, but merely monetary support. *Pattern Makers' League of N. Am. v. NLRB.*, 473 U.S. 95, (1985); *see also*, *Granite State Joint Bd.*, 409 U.S. at 217 ("when there is a lawful dissolution of a union-member relation, the union has no more control over the former member than it has over the man in the street."). When Kurk resigned, the Union should have had no more control over her than the man on the street.

It is consistent with neither the spirit nor the letter of the First Amendment for a government employer to force an employee to remain associated with a union through membership, when it would not be permitted in the private sector. But no federal court has so held, and the Ninth Circuit explicitly, or implicitly by refusing to so rule, does not recognize any such constitutional right. This Court should grant certiorari to recognize such a constitutional right.

B. This is a foundational issue for all other union membership, dues deduction, and related cases brought before federal courts.

Where a public employer and union, pursuant to state statute, enter into a contract to restrict free association rights by preventing union members from ever resigning membership, public employees across the country cease to have a meaningful right to freedom of association.

If an employee must remain a member, she may also be unable to avoid union discipline and may not be able to cease subsidizing union speech.

C. Maintenance of membership provisions are widespread and enduring.

California law provides for maintenance of membership provisions in other statutes aside from California Government Code §§ 3543.2 and 3540.1. For example, California Government Code § 3524.52(h) (applicable to judicial employees) and California Government Code §3513(i) (applicable to specified state employees including state administrative personnel) also provide for maintenance of membership.

Other states have taken a similar approach: under Pennsylvania Consolidated Statutes § 1101.705, "maintenance of membership" provisions like those present in the EERA in California, are specifically singled out as a proper subject of collective bargaining. Under another Pennsylvania code section, "all employees who have joined an employee organization or who join the employee organization in the future must remain members for the duration of a collective bargaining agreement," Pennsylvania Consolidated Statutes § 1101.301, and, under the Ninth Circuit's approach, are locked into membership as long as the government

employer and union decide to extend the CBA. Pennsylvania has enforced such requirements. *See Weyandt v. Pa. State Corr. Officers Ass'n*, No. 1:19-cv-1018, 2019 WL 5191103, at *2 (M.D. Pa. Oct. 15, 2019).

While Ohio does not explicitly permit maintenance of membership in its statutory scheme, the State Employment Relations Board has held maintenance of membership provisions are proper. *In re United Steelworkers of America*, State Emp. Rel. Bd. 89-009 (Ohio May 3, 1989) (upholding enforcement of duration of CBA); *see also Allen v. Ohio Civ. Serv. Emp. Ass'n AFSCME, Local 11*, 2020 WL 1322051 (S.D. Ohio March 20, 2020) (discussing a maintenance of membership provision).

Absent this Court's review of whether a statute can compel a public employee to associate with a union, states are free to force public employees to remain union members despite their objections, simply because these employees once agreed to become union members.

Worse still, many CBAs remain in effect for years, and often roll-over from year to year by mutual agreement of the employer and the union. This creates the possibility that a public employee may *never* be able to resign from union membership. In fact, in Kurk's case, on April 8, 2020, the Union informed Kurk that it and the District would be extending the CBA another six months, requiring her to continue to pay dues and maintain her membership until December 31, 2020. She was ultimately permitted to resign on June 30, 2020, despite the extension of the CBA, because she had filed suit.

Congress, in its wisdom, foresaw a related problem in the private sector and sought to protect employees

from endless schemes by limiting the effectiveness of union applications to a year. *See*, 9 U.S.C. § 186(c)(4); *SeaPak v. Indus., Tech. & Pro. Emp., Div. of Nat'l Mar. Union,* 300 F. Supp. 1197, 1201 (S.D. Ga. 1969), *aff'd sub nom. Seapak v. Indus., Tech. & Pro. Emps.*, 423 F.2d 1229 (5th Cir. 1970), *aff'd sub nom. Sea Pak v. Indus. Tech. & Pro. Emps.*, *Div. of Nat. Mar. Union,* 400 U.S. 985, (1971) ("A union is thus permitted to bargain for and receive a checkoff of dues under authorizations which may be irrevocable for as long as one year.").

Protection of the freedom of association rights of public employees requires that they be allowed to resign their union membership. This is especially apparent where, as here, the employee never agreed to any restriction on this right. This is an important and unresolved federal question appropriate for review by this Court.

II. THIS PETITION PRESENTS AN IDEAL VEHICLE TO ADDRESS THE NARROW QUESTION PRESENTED

The instant petition is the cleanest presentation of the identified constitutional question: whether a public sector employee can resign from a union at will.

A. This petition addresses only a narrow question.

This petition addresses only the narrow question whether public employees can resign union membership at will. Answering this question will not disrupt the state labor system in California or anywhere else, and leaves entirely intact the ability of unions to enforce otherwise lawful private membership agreements. This petition does not raise issues concerning

the validity of exclusive representation, or the issue of dues deduction as coerced speech.

B. The record in this case is fully developed.

The record below is robust and fully developed. The underlying case had the benefit of full discovery, rather than resolution on motions to dismiss. The issues are appropriate for review on appeal because all sides were given the opportunity to gather evidence, prepare a statement of undisputed facts, and submit cross motions for summary judgment. As noted, the Ninth Circuit held that Kurk's First Amendment free association claims did not even merit constitutional scrutiny, despite the statute and the CBA trapping her in the Union for twenty-one months against her will.

C. This dues checkoff card does not affect the analysis.

Lastly, this case is ideal for review because there is no question of consent or waiver through a private agreement. The First Amendment protection against compelled union membership may be waivable in theory, but Kurk never signed an agreement with the Union restricting her ability to resign union membership, avoid union discipline, or stop paying union dues, all of which the Union compels here.

1. As a matter of law, a dues check-off card does not limit resigning membership.

A dues check-off card alone does not constitute an agreement to maintain membership – it is only an agreement as to the method by which the employer may deduct dues payments from the employee. *Int'l Bhd. of Elec. Workers, Loc. No. 2008 and David D. May,* 302 N.L.R.B. 322, 328 (1991) ("[W]e will construe

("[W]e will construe language relating to a checkoff authorization's irrevocability…*as pertaining only to the method by which dues payments will be made* so long as dues payments are properly owing.") (emphasis added); *see also*, Robert A. Gorman & Matthew W. Finkin., Labor Law Analysis and Advocacy § 28.13 (2013) ("The checkoff is a relatively mild form of union security, for it *does not require* that an employee join or *remain a member* of a union, or pay union dues.") (emphasis added).

2. This specific 1997 card contains no language restricting Kurk's right to resign membership.

Here, Kurk did not sign a "membership agreement" with the Union, or even a "dues deduction agreement." Rather, she signed a "dues check-off form" which constituted an agreement between Kurk and her employer, *not* Kurk and the Union. Pet.App. 25a. In fact, Kurk's only options on the dues check-off card related to "Payroll Deduction Options" of $13 per month for a "union membership deduction" and $13 per month for a "non-membership, agency service fee deduction." *Id*. Kurk's dues check-off card only granted permission *to her employer* to deduct dues from her paycheck in the amount a union member's dues would be deducted. *Id*. And it placed no restriction on her ability to withdraw her authorization.

3. First Amendment protections are triggered when a state authorizes a union to compel employees to associate with the union.

In the case at bar, only a state statute and CBA compel association in the form of membership, and it is well-established by this Court that First Amendment protections against coerced association are undoubtedly

triggered when the state grants its coercive powers to a union to compel association. *See Janus v. Am. Fed'n. of State, Cnty. & Mun. Emps, Council 31*, 138 S. Ct. 2448, 2486 (2018) (applying constitutional scrutiny to compelled association scheme in Illinois law and CBA); *see also*, *Harris v. Quinn*, 573 U.S. 616, (2014); *Knox*, 567 U.S. at 314; *Chicago Teachers Union, Local No. 1 v. Hudson*, 475 U.S. 292, 308 (1986); *Abood*, 431 U.S. at 234. Contrary to the Ninth Circuit's reasoning below, "constitutional scrutiny" is "triggered" when a statute and CBA compel association, whether in the form of union membership, union discipline, or dues payments, all of which the California state system compels here. Pet.App. 2a.

If this set of facts does not merit constitutional scrutiny, it is difficult to imagine any set of facts that would implicate these issues. The petition should be granted.

CONCLUSION

For the foregoing reasons, the petition for writ of certiorari to the Ninth Circuit should be granted.

Respectfully submitted,

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November 22, 2022

APPENDIX

APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

[Filed: August 24, 2022]

No. 21-16257
D.C. No. 2:19-cv-00548-KJM-DB

KRISTINE KURK,

Plaintiff-Appellant,

v.

LOS RIOS CLASSIFIED EMPLOYEES ASSOCIATION; *et al.*,

Defendants-Appellees,

and

SERVICE EMPLOYEES
INTERNATIONAL UNION LOCAL 620; *et al.*,

Defendants.

Appeal from the United States District Court
for the Eastern District of California
Kimberly J. Mueller, District Judge, Presiding

MEMORANDUM[*]

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

Submitted August 17, 2022[**]

Before: S.R. THOMAS, PAEZ, and LEE, *Circuit Judges*.

Kristine Kurk appeals from the district court's summary judgment in her 42 U.S.C. § 1983 action alleging a First Amendment claim arising out of union membership dues paid to Los Rios Classified Employees Association ("union"). We have jurisdiction under 28 U.S.C § 1291. We review de novo cross-motions for summary judgment. *JL Beverage Co., LLC v. Jim Beam Brands Co.*, 828 F.3d 1098, 1104 (9th Cir. 2016). We affirm.

The district court properly granted summary judgment on Kurk's First Amendment claim for damages because Kurk's continued union membership and the deduction of union membership dues arose from the private membership agreement between the union and Kurk, and "private dues agreements do not trigger state action and independent constitutional scrutiny." *Belgau v. Inslee*, 975 F.3d 940, 946-49 (9th Cir. 2020), *cert. denied*, 141 S. Ct. 2795 (2021) (discussing state action); *see id*. at 950-52 (concluding that the Supreme Court's decision in *Janus v. American Federation of State, County & Municipal Employees, Council 31*, 138 S. Ct. 2448 (2018), did not extend a First Amendment right to avoid supporting the union and paying union dues that were agreed upon under voluntarily entered membership agreements); *Knutson v. Sirius XM Radio*

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

Inc., 771 F.3d 559, 565 (9th Cir. 2014) (discussing mutual assent).

Kurk's claims for prospective relief are moot. Kurk is no longer a member of the union, defendants stopped deducting union membership dues or enforcing the challenged statutes, and defendants demonstrated that they are unlikely to rescind the policy changes. *See Friends of the Earth, Inc. v. Laidlaw Env't Servs. (TOC), Inc.*, 528 U.S. 167, 189-90 (2000) (explaining voluntary cessation and mootness); *Bain v. Cal. Teachers Ass'n*, 891 F.3d 1206, 1211-14 (9th Cir. 2018) (explaining that plaintiffs' claims for prospective relief were moot when they resigned their union membership and presented no reasonable likelihood that they would rejoin the union in the future); *cf. Thomas v. Anchorage Equal Rts. Comm'n*, 220 F.3d 1134, 1139 (9th Cir. 2000) (en banc) (explaining that the mere existence of a proscriptive statute does not create a constitutionally sufficient direct injury).

AFFIRMED.

APPENDIX B

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

[Filed May 18, 2021]

No. 2:19-cv-00548-KJM-DB

KRISTINE KURK,

Plaintiff,

v.

LOS RIOS CLASSIFIED EMPLOYEES ASS'N, *et al.*,

Defendants.

ORDER

Plaintiff Kristine Kurk ("Kurk"),[1] defendant Los Rios Classified Employees Association ("LRCEA") and defendant Xavier Becerra,[2] in his official capacity as California Attorney General, each have filed a motion for summary judgment. For the following reasons, the

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[1] The court notes Susan Shroll is also identified as a plaintiff in the filed complaint, ECF No. 1. On June 2019, Shroll entered a voluntary dismissal of all her claims and she is no longer part of this action. *See* ECF No. 23.

[2] Rob Bonta was sworn in as the Attorney General of California on April 23, 2021 and is hereby substituted as a defendant in place of Xavier Becerra. *See* Fed. R. Civ. P. 25(d); Office of Governor Gavin Newsom, "Governor Newsom Swears in Rob Bonta as Attorney General of California" (Apr. 23, 2021), https://www.gov.ca.gov/2021/04/23/governor-newsom-swears-in-rob-bonta-as-attorney-general-of-california/, last visited May 12, 2021.

court grants defendants' motions. Plaintiff's motion is denied as moot.[3]

I. BACKGROUND

Kurk is a "public school employee" with Los Rios Community College District ("defendant school district"). Compl. ¶¶ 2–3, ECF No. 1. On June 24, 1997, Kurk signed a document titled, "Dues Check Off Form." Jt. Stip., Ex. A ("Dues Check Off Form") at 1, ECF No. 38-7. This Dues Check Off Form expressly stated three options, as follows:

> (1) Union Membership Deduction: ~~$14.00~~[4] $13.00 per month, or currently authorized dues rate; (2) Non-Membership, Agency Service Fee Deduction: ~~$14.00~~ $13.00 per month, or currently authorized dues rate . . .; and (3) Application for Religious Conscientious Objector Status: $14.00 per month, or currently authorized dues rate deduction to authorized non-religious charitable organization – (separate form).

Dues Check Off Form at 1. Kurk selected "Union Membership Deduction," to become a member of

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[3] On March 13, 2020, the court related this matter to *Woltkamp v. Los Rios Classified Employees Ass'n, et al*., Case No. 2:20-00457 (E.D. Cal.). *See* Related Case Order, ECF No. 33. At hearing on the motions addressed by this order, the parties clarified the issues and facts here are virtually identical to those in *Woltkamp*, except for the dates when the respective plaintiffs joined the LRCEA: Kurk joined in 1997 and Woltkamp in 2017. The court recently has issued a separate order in Woltkamp, addressing motions to dismiss and for judgment on the pleadings. *See* Case No. 2:20-00457, ECF No. 50.

[4] The original note has a handwritten interlineation through the typewritten dues amounts, and the proper dues amount is handwritten. *See generally* Dues Check Off Form.

LRCEA, signed and dated the Dues Check Off Form. *Id*. On July 1, 2017, defendant school district[5] extended its Collective Bargaining Agreement ("CBA") with LRCEA as the exclusive representative for Kurk's bargaining unit, effective July 1, 2017 through June 30, 2020. Compl. ¶¶ 22–23. LRCEA has represented Kurk since June 24, 1997. *See* LRCEA's Admis. at 6, ECF No. 43-4.

The CBA provides in pertinent part:

> The organizational security provisions described in this article of the Agreement constitute an Agency Shop. Within thirty (30) calendar days of the effective date of this Agreement or the employee being employed into a position in the Bargaining Unit, whichever comes first, each employee shall either join LRCEA as a member and pay its membership dues ("dues"), remain a non-member of LRCEA and pay the fair share service fee ("fee") it charges, or, if qualified pursuant to Section 3546.3 of the [Educational Employment Relations Act] EERA, pay the charitable contribution required by this Agreement.

CBA § 3.1.1 at 13, ECF No. 38-9 (bracketed text added).

California's EERA expressly authorizes the collection of agency fees as follows:

> Notwithstanding any other provision of law, upon receiving notice from the exclusive representative of a public school employee who is in a unit for which an exclusive

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[5] The court notes defendant Los Rios Community College District has not moved for summary judgment. *See* note 6 *infra*.

> representative has been selected pursuant to this chapter, the employer shall deduct the amount of the fair share service fee authorized by this section from the wages and salary of the employee and pay that amount to the employee organization . . .

Cal. Gov't Code § 3546(a); *see also* Cal. Gov't Code § 3540.1(i)(1).

A separate section of the CBA provides that "[e]ach employee who is a member of [LRCEA] on the effective date of this Agreement or who subsequently becomes a member of [LRCEA] shall, from that date forward, remain as a member of [LRCEA] and pay its dues for the duration of this Agreement and in accordance with the EERA." CBA § 3.1.2 at 13 (brackets added).

In June 2018, the Supreme Court decided *Janus v. AFSCME*, 138 S. Ct. 2448 (2018), holding that payments to unions could not be collected from public employees without the employees' affirmative consent. On September 13, 2018, after learning of the Supreme Court's decision in *Janus*, Kurk sent LRCEA a written notice requesting to end her union membership and revoke her previous authorization for dues deductions. Compl. ¶ 27. LRCEA informed Kurk she would have to remain a union member unless she resigned within the 30-day period following the expiration of the CBA in June 2020. *See Id*. ¶ 28; *see also* LRCEA Response at 4, ECF No. 38-10. Kurk alleges LRCEA relied on the EERA to compel her to remain a union member and continued to deduct union dues from her paychecks each pay period, without her consent. *See* Compl. ¶¶ 28–30.

On March 28, 2019, Kurk filed this suit. After the suit was filed, LRCEA ultimately confirmed Kurk was

discharged from union membership, effective July 1, 2020. *See* Bartholome Decl. ¶ 5, ECF No. 45-1. In the complaint, Kurk names LRCEA, the defendant community college district and its President of the Board of Trustees John Knight,[6] alleging deprivation of her First and Fourteenth Amendment rights to refrain from subsidizing the union's speech through dues, without adequate consent as provided in *Janus*. *See* Compl. ¶¶ 43–46, 52. Kurk alleges these defendants violated her First Amendment rights in three ways: (1) deducting LRCEA's dues from her paychecks; (2) claiming the authority to prevent her resignation from LRCEA at a time of her choosing; and (3) enforcing LRCEA's revocation policy with respect to her dues deductions. Compl. ¶¶ 6, 53. In her complaint, Kurk also names the Attorney General and mounts a facial and as-applied challenge to Cal. Gov't Code §§ 3540.1(i)(1) and 3546(a), *see id.* ¶¶ 21 & 24, asserting these statutes violate her right to free speech and association, *id*. ¶ 45. Kurk seeks a permanent injunction prohibiting LRCEA from enforcing the "Maintenance of Membership" provision in the CBA, a judgment declaring the Cal. Gov't Code §§ 3540.1(i)(1) and 3546 violate her First and Fourteenth Amendment rights under the United States Constitution, as well as monetary damages for the alleged violation of her First Amendment rights and recovery of all dues deducted from her wages since her resignation from

[6] Defendant community college district and Knight entered a stipulation with plaintiff whereby the district remains as a defendant but would "not oppose or otherwise contest the allegations or underlying legal theories in the Complaint." Stip. at 2, ECF No. 17. In exchange, plaintiff waives her right to recover attorneys' fees and costs from the defendant community college district if she prevails. *Id.*

LRCEA and attorneys' fees and costs under 42 U.S.C. § 1988. Compl. at 10–11 (Prayer for Relief).

Three motions are pending in this case: (1) Kurk's motion for summary judgment ("Kurk MSJ"), ECF No. 37; (2) LRCEA's motion for summary judgment ("LRCEA MSJ"), ECF No. 38; and (3) the Attorney General's motion for summary judgment, accompanied by a request for judicial notice of the information linked to footnotes ("AG MSJ"), ECF No. 39. Finally, plaintiff filed a request for judicial notice ("Req. Judicial Not."), ECF No. 51.

On September 25, 2020, the court held a video-conference hearing on these motions. Shella Sadovnik and Mariah Gondeiro appeared on behalf of plaintiff, Monique Alonso appeared for LRCEA and Maureen Onyeagbako appeared on behalf of the California Attorney General. Following hearing, the court granted the parties leave to file supplemental briefing addressing: (1) two recent cases, *Belgau v. Inslee*, 975 F.3d 940 (9th Cir. 2020) and *Savas v. California State Law Enf't Agency*, No. 20-00032, 2020 WL 5408940 (S.D. Cal. Sept. 9, 2020), and (2) whether Kurk's First Amendment freedom of association claim raises a question of first impression not addressed by these recent decisions. *See* Minutes, ECF No. 56. The court's recent order in Woltkamp addresses the same issue of first impression raised by plaintiff here. *See* Case No. 2:20-00457, ECF No. 50.

The court submitted the matter after receiving supplemental briefing from Kurk ("Kurk Suppl. Br."), ECF No. 58, and objections from LRCEA, Obj., ECF No. 59. The Attorney General filed a notice of intent not to file supplemental briefing. *See* ECF No. 57. The court addresses all three pending motions here.

II. LEGAL STANDARD

A court will grant summary judgment "if . . . there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). The "threshold inquiry" is whether "there are any genuine factual issues that properly can be resolved only by a finder of fact because they may reasonably be resolved in favor of either party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250 (1986).

The moving party bears the initial burden of showing the district court "that there is an absence of evidence to support the nonmoving party's case." *Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986). If that party bears the burden of proof at trial, as plaintiff does here in establishing defendants' liability, it must "affirmatively demonstrate that no reasonable trier of fact could find other than for the moving party." *Soremekun v. Thrifty Payless, Inc.*, 509 F.3d 978, 984 (9th Cir. 2007). The burden then shifts to the nonmoving party, which "must establish that there is a genuine issue of material fact." *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 585 (1986). To carry their burdens, both parties must "cit[e] to particular parts of materials in the record . . . ; or show[ ] that the materials cited do not establish the absence or presence of a genuine dispute, or that an adverse party cannot produce admissible evidence to support the fact." Fed. R. Civ. P. 56(c)(1); *see also Matsushita*, 475 U.S. at 586 ("[The nonmoving party] must do more than simply show that there is some metaphysical doubt as to the material facts."). Moreover, "the requirement is that there be no *genuine* issue of *material* fact . . . . Only disputes over facts that might affect the outcome of the suit under the governing law

will properly preclude the entry of summary judgment." *Anderson*, 477 U.S. at 247–48 (emphasis in original).

In deciding a motion for summary judgment, the court draws all inferences and views all evidence in the light most favorable to the nonmoving party. *Matsushita*, 475 U.S. at 587–88. "Where the record taken as a whole could not lead a rational trier of fact to find for the non-moving party, there is no 'genuine issue for trial.'" *Id.* at 587 (quoting *First Nat'l Bank of Ariz. v. ECities Serv. Co.*, 391 U.S. 253, 289 (1968)).

A court may consider evidence as long as it is "admissible at trial." *Fraser v. Goodale*, 342 F.3d 1032, 1036 (9th Cir. 2003). "Admissibility at trial" depends not on the evidence's form, but on its content. *Block v. City of L.A.*, 253 F.3d 410, 418–19 (9th Cir. 2001) (citing *Celotex Corp.*, 477 U.S. at 324). The party seeking admission of evidence "bears the burden of proof of admissibility." *Pfingston v. Ronan Eng'g Co.*, 284 F.3d 999, 1004 (9th Cir. 2002). If the opposing party objects to the proposed evidence, the party seeking admission must direct the district court to "authenticating documents, deposition testimony bearing on attribution, hearsay exceptions and exemptions, or other evidentiary principles under which the evidence in question could be deemed admissible . . . ." *In re Oracle Corp. Sec. Litig.*, 627 F.3d 376, 385–86 (9th Cir. 2010). These rules are more stringently enforced when evidence is offered in support of a motion for summary judgment because "[v]erdicts cannot rest on inadmissible evidence." *Burch v. Regents of Univ. of Cal.*, 433 F. Supp. 2d 1110, 1121 (E.D. Cal. 2006) (alteration in original) (quoting *Gleklen v. Democratic Cong. Campaign Comm., Inc.*, 199 F.3d 1365, 1369 (D.C. Cir. 2000)). Courts are generally "much more

lenient" with the evidence of the party opposing summary judgment. *Scharf v. U.S. Atty. Gen.*, 597 F.2d 1240, 1243 (9th Cir. 1979).

The Supreme Court has also taken care to note that district courts should act "with caution in granting summary judgment," and have authority to "deny summary judgment in a case where there is reason to believe the better course would be to proceed to a full trial." *Anderson*, 477 U.S. at 255. A trial may be necessary "if the judge has doubt as to the wisdom of terminating the case before trial." *Gen. Signal Corp. v. MCI Telecommunications Corp.*, 66 F.3d 1500, 1507 (9th Cir. 1995) (quoting *Black v. J.I. Case Co.*, 22 F.3d 568, 572 (5th Cir. 1994)). This may be the case "even in the absence of a factual dispute." *Rheumatology Diagnostics Lab., Inc v. Aetna, Inc.*, No. 12-05847, 2015 WL 3826713, at *4 (N.D. Cal. June 19, 2015) (quoting *Black*, 22 F.3d at 572); *accord Lind v. United Parcel Serv., Inc.*, 254 F.3d 1281, 1285 (11th Cir. 2001).

III. ANALYSIS

A. Jurisdiction

The Attorney General challenges the court's jurisdiction to hear this matter on two grounds: standing and mootness. *See* AG MSJ at 15–18. If standing is lacking or the matter is moot, the court must dismiss for lack of jurisdiction. The court, however, finds it has jurisdiction to decide the merits of plaintiff's claims. "The existence of federal jurisdiction ordinarily depends on the facts *as they exist when the complaint is filed*." *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 571 n.4 (1992) (emphasis in original). Kurk filed her complaint in March 2019, based on LRCEA's continued deduction of membership dues, which continued, until July 2020, for nearly two years after her September 13, 2018

request to withdraw from LRCEA. *See* Compl. ¶¶ 28–30. Kurk had standing at the time she filed her complaint and a controversy existed providing for federal jurisdiction.

B. State Action

The same analysis applies to both the Attorney General's and LRCEA's motions for summary judgment. As discussed at hearing, "[t]o establish § 1983 liability, a plaintiff must show both (1) deprivation of a right secured by the Constitution and laws of the United States, and (2) that the deprivation was committed by a person acting under color of state law." *Chudacoff v. Univ. Med. Ctr. of S. Nevada*, 649 F.3d 1143, 1149 (9th Cir. 2011). To meet the second prong, a plaintiff must show "the State is *responsible* for the specific conduct of which the plaintiff complains." *Blum v. Yaretsky*, 457 U.S. 991, 1004 (1982) (emphasis in original). A court decides whether defendants were acting under state law by using a two-part test established in *Lugar v. Edmondson Oil Co.*, 457 U.S. 922, 939 (1982). First, the court asks, "whether the claimed deprivation has resulted from the exercise of a right or privilege having its source in state authority." *Id.* Second, the court asks whether defendants "may be appropriately characterized as 'state actors.'" *Id.* State action occurs when both questions are answered in the affirmative. *See Collins v. Womancare*, 878 F.2d 1145, 1151 (9th Cir. 1989) (citing *Lugar*, 457 U.S. at 937–39).

"The Supreme Court has articulated four tests to determine whether a non-governmental person's actions amount to state action: (1) the public function test; (2) the joint action test; (3) the state compulsion test; and (4) the governmental nexus test." *Tsao v. Desert Palace, Inc.*, 698 F.3d 1128, 1140 (9th Cir. 2012) (citation omitted). *See Bain v. California Teachers*

Ass'n, 156 F. Supp. 3d 1142, 1153 n.12 (C.D. Cal. 2015) ("Because satisfaction of one state action test can be sufficient the Court only analyzes the complained of conduct under Plaintiffs' strongest theory."). The court addresses the joint action, state compulsion and governmental nexus tests below; the court need not reach the public function test, *see Semerjyan v. Serv. Emps. Int'l Union Loc. 2015*, 489 F. Supp. 3d 1048, 1058 (C.D. Cal. 2020) (rejecting nearly identical statutory arguments; clarifying "Union is not a state actor under the public function test").

In *Polk v. Yee*, 481 F. Supp. 3d 1060, 1066 (E.D. Cal. 2020), this court analyzed analogous facts under the joint action test and found the state's fee deduction on behalf of the union did not render the union a state actor. This court joined the reasoning articulated in *Belgau*, 359 F. Supp. 3d at 1000, *aff'd*, 975 F.3d 940, 947 (9th Cir. 2020), and several other district court decisions in cases where plaintiffs consented to union dues but attempted to opt out of their union agreement after *Janus* was decided. *Belgau* analyzed whether continued union dues deductions from plaintiffs' paychecks amounted to state action and concluded they did not because the "source of the alleged constitutional harm" was the "particular private agreement" between the union and the employees, not a state statute or policy. 359 F. Supp. 3d at 947. The same reasoning applies here. Although there is a connection between the alleged constitutional violation and the alleged state action, plaintiff has not pled facts to show LRCEA acted "in concert" with the state to cause the deduction of dues and prevent her withdrawal from membership. *Id.*; *see Belgau*, 975 F.3d at 947 ("A joint action between a state and a private party may be found . . . [when] the government either (1) affirms, authorizes, encourages, or facilitates unconstitutional

conduct through its involvement with a private party, or (2) otherwise has so far insinuated itself into a position of interdependence with the non-governmental party, that it is recognized as a joint participant in the challenged activity." (internal quotations omitted)). Kurk's argument is unavailing, given the state's lack of involvement in the drafting and executing of LRCEA's agreement with Kurk.

LRCEA's refusal to immediately accept Kurk's resignation and cease paycheck deductions also does not constitute state action under the state compulsion test. Provisions of the state statutes applicable do not support a conclusion the State "exercised coercive power" over LRCEA or engaged in "overt or covert encouragement" to enforcement plaintiff's voluntary agreement. *Belgau*, 359 F. Supp. 3d 1000 at 1014 (internal quotations omitted); *see also Roberts v. AT&T Mobility LLC*, 877 F.3d 833, 845 (9th Cir. 2017) ("P]ermission of a private choice cannot support a finding of state action, and private parties [do not] face constitutional litigation whenever they seek to rely on some [statute] governing their interactions with the community surrounding them" (alterations in original) (internal quotations and citations omitted)). "[A]t the risk of stating the choice too simplistically, [plaintiff] is given the option of protecting free speech or of protecting her vote on the continuation or conditions of work, but not both." *Kidwell v. Transportation Commc'ns Int'l Union*, 946 F.2d 283, 286 (4th Cir. 1991). There is no state compulsion in this case.

Similarly, there is no governmental nexus. "Under the governmental nexus test, a private party acts under color of state law if there is a sufficiently close nexus between the State and the challenged action of the regulated entity so that the action of the latter may

be fairly treated as that of the State itself." *Naoko*, 723 F.3d at 996 n.13. "Constitutional deprivation caused by [a] private party involves state action if [the] claimed deprivation resulted from exercise of a right or privilege having its source in state authority." *Lopez v. Dep't of Health Servs*., 939 F.2d 881, 883 (9th Cir. 1991) (citing *Edmonson v. Leesville Concrete Co*., 500 U.S. 614 (1991)). The language of the EERA forecloses any possibility of such a finding here, given the plain and unambiguous meaning of the statutory language. *See Robinson v. Shell Oil Co.*, 519 U.S. 337, 340 (1997) (noting the analysis begins with the statutory text itself). Cal. Gov't Code § 3540.1(i)(1) provides as follows:

> (i) Organizational security is within the scope of representation, and means . . .
>
> (1) An arrangement pursuant to which a public school employee may decide whether or not to join an employee organization, but which requires him or her, as a condition of employment, if he or she does join, to maintain his or her membership in good standing for the duration of the written agreement. However, an arrangement shall not deprive the employee of the right to terminate his or her obligation to the employee organization within a period of 30 days following the expiration of a written agreement.

Id. This language expressly provides public school employees like plaintiff a choice "whether or not to join an employee organization" and does not impose a state requirement conditioning employment on payment of fees to a union regardless of an employee's choice. *Id*. In other words, only if an employee chooses to join a union, she may be required "to maintain . . . her

membership in good standing for the duration of the written agreement." *Id*. Plaintiff concedes she voluntarily agreed to union membership during her onboarding process when she personally signed the Dues Check Off Form as a new hire in 1997. *See* Dep. Tr. at 4:15–18, ECF No. 38-4 ("Q- . . . And would you agree that, by signing this form, you authorized the deduction reflected on Exhibit A [Dues Check Off Form]? A- Yes.") (brackets added). This authorization continued through every CBA since Kurk joined in 1997 through June 30, 2020, after *Janus* was decided. Compl. ¶¶ 22–23. She exercised the power to enter a contract with LRCEA that provided for representation as well as union membership and dues deductions. As the Ninth Circuit explained in *Belgau*:

> *Janus* does not address this financial burden of union membership. The Court explicitly cabined the reach of *Janus* by explaining that the [s]tates can keep their labor-relations systems exactly as they are—only they cannot force nonmembers to subsidize public-sector unions.

2020 WL 5541390, at *8 (citing *Janus*, 138 S. Ct. at 2485 n.27) (internal quotation and citation omitted).

Finally, plaintiff argues LRCEA could not have included the provision for maintenance of membership dues for the entire term of the CBA without California Government Code section 3540.1(i)(1) and related provisions in the EERA, which she says are "fairly attributable to the state." Kurk MSJ at 9 n.4 (citing Cal. Gov't Codes §§3540.1(i) and 3546). However, it is undisputed the state was not a party to plaintiff's private agreement with LRCEA. Counterstatement re Stip. Facts No. 6, ECF No. 49. *See Quezambra v. United Domestic Workers of Am. AFSCME Loc. 3930*,

445 F. Supp. 3d 695, 704 (C.D. Cal. 2020) (union deduction of membership dues does not meet any of the four tests). By electing to join the union and receive the benefits of membership, Kurk agreed to bear the financial burden of membership. *Belgau*, 2020 WL 5541390, at *7 ("This choice to voluntarily join a union and the choice to resign from it are contrary to compelled speech."). The court finds as a matter of law plaintiff cannot establish LRCEA is a state actor liable under § 1983. Conversely, the State as a matter of law cannot be liable for declaratory relief as plaintiff seeks. Prayer for Relief, § A.

Defendants' motions for summary judgment are granted.

IV. CONCLUSION

Because LRCEA continued to deduct union dues until the CBA expired, *see* Compl. ¶ 22, plaintiff has a claim for retrospective damages she may file in state court. Supplemental jurisdiction, is "a doctrine of discretion, not of plaintiff's right . . . decisions of state law should be avoided both as a matter of comity and to promote justice between the parties, by procuring for them a surer-footed reading of applicable law." *United Mine Workers of Am. v. Gibbs*, 383 U.S. 715, 726 (1966); *see also* 28 U.S.C. § 1367(c)(2). Here, the court exercises its discretion to decline supplemental jurisdiction over any contract-based claim for damages for dues paid by plaintiff from September 19, 2018 to July 1, 2020. *See Titan Global LLC v. Organo Gold Intern., Inc*., No. 12-2104, 2012 WL 6019285, at *11–12 (N.D. Cal. Dec. 2, 2012) (declining supplemental jurisdiction over claim requiring interpretation of agreement not at issue in other claims).

For the reasons set forth above, the court grants defendants' motions for summary judgment, ECF Nos. 38 & 39. Kurk's motion for summary judgment, ECF No. 37, is denied as moot. The Clerk of Court is directed to enter judgment for defendants and close case.

This order resolves ECF Nos. 37, 38, 39, 51.

IT IS SO ORDERED.

DATED: May 18, 2021.

/s/ K J Mueller
Chief United States District Judge

APPENDIX C

Constitutional and Statutory Provisions

U.S. Const. amend I

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

Cal. Gov't Code § 3540.1

As used in this chapter:

(i) "Organizational security" is within the scope of representation, and means either of the following:

(1) An arrangement pursuant to which a public school employee may decide whether or not to join an employee organization, but which requires him or her, as a condition of continued employment, if he or she does join, to maintain his or her membership in good standing for the duration of the written agreement. However, an arrangement shall not deprive the employee of the right to terminate his or her obligation to the employee organization within a period of 30 days following the expiration of a written agreement.

(2) An arrangement that requires an employee, as a condition of continued employment, either to join the recognized or certified employee organization, or to pay the organization a service fee in an amount not to exceed the standard initiation fee, periodic dues, and general assessments of the organization for the duration of the agreement, or a period of three years from the effective date of the agreement, whichever comes first.

Cal. Gov't Code § 3543.2

(a)(1) The scope of representation shall be limited to matters relating to wages, hours of employment, and other terms and conditions of employment. "Terms and conditions of employment" mean health and welfare benefits as defined by Section 53200, leave, transfer and reassignment policies, safety conditions of employment, class size, procedures to be used for the evaluation of employees, organizational security pursuant to Section 3546, procedures for processing grievances pursuant to Sections 3548.5, 3548.6, 3548.7, and 3548.8, the layoff of probationary certificated school district employees, pursuant to Section 44959.5 of the Education Code, and alternative compensation or benefits for employees adversely affected by pension limitations pursuant to former Section 22316 of the Education Code, as that section read on December 31, 1999, to the extent deemed reasonable and without violating the intent and purposes of Section 415 of the Internal Revenue Code.1

APPENDIX D

Los Rios Community College District Collective Bargaining Agreement with Los Rios Classified Employees Association, 3.1.2 (July 1, 2017-June 30, 2020)

* * *

Article 3: Organizational Security

3.1 Application to Employees in the Unit and LRCEA

The organizational security provisions described in this article of the Agreement apply to all employees in the Bargaining Unit, to LRCEA, and to the District pursuant to Section 3546 of the EERA.

3.1.1 *Agency Shop*

The organizational security provisions described in this article of the Agreement constitute an Agency Shop. Within thirty (30) calendar days of the effective date of this Agreement or the employee being employed into a position in the Bargaining Unit, whichever comes first, each employee shall either join LRCEA as a member and pay its membership dues ("dues"), remain a non-member of LRCEA and pay the fair share service fee ("fee") it charges, or, if qualified pursuant to Section 3546.3 of the EERA, pay the charitable contribution required by this Agreement.

3.1.2 *Maintenance of Membership*

Each employee who is a member of LRCEA on the effective date of this Agreement or who subsequently becomes a member

of LRCEA shall, from that date forward, remain as a member of LRCEA and pay its dues for the duration of this Agreement and in accordance with the EERA.

APPENDIX E

Dues Check-Off Form

DUES CHECK-OFF FORM LOS RIOS CLASSIFIED EMPLOYEES ASSOCIATION (LRCEA)

To be completed by all Los Rios Community College District "White Collar" Bargaining Unit members (LRCCD/LRCEA Contract Article 4).

KRISTINE KURK	ACCT CLERK III	D.O.	[redacted]
Employee Name	Job Title	Work Location	Social Security No.

Payroll Deduction Options:

* ☒ Union membership deduction: ~~$14.00~~ 13.00 per month, or currently authorized dues rate

* ☐ Non-membership, Agency Service Fee Deduction: ~~$14.00~~ 13.00 per month, or currently authorized dues rate

  * Regular employees, working more than 50% pay $14.00 per month for each month worked, or portion thereof;
  * Regular employees, working 50% or less, pay ~~$10.00~~ 9.00 per month for each month worked, or portion thereof;

Kristine Kurk — Employee Signature 10/24/97 — Date

☐ Application for religious conscientious objector status: $14.00 per month, or currently authorized dues rate deduction to authorized non-religious charitable organization -- (separate form).

Employee agrees to provide documentation of claim within thirty (30) days to LRCEA or Agency Service Fee deduction becomes effective.

Employee Signature Date

(Rev. 1/1/87)