No. 23-____

IN THE

Supreme Court of the United States

CHRISTOPHER DEERING,

Petitioner,

v.

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 18, *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

The questions presented are:

1. As a matter of first impression, whether the First Amendment protects a public employee's right to disassociate from a union—by resigning union membership and canceling dues payments—that must be waived before a government employer and union can compel the employee to remain a member, to continue paying union dues, or both, after he resigns union membership and attempts to withdraw authorization to dues payments.
2. Whether a local municipality is liable for damages if it unconstitutionally compels public employees to fund union political speech pursuant to a policy it chose to collectively bargain with a union that requires employees to continue paying union dues after they resign union membership and withdraw authorization to dues payments.
3. Whether a union acts "under color of law" when it instructs a government employer to deduct union dues from an employee's wages pursuant to a policy it collectively bargained with a government employer that requires employees to continue paying union dues after they resign union membership and withdraw authorization to dues payments.

PARTIES TO THE PROCEEDING AND RULE 29.6 STATEMENT

Petitioner Christopher Deering was the Plaintiff-Appellant in the court below.

Respondents International Brotherhood of Electrical Workers, Local 18; City of Los Angeles; Rob Bonta, in his official capacity as Attorney General of California; Brian D'Arcy, Gus Corona, Martin Marrufo, Rafael Lopez, Martin Adams, David Wright, and Richard Harasick, trustees of the Joint Safety and Training Institute were Defendant-Appellees in the court below.

Because the Petitioner is not a corporation, a corporate disclosure statement is not required under Supreme Court Rule 29.6.

STATEMENT OF RELATED PROCEEDINGS

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

1. *Deering v. International Brotherhood of Electrical Workers, Local 18, et al.*, No. 22-55458, United States Court of Appeals for the Ninth Circuit. Judgment entered October 23, 2023.

2. *Deering v. International Brotherhood of Electrical Workers, Local 18, et al.,* No. 2:21-cv-07447. United States District Court for the Central District of California. Judgment entered April 7, 2022.

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OPINIONS BELOW

The district court dismissed Petitioner's claims, *Deering v. International Brotherhood of Electrical Workers, Local 18, et al*., No. 21-07447 (C.D. Cal. April 7, 2022); the order is reproduced as Appendix D, Pet.App. 8a-23a. The Ninth Circuit affirmed the district court's dismissal of Petitioner's complaint in a memorandum opinion, reported as *Deering v. Int'l Bhd. of Elec. Workers, Loc. 18*, No. 22-55458, 2023 WL 6970169 (9th Cir. Oct. 23, 2023), reproduced as Appendix B, Pet.App. 2a-6a. The Ninth Circuit's order denying rehearing en banc is reproduced at Appendix C, Pet.App. 7a.

JURISDICTION

The Ninth Circuit issued its memorandum opinion on October 23, 2023. Pet.App. 2a-6a. This Court has jurisdiction pursuant to 28 U.S.C. § 1254. The Ninth Circuit denied Petitioner's petition for rehearing en banc on December 12, 2023. Pet.App. 7a. On February 28, 2024, Justice Kagan granted an extension of time within which to file this petition to and including May 10, 2024. Pet.App. 1a.

CONSTITUTIONAL AND STATUTORY PROVISIONS AT ISSUE

The Free Speech Clause of the First Amendment to the United States Constitution states, in pertinent part: "Congress shall make no law… abridging the freedom of speech…" The text of the First Amendment is reproduced as Appendix M, Pet.App. 58a.

42 U.S.C. § 1983 is reproduced as Appendix N, Pet.App. 59a.

California Government Code § 1157.12 is reproduced as Appendix O, Pet.App. 60a.

INTRODUCTION

This Court has never explicitly held that a public employee has a First Amendment right to disassociate from a union by resigning union membership and canceling dues payments. Such a holding is necessary to correct an improper rule of law created by the Ninth Circuit based on a misinterpretation of *Janus v. Am. Fed'n of State, Cnty., & Mun. Emps., Council 31*, 585 U.S. 878 (2018), which fosters compelled association and speech.

There is no better illustration of this need than Petitioner's case. Here, a government employer and union collectively bargained a compelled speech policy which forces employees to maintain financial support for the union through April 1 of each calendar year, even when the employee never agreed to restrict his right to resign union membership or cancel dues payments. Respondents applied this policy to Petitioner by deducting $778.50 in union dues from his wages without his affirmative consent over eight months *after* he resigned union membership and canceled authorization to the deductions.

The Ninth Circuit held that such policies fail to even *implicate* the First Amendment based on an unduly narrow interpretation of *Janus* which confines *Janus*' holding that public employees must "freely," "clearly," and "affirmatively" waive their First Amendment rights not to associate with or subsidize a union to only "nonmembers" who never joined the union at all. By so narrowly cabining *Janus*, the Ninth Circuit effectively created a new rule of law that the First Amendment does not protect a public employee's right to disassociate with a union. This rule is incompatible with the First Amendment and warrants this Court's review.

The decision below illustrates how the Ninth Circuit's new rule of law fosters compelled speech and association contrary to the First Amendment. It also illustrates how some courts evade *Janus* altogether by improperly absolving government employers and unions of liability for their unconstitutional conduct through threshold principles such as local municipality liability and the "state action" of unions. This makes the case an ideal vehicle for addressing the three important questions presented.

The Court should grant certiorari to hold for the first time that the First Amendment protects a public employee's right to disassociate from a union by resigning membership and canceling dues payments and, further, prevent courts from evading this holding by absolving government employers and unions of liability for violating this right.

STATEMENT OF THE CASE

"Compell[ing] subsidization of private speech seriously impinges on First Amendment rights" and "cannot be casually allowed." *Janus*, 585 U.S. at 894. Yet the City of Los Angeles ("the City") and the International Brotherhood of Electrical Workers, Local 18 ("IBEW") do exactly this by forcing city employees such as Petitioner Christopher Deering to subsidize IBEW's private political speech after they have attempted to resign union membership and cancel authorization for dues payments.

The Ninth Circuit routinely sanctions such compelled speech schemes in three ways. First, it limits the First Amendment protections articulated in *Janus* to only public employees who never joined the union at all. Second, it absolves local municipalities of liability under *Monell v. Dep't of Soc. Servs. of City of New York*, 436 U.S. 658 (1978). Third, it holds that unions

are not "state actors" under *Lugar v. Edmondson Oil Co.*, 457 U.S. 922, 929 (1982). The Ninth Circuit has come down on the wrong side of these three issues and thereby permits government employers and unions to compel employees to subsidize objectionable union political speech. The facts below squarely address all three matters.

A. Factual Background

Petitioner Christopher Deering ("Petitioner" or "Deering") began working as a customer service representative for the Los Angeles Department of Water & Power in 2005. Pet.App. 27a, ¶4. At that time, Deering signed a barebones dues checkoff form entitled "Payroll Deduction Authority for Payments to [IBEW]" that was drafted and maintained by the City. This dues checkoff form authorized the City to deduct money from his wages to be forwarded to IBEW. The form did not mention membership and explicitly gave Deering the right to withdraw authorization for the deductions *at any time*, stating that "this authorization shall be effective *until canceled by me* in writing." *Id.* at 48a (emphasis added).

Fifteen years later by written letter dated August 3, 2020, Deering resigned any implied union membership, canceled authorization for all dues deductions, and requested a copy of any dues checkoff form IBEW had on file. *Id.* at 49a-50a. IBEW responded by letter dated August 13, 2020, stating that it was "in receipt of your letter dated August 3, 2020 in which you resign from membership in the Union" but that dues deductions would continue through April 1, 2021 pursuant to a compelled speech policy agreed to by *the City and IBEW* in Article 8.5 of their collective bargaining agreement. *Id.* at 51a-52a. That article states, "Employees' requests to cancel their dues withholding authoriza-

tion agreement shall be processed by the Department to be effective on the ending of the first complete pay period following April 1 of each calendar year." *Id.* at 52a, 56a.[1] In other words, despite the agreement the City had with Deering which explicitly gave him the right to cancel dues payments at any time, the City had nonetheless agreed *with IBEW* behind Deering's back to contradictory terms that effectively restricted him from canceling dues payments until April 1 of each year ("April Fools Policy").

IBEW also stated in its letter that it had requested "on your behalf" a copy of the "payroll deduction authorization" drafted and maintained by the City. *Id.* at 52a. IBEW processed Deering's membership resignation, but the City continued its dues deductions pursuant to the CBA. *Id.* at 34a, ¶48. Five months later, neither the City nor IBEW had produced the City's dues checkoff form. *Id. at* 33a, ¶37; 34a, ¶45.

Deering sent a second letter by email on January 19, 2021, again requesting a copy of an authorization form. *Id.* at 53a. IBEW did not respond. IBEW did not produce a copy of the City's form until March 12, 2021 after Deering's counsel sent a demand letter dated February 22, 2021. *Id.* at 34a, ¶45; 54a-55a. From August 3, 2020, when he withdrew authorization, through April 2021, when the deductions finally ended, the City deducted a total of $778.50 in union dues from Deering's wages without his affirmative

[1] In California, an agreement in collective bargaining is called a "Memorandum of Understanding", or "MOU," but is the fully enforceable contract governing the relationship between the government and union. This petition uses the more common terms "collective bargaining agreement" or "CBA" to reference the agreement between the City and IBEW.

consent and forwarded it to IBEW pursuant to CBA Art. 8.5's April Fools Policy. *Id.* at 39a, ¶87.

B. Proceedings below

Deering filed this lawsuit on September 17, 2021 under 42 U.S.C. § 1983. He alleged, inter alia, that the City's compelled dues deductions from August 2020 through April 2021 violated his First Amendment right against compelled speech under *Janus*. Pet.App. 39a-45a. Deering sought damages from the City and IBEW in the form of the $778.50 in union dues the City deducted from his wages from August 2020 through April 2021 and forwarded to IBEW without his affirmative consent pursuant to CBA Art. 8.5. *Id.* at 39a, ¶87; 46a-47a.

The City and IBEW each filed Fed. R. Civ. P. 12(b)(6) motions to dismiss Deering's lawsuit for failure to state a claim. The district court granted both motions. The court ruled that the City was not liable for damages under *Monell*, 436 U.S. 658, because the City had not adopted any policy, practice, or custom of its own since Cal. Gov't Code § 1157.12 allegedly compelled the City to make the unauthorized deductions. Pet.App. at 18a-19a. The court also dismissed Petitioner's damages claim against IBEW because IBEW had supposedly not "engage[d] in state action" when it instructed the City to continue deducting dues from Deering's wages without his affirmative consent pursuant to the April Fools Policy Respondents agreed to in their CBA. *Id.* at 22a-23a.

The Ninth Circuit affirmed in all respects, holding that the City was not liable under *Monell* because its unauthorized deductions from Deering's wages were compelled by Cal. Gov't Code § 1157.12, despite the fact the statute does not require the City to deduct

IBEW's union dues through payroll deductions *at all*. More importantly, the statute does not limit the City's ability to process employees' dues cancellation requests to April 1 of each year, thereby restricting when employees may cancel dues payments. *See infra* at 19-20.

As to IBEW, the Ninth Circuit held that the union "did not engage in state action" because "any harm from the union deductions is caused by the union authorization form which Deering freely signed." Pet.App. 5a. The court also held that the City "transmitting dues payments to a union after an employee authorizes such deductions does not give rise to a section 1983 claim against the union under the 'joint action' test." *Id.* at 5a. The court never acknowledged that Deering did not "authorize[] such deductions" since the City's dues checkoff form gave Deering the right to cancel dues payments at any time. The City's unlawful deductions from Deering's wages were pursuant *only* to the CBA *between the City and IBEW* in which the City agreed to limit its processing of employees' withdrawals of dues deduction authorization to April Fools Day of each year. *See infra* at 20-22.

The Ninth Circuit further held on the merits that the City's $778.50 in unauthorized dues deductions between August 2020 and April 2021 "did not violate Deering's First Amendment rights since he voluntarily joined the union." *Id.* at 4a. In other words, the Ninth Circuit held that the deductions failed to violate Deering's *Janus* rights *not* because he explicitly *agreed* to restrict his ability to stop paying but, rather, because he had previously *joined the union* by signing

the City's dues checkoff form.[2] That lone fact, so the Ninth Circuit held, rendered the Constitution inapplicable and empowered the City and IBEW to unilaterally impose on Deering an April Fools Policy requiring him to continue subsidizing objectionable union speech as a nonmember another eight months after he resigned membership and canceled the deductions.

REASONS FOR GRANTING THE PETITION

The Court should grant certiorari because the Ninth Circuit's rule of law concerning public employees' right to disassociate from a union concerns "important question[s] of federal law" and "conflicts with relevant decisions of this Court." Sup. Ct. R. 10(c). To the extent the Ninth Circuit's rule does not conflict with this Court's decisions, the Court should grant certiorari because the Ninth Circuit's rule concerns an "important question of federal law that has not been, but should be, settled by this Court…" *Id*. Either way, this petition presents the Court with an opportunity to weigh in for the first time on whether the First Amendment protects the right of a public employee to disassociate from a union by resigning union member-

[2] Notably, the court did *not* hold that Deering agreed to restrict his right to disassociate with the union by signing a form that incorporated the CBA's compelled speech policy—a policy which contradicts the explicit language on the form. *See infra* at 4-5. The form also lacked any language that could be construed as waiving any rights (except perhaps a right to resign union membership and cancel dues payments *verbally*). *Id*.

ship and canceling dues payments. The Court should hold that it does.[3]

Courts have demonstrated—particularly the Ninth Circuit—that without such an explicit holding they will not take *Janus* seriously. Courts have either cabined *Janus* so narrowly that it applies to virtually no one in a post-*Janus* world or evaded *Janus* altogether by wrongfully deciding threshold issues related to local municipality liability and the "state action" of unions—or both, as in the decisions below. Pet.App. 4a-5a; 18a-19a, 22a-23a. The Ninth Circuit's holdings on these issues of great federal importance warrant this Court's review.

[3] To be sure, the petition argues that the Ninth Circuit's rule that public employees have no First Amendment right to disassociate from a union conflicts with *Janus*. To the extent this Court finds breathing room between *Janus* and a public employee's right to disassociate, however, the petition requests that the Court explicitly hold on a matter of first impression that the First Amendment protects a public employee's right to disassociate from a union by resigning membership and canceling dues payments. Either way, given the Ninth Circuit's decisions, *see infra* at 15, what is needed is an explicit holding this Court has never made that a First Amendment right to disassociate exists, whether it derives from *Janus* or elsewhere.

I. THE FIRST AMENDMENT PROTECTS A PUBLIC EMPLOYEE'S RIGHT TO DISASSOCIATE FROM A UNION BY RESIGNING MEMBERSHIP AND CANCELING DUES PAYMENTS. THE NINTH CIRCUIT CREATED A RULE TO THE CONTRARY THAT FOSTERS COMPELLED SPEECH AND CONFLICTS WITH THE FIRST AMENDMENT AND THIS COURT'S DECISIONS.

A. The First Amendment Protects a Public Employee's Right to Disassociate from a Union by Resigning Membership and Canceling Dues Payments.

Though this Court has never explicitly held that public employees have a right to disassociate from a union, the Court has "held time and again that freedom of speech includes both the right to speak freely and the right to refrain from speaking at all." *Janus*, 585 U.S. at 892 (emphasis added). Similarly, just as "the right to engage in activities protected by the First Amendment" comes with "a corresponding right to associate with others," *Ams. for Prosperity Found. v. Bonta*, 141 S. Ct. 2373, 2382 (2021), the right not to speak comes with a corresponding right not to be compelled to associate with or subsidize the speech of others. *Janus*, 585 U.S. 892-93; *Roberts v. U.S. Jaycees*, 468 U.S. 609, 623 (1984). Indeed, "…*[d]is*association with a public-sector union and the expression of disagreement with [a union's] positions and objectives … 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) (emphasis added).

The right to disassociate is the flipside of the same free speech coin which includes a right *to* speak and a right *not* to speak. The right to disassociate is simply the right not to speak exercised by someone who was previously speaking by subsidizing another's speech, i.e., associating with another. The interests protected by disassociation, then, are implicated whenever a government prevents someone from ceasing to speak which, in effect, compels continued speech. Such a policy would also compel association when the person speaking was doing so by subsidizing a private political organization, as is the case here. The right of a public employee to *dis*associate with a union exclusive representative should, therefore, include the ability to resign union membership and cancel dues payments.

Additionally, the right to "disassociate" encompasses not only the rights *against* compelled speech and association—the interests protected in *Janus*—but also the right *to* speak since canceling membership and stopping dues payments constitutes "the expression of disagreement with [the union's] positions and objectives." *Id*. After joining a union, *dis*associating is an employee's primary recourse for expressing disagreement with an exclusive representative he is otherwise bound by law to be represented by.[4]

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[4] The public employee finds herself in a precarious situation given governments commonly grant to unions special privileges such as exclusive representation, which is "a significant impingement on associational freedoms," *Janus*, 585 U.S. at 899, that necessarily entails "the loss of individual [employees'] rights." *Commc'ns Ass'n v. Douds*, 339 U.S. 382, 401 (1950). This along with other "special privileges" such as "obtaining information about employees" and "having dues and fees deducted directly from employees" wages "result[] in a tremendous increase in the power" of the union. *Janus*, 585 U.S. at 899. Protecting a right to

Indeed, the "right to *eschew* association for *expressive* purposes… is protected" by the First Amendment. *Janus*, 585 U.S. at 892 (emphasis added). This right is implicated whenever government restricts an employee's ability to express disagreement with the union by resigning membership and/or stopping dues payments, as Respondents did here.

To be sure, like other constitutional rights, the right to disassociate can be waived. But as this Court has repeatedly instructed—in the specific context of public sector employment—"[c]ourts do not presume acquiescence in the loss of fundamental rights." *Knox v. Service Emos. Int'l Union, Local 1000*, 567 U.S. 298, 312 (2012). "[T]o be effective, the waiver must be freely given and shown by 'clear and compelling' evidence"—i.e., the employee must "clearly and affirmatively consent." *Janus*, 585 U.S. at 930.[5]

Notwithstanding this Court's language in *Janus*, Justice Powell's concurrence in *Abood*, and the other precedents cited above, no majority has explicitly recognized a public employee's right to disassociate

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disassociate is vital given these impingements and privileges surely pressure employees to maintain union membership.

[5] Whether Deering *actually* waived his right to disassociate by agreeing to pay nonmember fees over his objection is secondary to whether Deering possesses a First Amendment right to disassociate in the first place. *See infra* at 29.

from a union by resigning membership and canceling dues payments. The Court should do so here.[6]

B. The Ninth Circuit's Rule that the First Amendment Does Not Protect a Public Employee's Right to Disassociate from a Union Fosters Compelled Association and Speech.

The Ninth Circuit claims that compelled speech policies, such as the one here, fail to even *implicate* the First Amendment—let alone violate it—when employees such as Deering have previously joined the union. Pet.App. 4a. Here, the only parties that agreed to relinquish Deering's First Amendment right against compelled union speech were *IBEW and the City*, who decided that any employee who ever joined IBEW should not be allowed to stop subsidizing IBEW until April 1 of each calendar year, regardless when they resign membership and cancel dues payments. Deering was thus forced "to subsidize speech by a third party that … [he] d[id] not wish to support" for eight months, *Harris v. Quinn*, 573 U.S. 616, 656 (2014), even though he never agreed to do so.

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[6] Deering brought a free speech claim (compelled speech) but did not plead a formal "freedom of association" claim since IBEW processed his membership resignation. The Ninth Circuit's rule, however, permits both compelled association (membership) and speech (dues payments). *See infra* at 15. The First Amendment's right to disassociate is broad enough to encompass both. Accordingly, Deering seeks a remedy equal in scope to the Ninth Circuit's unconstitutional rule. Moreover, although IBEW processed Deering's membership resignation, it did so purely voluntarily since the Ninth Circuit's rule tolerates compelled continued membership. Lastly, to be clear, Deering does *not* seek a constitutional right to voluntarily join a union without paying union dues.

The Ninth Circuit sanctioned this result based on a new rule it derives from its own previous decision in *Belgau v. Inslee*, 975 F.3d 940 (9th Cir. 2020), *cert denied*, 141 S. Ct. 2795 (2021), Pet.App. 4a; namely, that once an employee joins a union, no free, clear, or even affirmative consent is needed to force him to *continue* subsidizing that union.

In *Belgau*, the plaintiff employees tried to disassociate from the union but they had signed dues deduction authorization forms which explicitly made their authorization "irrevocable for a period of one year" from each yearly anniversary they signed the form. *Id*. at 945.[7] Rather than finding that the plaintiffs had explicitly waived their right against compelled speech for the one-year duration of the authorization form, however, the court issued a much more sweeping ruling. According to *Belgau*, *Janus'* holding that public employees must "freely," "clearly," and "affirmatively" waive their First Amendment rights not to associate with or subsidize a union applies only to "nonmembers" who never joined the union at all. *Id*. at 952. Thus, once one has chosen to join a union, the calculus changes dramatically in the Ninth Circuit, and an employee may be required to continue subsidizing a union without regard to whether the employee agreed to do so.

The Ninth Circuit believes "the world did not change" after *Janus* for those who "signed up to be union members." *Belgau*, 975 F.3d at 944. *See also Savas v. Cal. State L. Enf't Agency*, No. 20-56045, 2022 WL 1262014, at *1 (9th Cir. April 28, 2022), *cert denied sub nom. Savas v. Cal. Statewide L. Enf't Ass'n*., 143 S. Ct. 2430 (2023) (*Janus'* holding that the right not to associate with a union can be waived only "freely,"

[7] Like Petitioner here, the employees in *Belgau* successfully resigned union membership.

"clearly," and "affirmatively" is a right that "applie[s] to nonunion members only."). According to the Ninth Circuit, then, employees' rights revert back to *Abood's* pre-*Janus* regime the moment they join a union, which means they can be compelled to associate with and subsidize a union.

The Ninth Circuit's rule creates a reality much *worse* than the pre-*Abood* world of compelled agency fees. The instant case is a perfect example: Respondents compelled Deering to pay *full dues* rather than a reduced agency fee, which an objecting nonmember would pay under *Abood* and its progeny. Other examples include *Kurk v. Los Rios Classified Emps. Ass'n*, where an employee was compelled to maintain her union *membership* (and dues payments) leaving her subject to potential union discipline, No. 21-16257, 2022 WL 3645061, at *1 (9th Cir. Aug. 24, 2022), *cert. denied*, 143 S. Ct. 2431 (2023), and *Wright v. Serv. Emps. Int'l Union Loc. 503*, where employees *who never signed anything* were compelled to pay union dues based on union membership forms the union had forged. 48 F.4th 1112, 1121 (9th Cir. 2022), *cert. denied*, 143 S. Ct. 749 (2023). In each case the Ninth Circuit applied *Belgau* to conclude that these schemes do not even *implicate* the First Amendment. The only way this is possible is if there is no First Amendment right to disassociate with a union *at all*—which is exactly what the Ninth Circuit has repeatedly held by confining *Janus* to only "nonmembers" who never joined a union in the first place.

In the Ninth Circuit, the bare act of joining a union forfeits a public employee's right ever to disassociate from it. And in some cases, a union's mere *claim* that an employee joined a union forfeits the employee's right to dissociate from the union (even a forged form).

Consistency may be the "hobgoblin of little minds" but, here, the force of the Ninth Circuit's broad holding in *Belgau* led it to a rule of law utterly incompatible with the Constitution: for public employees, there is no constitutional right to ever disassociate from a union—whether by resigning membership or canceling dues payments. This rule fosters compelled association and speech because it allows government employers and unions to compel both.

C. The Ninth Circuit's Rule that the First Amendment Does Not Protect a Public Employee's Right to Disassociate from a Union Conflicts with *Janus v. AFSCME, Council 31*.

The Ninth Circuit's confinement of *Janus* to only "nonmembers" who never joined the union cannot be reconciled to *Janus'* letter or spirit. This Court has never held that a public employee's First Amendment rights are contingent upon not having previously joined a union. Nor did this Court intend for lower courts to distinguish between classes of "nonmembers" when applying *Janus'* requirement that clear and compelling evidence of a waiver be "shown" before "any" type of payment is deducted from a "nonmember's" wages (nonmembers who previously joined a union and those who have not). *Janus*, 585 U.S. at 929-30.

While the plaintiff in *Janus* was a public employee who had not agreed to join or contribute to the union in the first place, the First Amendment rights the Court recognized were not confined to similarly situated "nonmembers." The Court vindicated the rights of all "nonconsenting employees" not to be

forced to pay agency fees "or *any* other payment to the union." *Janus*, 585 U.S. at 930 (emphasis added). And rightly so, as "[d]isassociation with a public-sector union and the expression of disagreement with its positions and objectives … lie at the core of those activities protected by the First Amendment." *Abood*, 431 U.S. at 258 (Powell, J., concurring). *See supra* at 10-13.

If anything, then, the right to disassociate from a union is *more* critical than the right to associate with a union in the first place (by joining), because an employee cannot know in advance—and certainly not more than a decade in advance—every view the union may one day espouse or whether the employee could one day *change her own mind*. *See, e.g.*, *Knox*, 567 at 315 (the factors influencing employees' choices regarding unions may change due to unexpected developments).

The Ninth Circuit has never even tried to explain why waivers of the right to *dis*associate with a union should be governed by a different standard than waivers of the right not to associate with a union in the first place. Either way, the claim is that public employees have "waiv[ed] their First Amendment rights, and such a waiver cannot be presumed." *Id*. That rule holds no less sway when it comes to policies which compel post-membership dues payments than when it comes to forced subsidization of a union one never chose to join, as in *Janus*.

After *Janus*, governments and unions will not be so brash as to impose formal "agency fees" on public employees in the manner Illinois did to Mark Janus. But there are many ways to compel "nonmembers" to fund objectionable union speech, as this case demon-

strates. If this Court's requirement in *Janus* that clear and compelling evidence of a waiver be "shown" (presumably by an employer or union) before "any" type of payment is deducted from a nonmember's wages is to have any teeth at all, it must apply in this case. *See Janus*, 585 U.S. at 929-30. Otherwise, the requirement has no application at all in a post-*Janus* world.

II. THE NINTH CIRCUIT'S DECISION TO ABSOLVE THE CITY AND UNION OF LIABILITY FOR THEIR UNCONSTITUTIONAL CONDUCT CONFLICTS WITH THIS COURT'S DECISIONS.

This case provides the Court with the opportunity to address two loopholes courts created to evade *Janus* altogether. These loopholes conflict with this Court's precedent regarding the threshold principles of local municipality liability and the "state action" of unions.

A. The Ninth Circuit's Decision to Relieve the City of Liability for Unconstitutionally Compelling Union Dues Payments Conflicts with this Court's Decision in *Monell v. Dep't of Soc. Servs. of City of New York*.

The first loophole occurs when courts improperly absolve local municipalities of liability for their unlawful union dues deductions through *Monell,* 436 U.S. 658. The City is liable for damages under § 1983 if its unconstitutional dues deductions were based on its own officially adopted and promulgated policy. *Id*. at 690. This is satisfied here since the

City adopted and promulgated the CBA's April Fools Policy under which it unlawfully deducted dues from Deering's wages.[8] Cal. Gov't Code § 1157.12 does not require the City to deduct IBEW's union dues through payroll deductions *at all* and does not restrict when the City may process employees' dues deduction cancellations; nor does it require any such policy be agreed to in collective bargaining. *Id*. The statute left the City with "various alternatives" to choose from regarding these policies and the City did so. *City of Oklahoma City v. Tuttle*, 471 U.S. 808, 823 (1985).[9]

The statute grants IBEW the authority to instruct the City to deduct dues from an employee's wages, as the Ninth Circuit observed, Pet.App. 5a, (The City was "compelled to act by California law to rely on IBEW 18's certification that union dues were authorized."), but this requirement is triggered only *if* the City establishes its own policy of collecting dues on behalf of a union through payroll deductions in the first place, which is determined by a municipality's own discretion. *See* Cal. Gov't Code § 1157.12(a)

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[8] "Where a teachers' union for example, acting pursuant to a state statute authorizing collective bargaining in the public sector, obtains the agreement of the school board that teachers residing outside the school district will not be hired, the provision in the bargaining agreement to that effect has the same force as if the school board had adopted it by promulgating a regulation." *Abood*, 431 U.S. at 253 (Powell, Rehnquist, and Blackmun, JJ. concurring).

[9] Deering does not challenge the general constitutionality of government deducting union dues from its employees' wages through payroll deductions. It is discussed here to demonstrate that the City established its own policy in multiple ways on this matter.

("Public employers other than the State *that* provide for the administration of payroll deductions … shall rely on a certification from any employee organization…") (emphasis added). Further, and more importantly, even if the statute mandated payroll deductions, it does *not* mandate that the City limit its processing of employees' dues deduction cancellations to April 1 of each calendar year, thereby restricting when employees can cancel dues payments.

In fact, the City's April Fools Policy restricting employees from effectively canceling dues payments until April 1 of each year regardless of the terms in a written authorization, *see supra* at 4-5, *contradicts* the statute's policy that deductions may be revoked "*only* pursuant to the terms of the employee's *written authorization*." Cal. Gov't Code § 1157.12(b) (emphasis added). Moreover, the City's practice of possessing the written authorization also differs from the statute's requirement that *IBEW do so*. *Id*. at § 1157.12(a).

The City used its discretion in adopting *its own* policies to maintain employees' written authorizations, collect IBEW's union dues through payroll deductions and, most importantly, to do so pursuant to a compelled speech policy that differs from, and is not required by, state law. The decisions below which absolve the City of liability, therefore, cannot be squared with *Monell*.

B. The Ninth Circuit's Decision to Relieve the Union of Liability for its Joint Participation with the City in Unconstitutionally Compelling Union Dues Payments Conflicts with this Court's Decisions Regarding "State Action."

The second loophole occurs when courts absolve unions of liability for their joint participation with government in coercing dues payments from employ-

ees by holding that unions are not "state actors," i.e., unions do not act "under color of law" or engage in "state action." *See*, *e.g*., Pet.App. 5a; 22a-23a. It is well-established that First Amendment protections against compelled association are triggered when the state grants its coercive powers to a union to control and receive payroll dues deductions from employees' wages, which government has done here through statute (Cal. Gov't Code § 1157.12(a), *see supra* at 19-20) and the CBA's April Fools Policy. *See Janus*, 585 U.S. at 929-30 (applying constitutional scrutiny to compelled dues scheme in Illinois law and CBA); *see also*, *Harris*, 573 U.S. 616; *Knox*, 567 U.S. at 314; *Chicago Tchrs. Union, Loc. No. 1, AFT, AFL-CIO v. Hudson*, 475 U.S. 292, 308 (1986); *Abood*, 431 U.S. at 234.

IBEW acts under "color of law" sufficient to be liable under § 1983, i.e., engages in "state action," when it instructs the City to deduct dues from employees' wages without affirmative consent. IBEW's authority to dictate the City's payroll deductions is a "power possessed by virtue of state law and made possible only because the wrongdoer is clothed with the authority of state law." *Lindke v. Freed*, 601 U.S. 187, 198 (2024) (citing *Lugar*, 457 U.S. at 929). IBEW's participation in the extraction of money from Deering's wages "resulted from the exercise of a right or privilege having its source in state authority." *Id*. IBEW misused the power granted it by state law to extract monies from Deering's wages by extracting those monies without his affirmative consent. Under *Lindke*, this "'[m]isuse of power, possessed by virtue of state law,' constitutes state action." *Id*. at 768 (quoting *United States v. Classic*, 313 U.S. 299, 326 (1941)).

Again applying *Belgau*, the courts below erroneously identified the source of the deprivation as the City's dues checkoff form even though the coerced dues payments in question were pursuant solely to the April Fools Policy agreed to by *the City and IBEW* in which *the City* refuses to process employees' dues cancellations until April 1 of each year—which contradicts the right given to Deering in *his* agreement with the City to cancel dues deductions at any time. Pet.App. 48a. Contrary to the courts' reasoning below, then, IBEW's conduct here is subject to constitutional scrutiny since the First Amendment's protections are triggered whenever government and unions force someone "to confess by word or act" any political belief or position, *Janus*, 585 U.S. at 892, which the City and IBEW did to Deering for eight months.

III. THIS CASE PRESENTS IMPORTANT FEDERAL QUESTIONS.

A. Whether the First Amendment Protects a Public Employee's Right to Disassociate from a Union by Resigning Union Membership and Canceling Dues Payments is an Important Federal Question.

"If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein." *West Virginia Bd. of Ed. v. Barnette*, 319 U.S. 624, 642 (1943). "Compelling individuals to mouth support for views they find objectionable violates that cardinal constitutional command, and in most contexts, any

such effort would be universally condemned." *Janus*, 585 U.S. at 892.

The circumstances under which a nonconsenting public employee may be forced to subsidize a union's "private speech on matters of substantial public concern" is, therefore, a question of exceptional importance, as this Court already determined by granting certiorari in *Janus*. *Id.* at 886. Similarly, whether employees have a constitutionally protected interest in *dis*associating from a union is also an important question in public employment. If the Ninth Circuit is correct that forcing an employee to continue to associate with a union does not even *implicate* the First Amendment, then nothing in the Constitution would stop unions and government employers from agreeing to CBAs that require employees to remain dues-paying members in perpetuity. There is also nothing to stop employers and unions from violating employees' other constitutional rights, such as due process.

Indeed, other unions have deployed CBAs with "organizational security" provisions requiring employees to remain dues-paying members for nearly a decade. *See*, *e.g.*, *Taylor Sch. Dist. v. Rhatigan*, 900 N.W.2d 699, 708 (Mich. Ct. App. 2016) (ten-year "security agreement"); *Debont v. City of Poway*, No. 98CV0502, 1998 WL 415844, at *1 (S.D. Cal. Apr. 14, 1998) (eight-year span). These long-term deals between unions and public sector employers to waive employees' First Amendment rights are especially problematic because the politics of a union, a person, or both can shift over time, making a once-agreeable association untenable. Further, an employee's political opinions may change over time, and she should not be precluded from exercising her First Amendment rights merely because she joined a union at some point in the past. Yet courts often sanction these deals with little or no constitutional scrutiny.

Additionally, the compelled association in the instant case is by no means an anomaly, as the Ninth Circuit is not alone in adopting an unduly narrow interpretation of *Janus*. To date, six other circuits have adopted interpretations of *Janus* similar to the Ninth Circuit, including the Second, Third, Sixth, Seventh, Eighth, and Tenth Circuits. *See Wheatley v. New York State United Tchrs.*, 80 F.4th 386, 390-92 (2d Cir. 2023); *Barlow v. Serv. Emps. Int'l Union Loc. 668*, 90 F.4th 607, 615-17 (3d Cir. 2024); *Littler v. Ohio Ass'n of Pub. Sch. Emps.*, 88 F.4th 1176, 1181-83 (6th Cir. 2023); *Ramon Baro v. Lake Cnty. Fed'n of Tchrs. Loc. 504, IFT-AFT/AFL-CIO*, 57 F.4th 582, 585-87 (7th Cir. 2023); *Bennett v. Council 31 of the Am. Fed'n of State, Cnty. & Mun. Emps., AFL-CIO*, 991 F.3d 724, 729-31 (7th Cir. 2021); *Burns v. Sch. Serv. Emps. Union Loc. 284*, 75 F.4th 857, 860-61 (8th Cir. 2023); *Hendrickson v. AFSCME Council 18*, 992 F.3d 950, 961 (10th Cir. 2021). Some of these cases differ from the factual circumstances here, but their logic leads these circuits to the same conclusion the Ninth Circuit draws here; namely, the First Amendment does not protect a public employee's right to disassociate from a union.

Further, compelled association policies which compel association and/or speech are widespread. For example, Cal. Gov't Code § 3524.52(h) (applicable to judicial employees) and § 3513(i) (applicable to specified state employees including state administrative personnel)—statutes not applicable here—provide for maintenance of membership. Pennsylvania Consolidated Statutes § 1101.705 specifically singles out maintenance of membership provisions as a proper subject of collective bargaining. *See also* Pennsylvania Con. Stat. § 1101.301. Pennsylvania courts uphold such provisions. *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). The Ohio State Employment Relations Board has also upheld maintenance of membership agreements. *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*, No. 19-CV-3709, 2020 WL 1322051 (S.D. Ohio March 20, 2020) (discussing a maintenance of membership provision). New Jersey limits union members from revoking an authorization for payroll deductions to only during the ten days following the anniversary of that union member's employment start date. *See* N.J. Stat. Ann. § 52:14-15.9e. These policies compel union membership and dues payments.

B. Whether Local Municipalities and Unions Are Liable for Damages Caused by Compelling Public Employees' Speech is an Important Federal Question.

The Ninth Circuit's unconstitutional rule, as damaging as it is to public employees' First Amendment rights, is not the only important federal matter this petition presents. Improperly evading *Janus* altogether through this Court's precedent on local municipality liability and union state action are two additional ways courts fail to take *Janus* seriously. *See supra* at 6-8. Addressing at least one of these threshold matters is of vital importance given courts commonly dismiss claims brought by employees such as Deering, which the courts below did, often leaving compelled association schemes entirely unexamined as a result.

State employers are not liable for money damages under the Eleventh Amendment and an employee's claim for injunctive relief is typically dismissed as moot because unions, to avoid their own liability, simply instruct the government to stop the dues deductions.[10] Municipal employers typically hide behind *Monell* and various state laws to deflect liability for damages,[11] as the City did here, while unions claim they are not engaging in "state action" when they take advantage of statutory schemes

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[10] *Craine v. Am. Fed'n of State, Cnty., & Mun. Emps. Council 36, Loc. 119*, No. 23-55206, 2024 WL 1405390 (9th Cir. Apr. 2, 2024); *Espinoza v. Union of Am. Physicians & Dentists, AFSCME Loc. 206*, No. 22-55331, 2023 WL 6971456 (9th Cir. Oct. 23, 2023); *Kant v. Serv. Emps. Int'l Union, Loc. 721*, No. 22-55904, 2023 WL 6970156 (9th Cir. Oct. 23, 2023); *Marsh v. AFSCME Loc. 3299*, No. 21-15309, 2023 WL 4363121 (9th Cir. July 6, 2023), *cert. denied sub nom. Jarrett v. Serv. Emps. Int'l Union Loc. 503*, 144 S. Ct. 494 (2023); *Kurk v. Los Rios Classified Emps. Ass'n*, 2022 WL 3645061 (9th Cir. Aug. 24, 2022), *cert. denied*, 143 S. Ct. 2431 (2023); *Wright*, 48 F.4th 1112; *Zielinski v. Serv. Emps. Int'l Union Loc. 503*, No. 20-36076, 2022 WL 4298160 (9th Cir. Sept. 19, 2022), *cert. denied sub nom. Wright v. Serv. Emps. Int'l Union Loc. 503*, 143 S. Ct. 749 (2023); *Belgau*, 975 F.3d 940; *Durst v. Oregon Educ. Ass'n*, 450 F. Supp. 3d 1085 (D. Or. Mar. 31, 2020); *Adams v. Teamsters Union Loc. 429*, No. 20-1824, 2022 WL 186045 (3d Cir. Jan. 20, 2022), *cert denied*, 143 S. Ct. 88 (2022); *Barlow*, 90 F.4th 607; *Hartnett v. Pennsylvania State Educ. Ass'n*, 963 F.3d 301 (3d Cir. 2020); *LaSpina v. SEIU Pennsylvania State Council*, 985 F.3d 278 (3d Cir. 2021); *Hendrickson*, 992 F.3d 950.

[11] *See*, *e.g.*, *Bourque, et al., v. Engineers and Architects Ass'n, et al.*, No. 23-55369, 2024 WL 1405390 at *2-3 (9th Cir. April 2, 2024); *Craine*, 2024 WL 1405390 at *2-3; *Jarrett v. Serv. Emps. Int'l Union Loc. 503*, No. 21-35133, 2023 WL 4399242 at *1 (9th Cir. July 7, 2023), *cert. denied*, 144 S. Ct. 494 (2023); *Quezambra v. United Domestic Workers of Am., AFSCME Loc. 3930*, No. 20-55643, 2023 WL 4398498 at *1 (9th Cir. July 7, 2023), *cert. denied sub nom. Jarrett v. Serv. Emps. Int'l Union Loc. 503*, 144 S. Ct. 494 (2023).

granting them control over a government's payroll deductions from public employees' wages.[12] The end result is that courts need not apply constitutional scrutiny to the myriad of compelled association schemes used by government employers and unions to fund the union's political speech.

IV. THIS CASE IS AN EXCELLENT VEHICLE TO RESOLVE THE IMPORTANT QUESTIONS PRESENTED.

The instant petition is a clean presentation of the questions presented for several reasons. First, the questions presented in this petition address narrow matters relevant in the context of public sector employment; specifically, whether the First Amendment protects a public employee's right to disassociate with a union by resigning membership and canceling dues payments, and whether local municipalities and unions can be held liable for monetary damages when

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[12] *See*, *e.g.*, *Wright*, 48 F.4th at 1121-25; *Polk v. Yee*, 36 F.4th 939, 942-43 (9th Cir. 2022), *cert. denied*, 143 S. Ct. 405 (2022); *Belgau*, 975 F.3d at 946-49; *Bourque*, 2024 WL 1405390 at *2-3; *Craine*, 2024 WL 1405390 at *2-3; *Cram v. Serv. Emps. Int'l Union Loc. 503*, No. 22-35321, 2023 WL 6971455 at *1 (9th Cir. Oct. 23, 2023); *Crouthamel v. Walla Walla Pub. Sch.*, No. 21-35387, 2023 WL 6970168 at *1 (9th Cir. Oct. 23, 2023); *Espinoza*, 2023 WL 6971456 at *1; *Hubbard v. Serv. Emps. Int'l Union Loc. 2015*, No. 21-16408, 2023 WL 6971463 at *1 (9th Cir. Oct. 23, 2023); *Kant*, 2023 WL 6970156 at *1; *Laird v. United Tchrs. Los Angeles*, No. 22-55780, 2023 WL 6970171 at *1 (9th Cir. Oct. 23, 2023); *Kurk*, 2022 WL 3645061 at *1; *Jarrett*, 2023 WL 4399242 at *1; *Yates v. Washington Federation of State Emps, AFSCME Council 28, et al.*, No. 20-35879 2023 WL 4417276 at *1 (9th Cir. July 10, 2023); *Quezambra*, 2023 WL 4398498 at *1; *Marsh*, 2023 WL 4363121 at *1; *Zielinski*, 2022 WL 4298160 at *1; *Wagner v. Univ. of Washington*, No. 20-35808, 2022 WL 1658245 at *1 (9th Cir. May 25, 2022); *Mendez v. California Tchrs. Ass'n*, 854 F. App'x 920, 921 (9th Cir. 2021).

they violate this right. These questions are clearly presented because the lower courts dismissed Deering's claims on Fed. R. Civ. P. 12(b)(6) motions, which means Deering's allegations must be accepted as true and reasonable inferences drawn in his favor.

Further, answering the questions presented in this case will not disrupt California's state labor system and leaves entirely intact the ability of unions to enforce otherwise lawful private membership agreements. Deering also does not appeal other matters in this case related to standing, mootness, or due process.

Second, the City's dues checkoff form in this case does not affect the analysis. The First Amendment protection against compelled union association and speech may be waivable in theory, but Deering never signed an agreement restricting his ability to cancel dues payments. The form explicitly states that its duration "shall be effective until canceled by [Deering] in writing." *See supra* at 4. The form is not even a union document, but even if the form made Deering a union member (which does not, by itself, waive the First Amendment right to disassociate), it certainly does not incorporate contradictory terms found in a separate unreferenced document, such as a CBA. Regardless, the Ninth Circuit based its ruling on Deering's previous *membership*, not an alleged agreement to restrict his own rights. Pet.App. 4a.

In any event, even if the dues checkoff form *does* incorporate a compelled speech policy, it does not follow that the First Amendment is not implicated. Rather, the dues checkoff form would need to satisfy the First Amendment's affirmative consent waiver standard articulated in *Janus*—a question unaddressed by the courts below. *See Janus*, 585 U.S. at 930. Although Deering argues the form falls well short of

this standard, the Court need not decide this matter if it grants the petition, because it could hold public employees have a First Amendment right to disassociate from a union and then remand the case to address whether the City's dues checkoff form waived that right. *See supra* at 12 n.5.

Third, this case does not present any of the vehicle issues that were present in recent certiorari petitions involving *Janus* that the Court declined to grant. The instant case is not a class action, as was *Belgau v. Inslee*, No. 20-1120 (S. Ct.). Nor does this petition omit a challenge to the Ninth Circuit's ruling on IBEW's state action, unlike *Kurk v. Los Rios Classified Emps. Ass'n*, No. 22-498 (S. Ct.). This petition also avoids any mootness issues. *See*, *e.g.*, *Hendrickson v. AFSCME Council 18*, No. 20-1606 (S. Ct.).

Finally, this case offers the Court the flexibility of three avenues to address the Ninth Circuit's flawed rule that the First Amendment does not protect a public employee's right to disassociate. The Ninth Circuit absolved both the City and IBEW of liability for depriving Deering of his First Amendment rights, so this Court could vindicate public employees' *Janus* rights by holding the local municipality accountable, the union accountable, or both accountable.

This Court was correct in *Janus* that "in most contexts" an effort to "compel individuals to mouth support for views they find objectionable" would be "universally condemned." *Janus*, 585 U.S. at 892. Although *Janus* successfully prevents government employers and unions from imposing formal "agency fees" on public employees, compelled association and speech schemes continue to thrive in the Ninth Circuit and elsewhere. They should similarly be "condemned" by this Court.

CONCLUSION

The Court should grant the petition.

Respectfully submitted,

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Counsel for Petitioner

May 10, 2024

APPENDIX

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APPENDIX A

Supreme Court of the United States
Office of the Clerk
Washington, DC 20543-0001

Scott S. Harris
Clerk of the Court
(202) 479-3011

February 28, 2024

Mr. Timothy Ray Snowball
Freedom Foundation
P.O. Box 552
2403 Pacific Ave SE
Olympia, WA 98501

Re: Christopher Deering v. International Brotherhood of Electrical Workers Local 18, et al. Application No. 23A780

Dear Mr. Snowball:

The application for an extension of time within which to file a petition for a writ of certiorari in the above-entitled case has been presented to Justice Kagan, who on February 28, 2024, extended the time to and including May 10, 2024.

This letter has been sent to those designated on the attached notification list.

Sincerely,

Scott S. Harris, Clerk

By /s/ A
Angela Jimenez
Case Analyst

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 22-55458

D.C. No. 2:21-cv-07447-DSF-AS

CHRISTOPHER DEERING,

Plaintiff-Appellant,

v.

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS LOCAL 18, an employee organization; CITY OF LOS ANGELES, a public agency; ROB BONTA, in his official capacity as Attorney General of California; BRIAN D'ARCY, trustee of the Joint Safety and Training Institute; GUS CORONA, trustee of the Joint Safety and Training Institute; MARTIN MARRUFO, trustee of the Joint Safety and Training Institute; RAFAEL LOPEZ, trustee of the Joint Safety and Training Institute; MARTIN ADAMS, trustee of the Joint Safety and Training Institute; DAVID WRIGHT, trustee of the Joint Safety and Training Institute; RICHARD HARASICK, trustee of the Joint Safety and Training Institute,

Defendants-Appellees.

Appeal from the United States District Court
for the Central District of California
Dale S. Fischer, District Judge, Presiding

MEMORANDUM*

Submitted October 19, 2023**
San Francisco, California

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

Christopher Deering voluntarily joined the International Brotherhood of Electrical Workers Local 18 (IBEW 18), the exclusive bargaining representative for Los Angeles Department of Water and Power employees, in 2005. After the Supreme Court decided *Janus v. American Federation of State, County, & Municipal Employees, Council 31*, 138 S. Ct. 2448 (2018), he resigned from IBEW 18 and asked it to tell Los Angeles to stop deducting union dues from his paycheck. Consistent with the Memorandum of Understanding (MOU) between IBEW 18 and Los Angeles, union dues were deducted until the first paycheck after April 1st of the next year. He is no longer being charged union dues. The City does, however, continue to deduct fees from Deering to fund an organization called the Joint Safety and Training Institute (JSTI), an independent body created by Los Angeles and IBEW 18 jointly. Deering raises First and Fourteenth Amendment claims against IBEW 18, Los Angeles, the California Attorney General, and the JSTI trustees. The district court dismissed all claims. We have jurisdiction under 28 U.S.C. § 1291 and affirm.

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

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

1. Sovereign immunity bars Deering's damages claims against the Attorney General. *See Platt v. Moore*, 15 F.4th 895, 910 (9th Cir. 2021). As to prospective relief, the complaint alleges only "a generalized duty to enforce state law or general supervisory power over the persons responsible for enforcing the challenged provision," which does not overcome Eleventh Amendment immunity. *L.A. Cnty. Bar Ass'n v. Eu*, 979 F.2d 697, 704 (9th Cir. 1992) (citation omitted).

2. Deering lacks standing to sue the JSTI trustees. *See Alaska Right to Life Pol. Action Comm. v. Feldman*, 504 F.3d 840, 848 (9th Cir. 2007). Deering alleges that JSTI received funds which Los Angeles deducted without his consent and uses those funds for political speech. To the extent Deering may have been injured, that injury was not caused by JSTI. The district court gave him the opportunity to amend his complaint and state an injury against JSTI, but he did not do so.

3. Los Angeles is not liable for deducting union dues under *Monell v. Department of Social Services of New York*, 436 U.S. 658 (1978). *Monell* liability "is contingent on a violation of constitutional rights." *Scott v. Henrich*, 39 F.3d 912, 916 (9th Cir. 1994). It will not attach to city policy if state law compels that policy. *See City of Oklahoma City v. Tuttle*, 471 U.S. 808, 823–24 (1985) (plurality opinion).

The union deductions which extended into April 2021 did not violate Deering's First Amendment rights since he voluntarily joined the union. *Belgau v. Inslee*, 975 F.3d 940, 950 (9th Cir. 2020). Before joining, he knew there was an MOU under which he would either pay agency fees or join the union. And Deering joined the union with constructive knowledge of the MOU, even if he did not read it.

Further, Los Angeles was compelled to act by California law to rely on IBEW 18's certification that the union dues were authorized. Cal. Gov't Code § 1157.12(a). And while nothing in California law compels the unauthorized JSTI fee claim, and an amendment to the complaint could provide facts about the ways that JSTI is using the money it receives from the City of Los Angeles sufficient to support *Monell* liability against Los Angeles, the threadbare allegations against JSTI are insufficient. *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

4. IBEW 18 did not engage in state action. *See Lugar v. Edmondson Oil Co.*, 457 U.S. 922 (1982). Any harm from the union deductions is caused by the union authorization form which Deering freely signed. On similar facts, we declined to find state action under *Lugar* in *Belgau*, 975 F.3d at 946–47.

Nor is IBEW 18 a state actor under the "joint action" or "governmental nexus" tests that guide our analysis under *Lugar*'s second prong. *See Tsao v. Desert Palace, Inc.*, 698 F.3d 1128, 1140 (9th Cir. 2012). Los Angeles's transmitting dues payments to a union after an employee authorizes such deductions does not give rise to a section 1983 claim against the union under the "joint action" test. *See Belgau*, 975 F.3d at 947–49. Similarly, Los Angeles's "ministerial processing of payroll deductions pursuant to [e]mployees' authorizations" does not create a nexus between Los Angeles and IBEW 18. *Id.* at 947–48 & n.2.

5. Deering's due-process claims were not sufficiently developed in the opening brief. Parties must make arguments "specifically and distinctly . . . in [their] opening brief." *Indep. Towers of Wash. v. Wash.*, 350 F.3d 925, 929 (9th Cir. 2003). Though Deering mentions due-process concerns, he does not suffi-

ciently present them for the panel's review. "Arguments made in passing and inadequately briefed are waived." *Maldonado v. Morales*, 556 F.3d 1037, 1048 n.4 (9th Cir. 2009).

AFFIRMED.

APPENDIX C

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 22-55458

D.C. No. 2:21-cv-07447-DSF-AS
Central District of California, Los Angeles

CHRISTOPHER DEERING,

Plaintiff-Appellant,

v.

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS LOCAL 18, an employee organization; et al.,

Defendants-Appellees.

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

The panel has voted to deny the petition for rehearing en banc (Dkt. No. 65) and Judge W. Fletcher has so recommended.

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

The petition for rehearing en banc is denied.

APPENDIX D

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CV 21-7447 DSF (ASx)

CHRISTOPHER DEERING,

Plaintiff,

v.

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS LOCAL 18 et al.,

Defendants.

Order Granting Motions to Dismiss
(Dkts. 80, 91, 92)

Defendant Rob Bonta, the Attorney General for the State of California, moves to dismiss Plaintiff Christopher Deering's Complaint. Dkt. 80-1 (AG MTD). Defendant City of Los Angeles also moves to dismiss. Dkt. 92 (City MTD). Defendants International Brotherhood of Electrical Workers Local 18 (IBEW 18) and Brian D'Arcy, Gus Corona, Martin Marrufo, Rafael Lopez, Martin Adams, Richard Harasick, Andrew Kendall, and David Wright (collectively, the JSTI Trustees) also move to dismiss. Dkt. 91-1 (Union MTD). Plaintiffs filed an omnibus opposition to the motions to dismiss. Dkt. 99 (Opp'n). The Court deems these matters appropriate for decision without oral argument. *See* Fed. R. Civ. P. 78; Local Rule 7-15. For the reasons stated below, Defendants' motions to dismiss are GRANTED.

I. BACKGROUND

A. The Parties

Plaintiff resides in Los Angeles, California and has been employed as a customer service representative for the Department of Water and Power for the City of Los Angeles (LADWP) since 2005. Dkt. 1 (Compl.) ¶ 4.

Defendant IBEW 18 is a recognized employee organization under Cal. Gov't Code § 3501 and is the exclusive representative for Plaintiff's bargaining unit. *Id.* ¶ 5. IBEW 18 is "empowered to represent whether [Plaintiff] has affirmatively consented to monetary deductions." *Id.*

LADWP is a public entity organized and managed by Defendant City of Los Angeles. *Id.* ¶ 6. Under California law and the terms of the Memorandum of Understanding (MOU) between IBEW 18 and the City, LADWP is responsible for deducting dues from public employees' wages and remitting the dues to IBEW 18 based on IBEW 18's representation of whether employees have affirmatively consented to have deductions withdrawn from their lawfully earned wages. *Id.*

The Attorney General is sued in his official capacity "as the representative of the State of California charged with the enforcement of state laws, including the statute challenged in this case." *Id.* ¶ 7.

Defendants D'Arcy, Corona, Marrufo, Lopez, Adams, Harasick, Kendall, and Wright are trustees of the Joint Safety and Training Institute (JSTI) appointed by LADWP and are responsible for "the operation of the trust, including the expenditure of trust assets." *Id.* ¶¶ 8-15. J STI is a trust fund jointly created by the LADWP and IBEW 18.

B. Termination of Membership with IBEW 18

When Plaintiff began his employment with LADWP in 2005, he executed a membership agreement and dues authorization with IBEW 18. *Id.* ¶ 20. Under the MOU, permanent employees of LADWP were required as a condition of continued employment to either become members of IBEW 18 or remain a nonmember and pay service fees, which were automatically deducted from all n on members' earnings. *Id.* ¶ 21 & n.3. Plaintiff's dues authorization card did not state any limits on his right to end his membership in and payments to IBEW 18 at any time. *Id.* ¶ 26; Ex. A.

Despite making payments to IBEW 18, Plaintiff alleges he "took issue with the use of workers' lawfully earned wages to fund what he considered to be political endorsements with which he did not agree and otherwise would not have financially supported." *Id.* ¶ 27. From 2005 until April 21, 2021, the City and IBEW 18 took approximately $86.50 per month from Plaintiff's wages "for use in political speech and other union activities." *Id.* ¶ 28.

In 2018, Plaintiff learned of the Supreme Court's ruling in *Janus v. AFSCME*, Council 31, 138 S. Ct. 2448 (2018), and considered resigning from IBEW 18 and withdrawing his authorization for dues deductions, but delayed "due to concerns that both his employer and the union would retaliate against him if he resigned at that time." *Id.* ¶¶ 29-31.

On August 3, 2020, Plaintiff sent a letter to IBEW 18 requesting that it immediately cancel his membership and stop deducting dues and fees from Plaintiff's pay. *Id.* ¶ 32. Plaintiff also requested a copy of his 2005

dues authorization and membership agreement. *Id.* ¶ 35.

On August 13, 2020, Plaintiff received a letter from IBEW 18 confirming his resignation and request to end deductions. *Id.* ¶ 36. The letter also stated IBEW 18 would continue authorizing LADWP to take deductions from Plaintiff's wages through April 1, 2021. *Id.* ¶ 38. This "opt-out window" was not contained in Plaintiff's 2005 dues authorization but was stated in Article 8.5 of the MOU. *Id.* ¶¶ 39-40. Specifically, Article 8.5 of the MOU states:

> Upon receipt of a dues deduction authorization agreement from an employee, the Department agrees to deduct from the wages of an employee within the Unit, the dues in the amount set forth in the schedule on file with the Department. Such dues deductions shall be subject to the provisions of the authorization agreement, which has been agreed to by the parties. . . . The Department further agrees to remit the amounts so deducted directly to the Union.
>
> Notwithstanding any provisions of this MOU that may conflict:
>
> Employees' requests to cancel their dues withholding authorization agreement shall be processed by the Department to be effective on the ending of the first complete pay period following April 1 of each calendar year.

Union MTD Ex. A (MOU).[1]

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[1] The Court finds the MOU is incorporated by reference in the Complaint and therefore may consider it. *See United States v. Ritchie*, 342 F.3d 903, 907-08 (9th Cir. 2003) ("A court may

On January 19, 2021, Plaintiff sent a follow-up email to IBEW 18 requesting a copy of his 2005 dues authorization and membership card. Compl. ¶ 41. IBEW 18 did not respond to this request. *Id.* ¶ 42.

On February 22, 2021, Plaintiff's counsel sent a letter to IBEW 18 demanding that it immediately cease deductions from Plaintiff's pay and provide a copy of the 2005 authorization card. *Id.* ¶ 44. On March 12, 2021, IBEW 18 provided a copy of the card. *Id.* ¶ 45.

From August 2020 through April 2021, LADWP and IBEW 18 continued to make deductions from Plaintiff's pay totaling approximately $778.50 and "used it in political speech for which he disagrees." *Id.* ¶¶ 48-49. Additionally, Plaintiff's paychecks still list a $15.00 deduction for use by JSTI. *Id.* ¶¶ 65, 67. Plaintiff alleges that "JSTI, jointly operated by [LADWP] and IBEW 18, has used and continues to use Deering and other Department employees' lawfully earned wages without their affirmative consent for political speech." *Id.* ¶ 68. Plaintiff alleges LADWP and IBEW 18 have a "general pattern and practice of taking employees' lawfully earned wages without their affirmative consent for use in political speech," such as by denying individuals such as Plaintiff "their rightful ability to end membership deductions according to the terms of their IBEW 18 agreements." *Id.* ¶ 70.

Plaintiff brings causes of action under 42 U.S.C. § 1983 for (1) violation of the right to freedom from

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. . . consider certain materials – documents attached to the complaint, documents incorporated by reference in the complaint, or matters of judicial notice – without converting the motion to dismiss into a motion for summary judgment.").

compelled speech; (2) deprivation of liberty and property interests without procedural due process; and (3) inherently arbitrary deprivation of free speech liberty interests in violation of Plaintiff's right to substantive due process. *Id.* ¶¶ 80-125.

II. LEGAL STANDARD

Rule 12(b)(6) allows an attack on the pleadings for failure to state a claim on which relief can be granted. "[W]hen ruling on a defendant's motion to dismiss, a judge must accept as true all of the factual allegations contained in the complaint." *Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (per curiam). However, a court is "not bound to accept as true a legal conclusion couched as a factual allegation." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell At l. Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). "Nor does a complaint suffice if it tenders 'naked assertion[s]' devoid of 'further factual enhancement.'" *Id.* (alteration in original) (quoting *Twombly*, 550 U.S. at 557). A complaint must "state a claim to relief that is plausible on its face." *Twombly*, 550 U.S. at 570. This means that the complaint must plead "factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Iqbal*, 556 U.S. at 678. There must be "sufficient allegations of underlying facts to give fair notice and to enable the opposing party to defend itself effectively . . . and factual allegations that are taken as true must plausibly suggest an entitlement to relief, such that it is not unfair to require the opposing party to be subjected to the expense of discovery and continued litigation." *Starr v. Baca*, 652 F.3d 1202, 1216 (9th Cir. 2011).

Ruling on a motion to dismiss will be "a context - specific task that requires the reviewing court to draw on its judicial experience and common sense. But

where the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged – but it has not 'show[n]' – 'that the pleader is entitled to relief.'" *Iqbal*, 556 U.S. at 679 (alteration in original) (citation omitted).

As a general rule, leave to amend a complaint that has been dismissed should be freely granted. Fed. R. Civ. P. 15(a).

III. DISCUSSION

A. Sovereign Immunity

The Attorney General moves to dismiss on the grounds that the Eleventh Amendment bars claims against states and their officials except for claims for prospective injunctive relief. AGMTD at 1. The Court agrees.

"The Eleventh Amendment creates an important limitation on federal court jurisdiction, generally prohibiting federal courts from hearing suits brought by private citizens against state governments without the state's consent." *Sofamor Danek Grp., Inc. v. Brown*, 124 F.3d 1179, 1183 (9th Cir. 1997). "With one exception, state immunity from suit extends also to its agencies and officers." *Id.* (citing *Ex parte Young*, 209 U.S. 123 (1908) (barring suits against state officials in their official capacity except for claims for prospective declaratory and injunctive relief)). To be liable under *Ex parte Young*, the state official "must have some connection with the enforcement of the [allegedly unconstitutional] act." *Los Angeles Cnty. Bar Ass'n v. Eu*, 979 F.2d 697, 704 (9th Cir. 1992). "This connection must be fairly direct; a generalized duty to enforce state law or general supervisory power over the persons responsible for enforcing the challenged provision will not subject an official to suit." *Id.* The

Eleventh Amendment bars claims for retrospective relief. *Green v. Mansour*, 474 U.S. 64, 68 (1985) ("We have refused to extend the reasoning of *Young*, however, to claims for retrospective relief.").

Plaintiff has not identified any direct relationship between the Attorney General and the alleged constitutional violations. Instead, Plaintiff alleges he asserts the claims against the Attorney General "in his official capacity as the representative of the State of California charged with the enforcement of state laws, including the statute challenged in this case." Compl. ¶ 7. This general duty to enforce state law falls within the Eleventh Amendment's bar to suit, and contrary to Plaintiff's contention, *see* Opp'n at 25, the Attorney General's motion to dismiss does not specifically defend the constitutionality of the statute cited as authority for the deductions from Plaintiff's pay such as to eliminate Eleventh Amendment immunity.

Plaintiff argues the Attorney General is a proper defendant because Defendants' conduct, allegedly in violation of Plaintiff's constitutional rights, is authorized by California Government Code Section 1157.12, which is a "practice, policy, or procedure that animates the constitutional violation at issue." Opp'n at 25. However, "[w]here an attorney general cannot direct, in a binding fashion, the prosecutorial activities of the officers who actually enforce the law or bring his own prosecution, he may not be a proper defendant." *Planned Parenthood of Idaho, Inc. v. Wasden*, 376 F.3d 908, 919 (9th Cir. 2004). Plaintiff has alleged no facts indicating how the Attorney General has any connection to the other Defendants' deductions from Plaintiff's pay other than that he, as Attorney General of California, has a general duty to uphold state law,

pursuant to which the deductions to Plaintiff's pay were made.

The Court therefore GRANTS the Attorney General's motion to dismiss.

B. Municipal Liability

The City moves to dismiss Plaintiff's claims against it on the grounds that the Complaint fails to state a claim for liability under *Monell v. Dep't of Soc. Servs. of City of New York*, 436 U.S. 658 (1978). City MTD at 8.

There is no vicarious liability under § 1983, but municipalities can be held liable in certain situations. *Id.* at 695. A local government may be held liable (1) "when implementation of its official policies or established customs inflicts the constitutional injury," (2) when "omissions," including the failure to train employees, "amount to the local government's own official policy," and (3) "when the individual who committed the constitutional tort was an official with final policy-making authority or such an official ratified a subordinate's unconstitutional decision or action and the basis for it." *Clouthier v. Cnty. of Contra Costa*, 591 F.3d 1232, 1249 (9th Cir. 2010) (internal quotation marks omitted), *overruled on other grounds by Castro v. Cnty. of Los Angeles*, 833 F.3d 1060 (9th Cir. 2016).

A municipality may be held liable if a plaintiff can "prove that (1) he was deprived of a constitutional right; (2) the municipality had a policy; (3) the policy amounted to deliberate indifference to [plaintiff's] constitutional right; and (4) the policy was the moving force behind the constitutional violation." *Lockett v. Cnty. of Los Angeles*, 977 F.3d 737, 741 (9th Cir. 2020). A policy within the meaning of *Monell* exists where

official policy makers "consciously" choose a particular course of action or procedure "from among various alternatives." *City of Oklahoma City v. Tuttle*, 471 U.S. 808, 823 (1985); *Pembaur v. City of Cincinnati*, 475 U.S. 469, 483 (1986) ("municipal liability under § 1983 attaches where – and only where – a deliberate choice to follow a course of action is made from among various alternatives by the official or officials responsible for establishing final policy with respect to the subject matter in question"). "Liability for improper custom may not be predicted on isolated or sporadic incidents; it must be founded upon practices of sufficient duration, frequency and consistency that the conduct has become a traditional method of carrying out policy." *Trevino v. Gates*, 99 F.3d 911, 918 (9th Cir. 1996).

Here, Plaintiff alleges that the City violated his constitutional rights by deducting union dues and JSTI fees from his pay after he had notified IBEW 18 of his withdrawal of auth or ization to do so. As Plaintiff alleges, California Government Code Section 1157.12 states that public employers that provide for the administration of payroll deductions authorized by employees shall:

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

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

Cal. Gov't Code § 1157.12.

Plaintiff does not allege the City chose a deliberate course of action from various alternatives in making the deductions from Plaintiff's pay. Instead, Plaintiff concludes that LADWP and IBEW 18 "have a general pattern and practice of taking employees' lawfully earned wages without their affirmative consent for use in political speech." Compl. ¶ 70. But Plaintiff also alleges LADWP "is responsible for deducting dues from public employee's [sic] wages and remitting the dues to IBEW 18, *based on IBEW 18's representation* of whether employees have affirmatively consented to have deductions withdrawn from their lawfully earned wages." *Id.* ¶ 6 (emphasis added); *see also id.* ¶ 17 ("Under Cal. Gov't Code § 1157.12 and the terms of the MOU between the Department and IBEW 18,

the Department is responsible for deducting dues from public employee's wages and remitting the dues to IBEW 18, based on IBEW 18's representation of whether employees have affirmatively consented to monetary deductions."). Therefore, Plaintiff has not plausibly alleged the City's pay deductions for union dues were pursuant to any policy, practice, or custom other than the City's compliance with state law and the MOU. *See Quezambra v. United Domestic Workers of Am. AFSCME Loc. 3930*, 445 F. Supp. 3d 695, 706 (C.D. Cal. 2020) (finding no state action because the county was simply complying with state law). Plaintiff also challenges the City's continuing deduction of JSTI fees, which has allegedly continued even after the City stopped deducting union dues from Plaintiff's pay. Compl. ¶ 69. The Supreme Court's holding in *Janus* is limited to agency fees, i.e., a "proportionate share" of a union's expenditures attributable to activities that are "germane to the union's duties as collective-bargaining representative." *Janus*, 138 S. Ct. at 2460-61. Plaintiff cites no authority extending the holding of *Janus* to the JSTI fee, and the Court declines to do so. Therefore, Plaintiff's challenge to the JSTI fee cannot be based on *Janus*. Plaintiff's Opposition does not argue another basis other than *Janus* under which the City's deduction of J STI fees constitutes compelled speech or another constitutional violation, and it is not the role of the Court to make the parties' arguments for them. *See Indep. Towers of Wash. v. Washington*, 350 F.3d 925, 929 (9th Cir. 2003).

The Court GRANTS the City's motion to dismiss.

C. IBEW 18 and JSTI Trustees

1. Standing Against JSTI Trustees

IBEW 18 and the JSTI Trustees move to dismiss Plaintiff's claims against the JSTI Trustees on the grounds that Plaintiff lacks standing because he has not alleged an injury-in-fact traceable to the actions of the JSTI Trustees. Union MTD at 25. IBEW 18 and the JSTI Trustees also argue that a decision in favor of Plaintiff regarding his claims against the JSTI Trustees would not cure any alleged injury because IBEW 18 and the City were the entities responsible for carrying out the deductions to fund JSTI. *Id.*

As the party invoking jurisdiction, Plaintiff bears the burden of establishing standing. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992). For Plaintiff to allege Article III standing, he must sufficiently plead an (i) injury-in-fact, (ii) that is causally connected to Defendants' challenged conduct, and (iii) is likely to be "redressed by a favorable decision." *Id.* at 560-61 (quoting *Simon v. E. Ky. Welfare Rts. Org.*, 426 U.S. 26, 38 (1976)). The alleged injury-in-fact must be: (i) "concrete and particularized" and (ii) "actual or imminent, not 'conjectural' or 'hypothetical.'" *Id.* at 560 (quoting *Whitmore v. Arkansas*, 495 U.S. 149, 155 (1990)).

Plaintiff has not alleged any specific conduct by JSTI that allegedly violates his constitutional rights, and instead simply alleges JSTI receives money that was deducted from Plaintiff's pay and uses it for political speech and other activities. The Court finds Plaintiff has failed to plausibly plead standing for his claims against the JSTI Trustees.

2. State Action

IBEW 18 and the JSTI Trustees also argue Plaintiff cannot state his claims against IBEW 18 because (1) IBEW 18's conduct did not amount to state action; and (2) Plaintiff has not alleged facts showing that IBEW 18's conduct violated Plaintiff's First Amendment rights. Union MTD at 11-12, 22.

"Section 1983 creates a private right of action against individuals who, acting under color of state law, violate federal constitutional or statutory rights." *Devereaux v. Abbey*, 263 F.3d 1070, 1074 (9th Cir. 2001) (en banc). "Dismissal of a § 1983 claim following a Rule 12(b)(6) motion is proper if the complaint is devoid of factual allegations that give rise to a plausible inference of either element." *Naffe v. Frey*, 789 F.3d 1030, 1036 (9th Cir. 2015). "An individual acts under color of state law when he or she exercises power 'possessed by virtue of state law and made possible only because the wrongdoer is clothed with the authority of state law.'" *Id.* (citing *United States v. Classic*, 313 U.S. 299, 326 (1941)).

Courts adopt a two-step inquiry in determining whether "involvement in private action is itself sufficient in character and impact that the government fairly can be viewed as responsible for the harm of which plaintiff complains." *Belgau v. Inslee*, 975 F.3d 940, 947 (9th Cir. 2020). First, courts look to "whether the claimed constitutional deprivation resulted from 'the exercise of some right or privilege created by the State or by a rule of conduct imposed by the state or by a person for whom the State is responsible.'" *Id.* (simplified). Second, courts consider "whether the party charged with the deprivation could be described in all fairness as a state act or." *Id.* at 947.

The Ninth Circuit in *Belgau* held that the first prong was not satisfied because the alleged constitutional harm was not the state's deduction of union dues pursuant to state law, but rather the "particular private agreement between the union and Employees." *Id.* at 946-47. With respect to the second prong, the Ninth Circuit explained that a "private party cannot be treated like a state act or where the government's involvement was only to provide 'mere approval or acquiescence,' 'subtle encouragement,' or 'permission of a private choice.'" *Id.* at 947. In *Belgau*, the Ninth Circuit held that under the second prong, a union was not a state act or because, while the State of Washington authorized deductions from the plaintiffs' pay, those deductions were made pursuant to "bargained-for agreements without any direction, participation, or oversight by Washington" and "[a]lthough Washington was required to enforce the membership agreement by state law, it had no say in shaping the terms of that agreement." *Id.* The Ninth Circuit also found that "Washington's role in the allegedly unconstitutional conduct was ministerial processing of payroll deductions pursuant to Employees' authorizations" and therefore not state action, and that a "merely contractual relationship between the government and the non-governmental party does not support joint action." *Id.* at 848.

Here, like the plaintiffs in *Belgau*, Plaintiff does not challenge the state law authorizing the City to make deductions to Plaintiff's pay pursuant to IBEW 18's representations as to whether those deductions are authorized by Plaintiff. Instead, Plaintiff challenges the terms of the private agreement between Plaintiff and IBEW 18 that authorized the deductions in the first place, and the MOU, which provided the April 1 date for LADWP to process an employee's request

to cancel their dues withholding authorization agreement. The Court finds IBEW is not a state actor.

The Court therefore GRANTS IBEW 18 and the JSTI Trustees' motion to dismiss.

IV. CONCLUSION

Defendants' motions to dismiss are GRANTED. The Court dismisses all of Plaintiff's causes of action with leave to amend, if Plaintiff can do so consistent with Rule 11 of the Federal Rules of Civil Procedure. Should Plaintiffs choose to file an amended complaint, it must be filed and served no later than May 2, 2022. Failure to file by that date will waive the right to do so. The Court does not grant leave to add new defendants or new claims. Leave to add defendants or new claims must be sought by a separate, properly noticed motion.

IT IS SO ORDERED.

Date: April 7, 2022

/s/ Dale S. Fischer
Dale S. Fischer
United States District Judge

APPENDIX E

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CV 21-7447 DSF (ASx)

CHRISTOPHER DEERING,

Plaintiff,

v.

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS LOCAL 18 et al.,

Defendants.

JUDGMENT

The Court having dismissed this action with leave to amend and Plaintiff having advised that he will not file an amended complaint,

IT IS ORDERED AND ADJUDGED that Plaintiff take nothing, that the action be dismissed with prejudice, and that Defendants recover costs of suit pursuant to a bill of costs filed in accordance with 28 U.S.C. § 1920.

Date: June 3, 2022

/s/ Dale S. Fischer
Dale S. Fischer
United States District Judge

APPENDIX F

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

Case No.:

CHRISTOPHER DEERING, individual,
Plaintiff,
v.

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS LOCAL 18, an employee organization; CITY OF LOS ANGELES, a public agency; ROB BONTA, in his official capacity as Attorney General of California; BRIAN D'ARCY, GUS CORONA, MARTIN MARRUFO, RAFAEL LOPEZ, MARTIN ADAMS, RICHARD HARASICK, ANDREW KENDALL, and DAVID WRIGHT, trustees of the Joint Safety and Training Institute
Defendants,

COMPLAINT FOR DECLARATORY JUDGMENT, INJUNCTIVE RELIEF, AND DAMAGES FOR VIOLATION OF CIVIL RIGHTS
[42 U.S.C. § 1983]

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INTRODUCTION

Christopher Deering's 2005 dues' authorization card with Defendant International Brotherhood of Electrical Workers Local 18 (IBEW 18) authorized him to end the deductions at any time without restriction. But when Deering exercised this right and ended the dues' authorization in August 2020, IBEW 18 continued demanding that Defendant, City of Los Angeles (the City), through the Department of Water and Power (the Department), continue taking Deering's lawfully earned wages anyway. This continued for another eight months.

Additionally, since 2018 the Department and IBEW 18 have jointly deducted $15.00 from each of Deering's paychecks to fund an entity called the "Joint Safety and Training Institute" (JSTI). There is no mention of this entity in Deering's 2005 agreement. This trust fund, which is managed jointly by the Department and IBEW 18, has a documented history of using trust assets for non-safety and training purposes. Deering continues to have $15.00 a paycheck deducted from his lawfully earned wages without his affirmative consent.

This joint action by the City, Department, and IBEW 18, under the exclusive authority of state statutes and with the tacit approval of Defendant Attorney General Rob Bonta, violated, and continues to violate, Deering's First and Fourteenth Amendment rights. Thus, Deering thus brings this action seeking declaratory, injunctive, monetary, and any other remedies this Court deems just and proper.

JURISDICTION AND VENUE

1. This action arises under the First and Fourteenth Amendments to the United States Constitution, 42 U.S.C. § 1983 (action for deprivation of federal civil rights), and 28 U.S.C. §§ 2201-2202 (action for declaratory relief).

2. The Court has subject-matter jurisdiction under 28 U.S.C. § 1331 (federal questions), and 28 U.S.C. § 1343 (deprivation of federal civil rights).

3. Venue is proper in the Central District of California pursuant to 28 U.S.C. § 1391(b)(1) and 28 U.S.C. § 1391(b)(2), because all Defendants are residents of California, and a substantial part of the events giving rise to this action occurred in this judicial district.

PARTIES

4. Plaintiff, Christopher Deering, resides in the City of Los Angeles, CA, and has been a Customer Service Representative for the City of Los Angeles Department of Water and Power since 2005, all within Los Angeles County.

5. Defendant, International Brotherhood of Electrical Workers Local 18, is a "recognized employee organization," Cal. Gov't Code §3501(b), and the exclusive representative for Deering's bargaining unit. Under Cal. Gov't Code § 1157.12 and the terms of the Memorandum of Understanding (MOU),[1] IBEW 18 is empowered to represent whether Deering has affirmatively consented to monetary deductions. IBEW 18's office is located at 4189 W. 2nd St., Los Angeles, CA 90004.

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[1] https://insidedwp.ladwp.com/cs/WebFiles/LRMOU/MOU Clerical 2005 2010.pdf

6. Defendant City of Los Angeles is a "public agency," Cal. Gov't Code § 3501(c). Deering's employer, the Los Angeles Department of Water and Power, is a public utility organized and managed by the City. Under California state law, Cal. Gov't Code § 1157.12 and the terms of the MOU, the Department is responsible for deducting dues from public employee's wages and remitting the dues to IBEW 18, based on IBEW 18's representation of whether employees have affirmatively consented to have deductions withdrawn from their lawfully earned wages. The City's office is located at 200 N Spring St, Los Angeles, CA 90012.

7. Defendant Rob Bonta, California's Attorney General, is sued in his official capacity as the representative of the State of California charged with the enforcement of state laws, including the statute challenged in this case. The actions of the City and IBEW 18, occurring under the sole authority provided by state law, are defended as constitutional by the Attorney General. The Attorney General's address for service of process is 300 South Spring Street, Los Angeles, California, 90013 in Los Angeles County.

8. Defendant Brian D'Arcy has is a trustee of the Joint Safety and Training Institute appointed by IBEW 18 and has held that position since 2017. D'Arcy was also a trustee of both the Joint Safety Institute and Joint Training Institute from 2010 until the trusts were reorganized in 2017. As a JSTI trustee, D'Arcy is responsible for the operation of the trust, including the expenditure of trust assets. His address for service of process is 11801 Sheldon Street, Sun Valley, California, 91352.

9. Defendant Gus Corona is trustee of the Joint Safety and Training Institute appointed by IBEW 18 and has held that position since 2017. From 2010 to

2014, Corona was an advisor for both the Joint Safety Institute and Joint Training Institute. As a JSTI trustee, Corona is responsible for the operation of the trust, including the expenditure of trust assets. His address for service of process is 11801 Sheldon Street, Sun Valley, California, 91352.

10. Defendant Martin Marrufo is trustee of the Joint Safety and Training Institute appointed by IBEW 18 and has held that position since 2017. From 2010 to 2014, Marrufo was an advisor for both the Joint Safety Institute and Joint Training Institute. As a JSTI trustee, Marrufo is responsible for the operation of the trust, including the expenditure of trust assets. His address for service of process is 11801 Sheldon Street, Sun Valley, California, 91352.

11. Defendant Rafael Lopez is trustee of the Joint Safety and Training Institute appointed by IBEW 18. As a JSTI trustee, Lopez is responsible for the operation of the trust, including the expenditure of trust assets. His address for service of process is 11801 Sheldon Street, Sun Valley, California, 91352.

12. Defendant Martin Adams is trustee of the Joint Safety and Training Institute appointed by the Department. As a JSTI trustee, Adams is responsible for the operation of the trust, including the expenditure of trust assets. His address for service of process is 11801 Sheldon Street, Sun Valley, California, 91352.

13. Defendant Richard Harasick is trustee of the Joint Safety and Training Institute appointed by the Department. As a JSTI trustee, Harasick is responsible for the operation of the trust, including the expenditure of trust assets. His address for service of process is 11801 Sheldon Street, Sun Valley, California, 91352.

14. Defendant Andrew Kendall is trustee of the Joint Safety and Training Institute appointed by the Department. As a JSTI trustee, Kendall is responsible for the operation of the trust, including the expenditure of trust assets. His address for service of process is 11801 Sheldon Street, Sun Valley, California, 91352.

15. Defendant David Wright is trustee of the Joint Safety and Training Institute appointed by the Department. As a JSTI trustee, Wright is responsible for the operation of the trust, including the expenditure of trust assets. His address for service of process is 11801 Sheldon Street, Sun Valley, California, 91352.

FACTUAL ALLEGATIONS

A. Deering hired at the Department and joins IBEW 18 in 2005.

16. The Los Angeles Department of Water and Power, an agency of the City of Los Angeles, is a public utility company that services Los Angeles area residents.

17. Under Cal. Gov't Code § 1157.12 and the terms of the MOU between the Department and IBEW 18,[2] the Department is responsible for deducting dues from public employee's wages and remitting the dues to IBEW 18, based on IBEW 18's representation of whether employees have affirmatively consented to monetary deductions.

18. Deering has been employed by the Department as a Customer Service Representative since 2005.

19. Deering's primary responsibility is to respond to phone inquiries regarding power and water outages

[2] *See* n.1 above.

and other service-related issues. He works the graveyard shift from 12:00 a.m. to 8:00 a.m., Monday through Friday.

20. When Deering began employment with the Department in 2005, he executed an IBEW 18 membership agreement and dues authorization.

21. Under the then applicable MOU between IBEW 18 and the Department, agency or "fair share" fees,[3] were automatically deducted from the earnings of all nonmembers as a "condition of continued employment."

22. Thus, Deering signed a membership form in 2005 under the belief that he would be forced to pay money to IBEW 18 whether he "decided" to join or not.

23. Had he possessed the option to choose to pay nothing to IBEW 18 for membership dues or any other payments, Deering would have paid them nothing.

24. Deering's 2005 dues' authorization card contained no restriction to end his membership and payments to IBEW 18 at any time. Exhibit A.

25. In fact, the card specifically stated the "authorization shall be effective until cancelled by me in writing."

26. Deering's initial concerns over the political activities of IBEW 18, of which he remained opposed

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[3] Article 8.6(A)(1)(a) of the operative MOU between the Department and IBEW 18 states that: "[p]ermanent employees in this unit (who are not on leave of absence) shall, as a condition of continued employment, become members of the certified representative of this Unit, or pay the Union a service fee in an amount not to exceed periodic dues and general assessments of the Union for the term of this MOU, or a period of three (3) years from the operative date of this article, whichever comes first."

over his tenure at the Department, were repeatedly confirmed over the years by offensive union speech funded by members (and nonmembers) wages.

27. Specifically, Deering took issue with the use of workers' lawfully earned wages to fund what he considered to be political endorsements with which he did not agree and otherwise would not have financially supported.

28. From the time he joined IBEW 18 until April 2021, the City and IBEW 18, acting jointly, took approximately $86.50 a month from Deering's lawfully earned wages for use in political speech and other union activities.

B. Deering ends his authorization, but Defendants continue the deductions.

29. In 2018 Deering learned that in *Janus v. AFSCME, Council 31*, 138 S. Ct. 2448, 2486 (2018) the U.S. Supreme Court ruled that the use of unauthorized union dues to finance unions' political activities violates First Amendment protections against compelled speech.

30. The *Janus* decision caused Deering to immediately consider resigning from the IBEW 18 and withdrawing his authorization for dues deductions according to the terms of his agreement.

31. However, Deering delayed due to concerns that both his employer and the union would retaliate against him if he resigned at that time.

32. When Deering reached 55 years of age, and he became eligible for early retirement, he decided he had enough.

33. On August 3, 2020, Deering sent a letter to IBEW 18 requesting the immediate cancellation of

membership, and the end of all dues and fee deductions from his lawfully earned wages. Exhibit B.

34. This letter satisfied the "in writing" requirement for the cancellation of dues' authorizations in Deering's 2005 membership card, and all other monies taken from his lawfully earned wages without his affirmative consent.

35. In his August 3, 2020, letter, Deering also requested a copy of his original 2005 dues authorization and membership agreement.

36. Ten days later, on August 13, 2020, Deering received a letter from IBEW 18 confirming his resignation and request to end the deductions from his lawfully earned wages. Exhibit C.

37. The requested copy of his original membership agreement was not provided.

38. IBEW 18's letter stated that the union would continue authorizing the Department to take his lawfully earned wages until April 1, 2021.

39. This April 1, 2021, "opt-out period" is not contained in Deering's dues' authorization from 2005 that governed his relationship with IBEW 18.

40. While this "window" language is contained in Article 8.5 of the MOU between the Department and IBEW 18, the language was not displayed, mentioned, or incorporated in any way on the membership application that Deering signed in 2005.

41. On January 19, 2021, Deering sent a subsequent email to IBEW 18, again requesting a copy of his original 2005 dues authorization and membership card. Exhibit D.

42. IBEW 18 never responded to Deering's second request.

C. The unauthorized dues' deductions continued for another eight months.

43. Left with no alternative, Deering retained counsel in February 2021.

44. On February 22, 2021, Deering's attorney sent a letter to IBEW 18 demanding that the union immediately cease authorizing the deduction of all monies from his lawfully earned wages and immediately provide a copy of Deering's 2005 authorization card. Exhibit E.

45. On March 12, 2021, IBEW 18 responded via email and finally provided a copy of the requested authorization card. Exhibit F.

46. The copy of the authorization card confirmed that there was no restriction on Deering's ability to end his payments at any time.

47. Nor does the card contain any reference to an "opt-out" window, or any express or implied incorporation of any sequent agreement between the Defendants.

48. The Department and IBEW 18, acting jointly under the sole authority provided by state law, continued to take monies from Deering's lawfully earned wages, without his affirmative consent, and used it in political speech with which he disagrees from August 2020 to April 2021.

49. From August 2020, when he effectively resigned his membership, to April 2021, when the unauthorized deductions finally ceased, the Department and IBEW 18 took approximately $778.50 of Deering's lawfully earned wages without his affirmative consent.

D. The Joint Safety and Training Institute.

50. The "Joint Safety Institute" was created by the Department and IBEW 18 in 2000, purportedly for the benefit of Los Angeles Department of Water and Power employees represented by IBEW in all aspects of safety on the job.

51. The "Joint Training Institute" was jointly created by the Department and IBEW 18 in 2002, to improve Department employee productivity and work life.

52. These trusts were originally funded by Department ratepayers through the imposition of an additional charge on their monthly bills.

53. Between 2002 and 2013, the trusts operated in secret with virtually no public accounting.

54. The trusts, though separate in name, functioned as one entity, as the trustees and advisors for both were the same individuals.

55. During this period the Department funneled approximately $4,000,000 a year to trusts, for a total of approximately $40,000,000 over eleven years.[4]

56. Los Angeles Mayor Eric Garcetti and City Controller Ron Galperin's pressed for an audit of the trusts' expenditures, alleging potential misuse of trust assets by the trustees and administrators.

57. Garcetti and Galperin's suspicions were confirmed.

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[4] *See* LA Times Editorial Board, *The DWP and the $40-million question*, LA Times (last visited Aug. 9, 2021), https://www.latimes.com/opinion/editorials/la-ed-dwp-nonprofits-audit-20131219-story.html

58. The audit uncovered many examples of the misuse of trust funds for purposes other than safety and training.[5]

59. Seemingly based on the shocking revelations of the audit, which included numerous examples of trustees using trust funds for their own personal enrichment, plans were made in Oct 2017 to combine the funds into a single entity.

60. In March 2019, the funds were combined into the JSTI. Exhibit G.

61. As part of this reorganization, in October 2018 funding for the trust(s) was shifted from ratepayers to Department employees like Deering.

62. The JSTI Board of Trustees is jointly appointed by the Department and IBEW 18, with equal representation for both entities.

63. The JSTI trustees representing the Department and IBEW 18 are fiduciaries who have the exclusive authority and discretion to control and manage the assets, operation, and administration of the JSTI.

E. Joint Safety Training Institute takes Deering's money without consent.

64. In October 2018 the Department and IBEW 18, acting jointly, began deducting $15.00 from Deering's lawfully earned wages and remitting it to JSTI without his affirmative consent.

65. Deering's paychecks still list the monthly $15.00 deduction as "JSI/JTI," rather than the "JSTI"

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[5] Audit of IBEW-OWP Joint Safety Institute and Joint Training Institute, City of Los Angeles (last visited Sept. 9, 2021), https://lacontroller.org/wp-content/uploads/2019/05/R15_09_IBEW-DWPJSTJTI-1.pdf

or any other designation based on the purported reorganization. *Id.*

66. Deering's operative 2005 IBEW 18 agreement did not authorize the deduction of any funds to JSTI, or any other trust fund jointly operated by the Department and IBEW 18.

67. The Department and IBEW 18, acting jointly, continue to take $15.00 a paycheck from Deering's lawfully earned wages for use by JSTI.

68. JSTI, jointly operated by the Department and IBEW 18, has used and continues to use Deering and other Department employees' lawfully earned wages without their affirmative consent for political speech.

69. From 2018 to the present, the Department and IBEW 18 have jointly taken approximately $495.00 of Deering's lawfully earned wages without his affirmative consent.

70. The Department and IBEW 18 have a general pattern and practice of taking employees' lawfully earned wages without their affirmative consent for use in political speech.

71. This includes denying individuals, like Deering, their rightful ability to end membership deductions according to the terms of their IBEW 18 agreements.

72. It also includes the actions of the Department and IBEW 18 acting through their control and use of JSTI, in taking employees like Deering's lawfully earned wages without affirmative consent and spending it on political speech.

F. Allegations applicable to requests for equitable relief.

73. The controversy between Deering and the Defendants is a definite and concrete dispute concerning the legal relations of parties with adverse legal interests.

74. The dispute is real and substantial, as the City (through the Department) and IBEW 18 continue to take Deering's lawfully earned wages without his affirmative consent for use in political speech through the JSTI.

75. The Defendants maintain the constitutionality of their actions.

76. Permanent injunctive relief is appropriate, as Deering is suffering a continuing irreparable harm and injury inherent in a violation of First and Fourteenth Amendment rights, for which there is no adequate remedy at law.

77. The declaratory relief sought is not based on a hypothetical state of facts, nor would it amount to a mere advisory opinion.

78. Deering and the Defendants dispute the legality of the ongoing taking and spending of Deering's lawfully earned wages on political speech without his affirmative consent.

79. As a result of the foregoing, an actual and justiciable controversy exists between Deering and the Defendants regarding their respective legal rights, the matter is ripe, and judicial review is appropriate.

CAUSES OF ACTION

COUNT I

Violation of the Right to Freedom from
Compelled Speech
(42 U.S.C. § 1983)

80. Deering re-alleges and incorporates by reference each and every paragraph above.

81. Under the First Amendment, the Defendants cannot take money from a public employee's lawfully earned wages without their affirmative consent.

82. Deering's 2005 dues' authorization with IBEW 18 authorized him to end his membership and payments at any time.

83. Deering effectively ended his IBEW 18 membership and dues authorization in August 2020.

84. Deering did not affirmatively consent to the deduction of membership dues from his lawfully earned wages between August 2020 and April 2021.

85. But the Defendants, acting jointly under the exclusive authority of state law, Cal. Gov't Code § 1157.12, continued to take approximately $86.50 a month from Deering's lawfully earned wages.

86. The money taken by the Defendants was then used in political speech without Deering's affirmative consent.

87. From August 2020 to April 2021 the Defendants jointly took approximately $778.50 of Deering's lawfully earned wages without his affirmative consent and used it in political speech without his affirmative consent.

88. This was a violation of Deering's First Amendment rights against compelled speech.

89. The $15.00 deductions taken from Deering's lawfully earned wages without his affirmative consent by the Department and IBEW 18 and sent to JSTI for use in political speech since October 2018 and continuing to this day, also violate his First Amendment rights.

90. Deering's 2005 dues' authorization with IBEW 18 does not contain any provision applicable to the withdrawal of fees for JSI, JTI, or JSTI.

91. Deering did not affirmatively consent to the continuing withdrawal of monies from his lawfully earned wages for use by the Department and IBEW 18 through JSTI between October 2018 and the present.

92. But the Defendants, acting jointly, continue to take $15.00 a month for use in political speech without Deering's affirmative consent.

93. From October 2018 to the present, the Defendants have jointly taken approximately $495.00 of Deering's lawfully earned wages without his affirmative consent for use by the Department and IBEW 18 in political speech through JSTI.

94. Because it authorizes the confiscation of Deering's lawfully earned wages without his affirmative consent, Defendants' deduction schemes, for both purported dues and monies for JSTI, on their face and as applied, violated, and continue to violate Deering's First Amendment right against compelled speech.

95. The Defendants have no legitimate, let alone compelling, interest in depriving Deering of his First Amendment right against compelled speech.

96. Even if the Defendants' scheme did have a legitimate or compelling purpose, it is not narrowly tailored to support that interest.

97. Therefore, Deering seeks compensatory and nominal damages for the violation of his First Amendment rights, and injunctive and declaratory relief against all Defendants for the continuing withdrawal of his lawfully earned wages without his affirmative consent pursuant to 42 U.S.C. § 1983 and 28 U.S.C. §§ 2201-2202.

COUNT II

Deprivation of Liberty and Property Interests
Without Procedural Due Process
(42 U.S.C. § 1983)

98. Deering re-alleges and incorporates by reference each and every paragraph above.

99. The Fourteenth Amendment requires the provision of adequate procedures before an individual is deprived of liberty or property.

100. Deering has a cognizable liberty interest in his First Amendment rights against compelled speech.

101. Deering has a cognizable property interest in his lawfully earned wages confiscated by the Defendants without his affirmative consent.

102. This include both the purported membership dues collected between August 2020 and April 2021, and monies dispatched to JSTI since October 2018, and continuing to be dispatched to JSTI.

103. The Defendants' scheme for the seizure of Deering's lawfully earned wages did not include any procedural protections sufficient to meet the procedural requirements of the Due Process Clause.

104. Neither Cal. Gov't Code § 1157.12 nor the applicable MOU, establish any procedures to convey notice to Deering before the Defendants seized his lawfully earned wages without his affirmative consent for use in political speech.

105. Neither Cal. Gov't Code § 1157.12 nor the applicable MOU establish any procedures to provide Deering with any pre-deprivation or post-deprivation hearing or other opportunity to object to the Defendants seizure of his lawfully earned wages for use in political speech with which he disagrees.

106. Pursuant to the exclusive authority provided by state law, Cal. Gov't Code § 1157.12, the Defendants acted jointly to deny Deering his procedural due process rights.

107. Because it lacks the necessary procedural safeguards to protect Deering's First Amendment liberty interests, and his property interests in his lawfully earned wages, the Defendants' deduction schemes, for both purported dues and monies for JSTI, on their face and as applied, violated, and continue to violate Deering's right to procedural due process.

108. Therefore, Deering seeks compensatory and nominal damages for the violation of his Fourteenth Amendment rights, and injunctive and declaratory relief against all Defendants for the continuing deprivation if his liberty and property interests without procedural due process pursuant to 42 U.S.C. § 1983 and 28 U.S.C. §§ 2201-2202.

COUNT III

Inherently Arbitrary Deprivation of Free Speech Liberty Interests (42 U.S.C. § 1983)

109. Deering re-alleges and incorporates by reference each and every paragraph above.

110. The substantive component of the Due Process Clause prohibits restraints on liberty that are inherently arbitrary.

111. Hence, substantive due process bars certain government actions regardless of the fairness of the procedures used to implement them.

112. Infringements of substantive due process rights are subject to strict constitutional scrutiny and must be narrowly tailored to serve a compelling state interest.

113. Deering has a cognizable liberty interest in his First Amendment right against compelled speech.

114. The sole means available to Deering and public employees to terminate their union memberships and end their dues deductions under Cal. Gov't Code § 1157.12 and the applicable MOU, requires their termination requests be directed to unions, rather than directly to their employers.

115. IBEW 18 is an inherently biased and financially interested party with an incentive for dues deductions to continue, whether an employee like Deering has given their affirmative consent or not.

116. IBEW 18 has no incentive to release Deering, or other comparable situated public employees, from their memberships or supposed dues authorizations.

117. Rather, IBEW 18 has a direct financial and legal incentive to represent to the Department that Deering provided the affirmative consent required by the First Amendment, even when Deering had effectively terminated his authorization under the terms of his 2005 authorization agreement.

118. Under Cal. Gov't Code § 1157.12 and the applicable MOU, the Department is allowed neither to independently verify whether Deering affirmatively consented to the deduction of monies from his lawfully earned wages for IBEW 18 or for JSTI purposes, nor request he submit a new verifiable authorization.

119. As a result, Defendants' scheme under Cal. Gov't Code § 1157.12 and the applicable MOU has the purpose and effect of arbitrarily burdening Deering's ability to exercise his First Amendment rights against compelled speech.

120. Deering has a substantive due process right to exercise his First Amendment rights without suffering the conflict of interest imposed by Defendants' scheme.

121. Pursuant to the exclusive authority provided by state law, Cal. Gov't Code § 1157.12, IBEW 18 jointly acted with the Department to deny Deering his substantive due process rights.

122. Because it creates an inherent and arbitrary conflict of interest burdening Deering's ability to exercise his First Amendment rights, Defendants' deduction schemes, for both purported dues and monies for JSTI, on their face and as applied, violated, and continue to violate Deering's right to substantive due process.

123. The Defendants had no legitimate, let alone compelling, interest in depriving Deering of his substantive due process rights.

124. Even if the Defendants' scheme did have a legitimate or compelling purpose, it is not narrowly tailored to support that interest.

125. Therefore, Deering seeks compensatory and nominal damages for the violation of his First Amendment rights, and injunctive and declaratory relief against all Defendants for the continuing violation of his rights to substantive due process. pursuant to 42 U.S.C. § 1983 and 28 U.S.C. §§ 2201-2202.

PRAYER FOR RELIEF

Wherefore, Deering respectfully requests this Court:

A. Issue a declaratory judgement:

- That the Defendants' scheme to seize Mr. Deering's wages without his affirmative consent to be spent on political speech under Cal. Gov't Code § 1157.12 and the applicable MOU, and wages of all other similarly situated employees, is a violation of the First Amendment right against compelled speech;

- That the Defendants' failure to provide Mr. Deering, and similarly situated employees, with prior notice and an opportunity to dispute the seizure of their wages without their affirmative consent, is a violation of the Fourteenth Amendment's guarantee of procedural due process;

- That the Defendants' scheme requiring Mr. Deering, and other similarly situated employees, to direct their membership and dues authorization termination requests to a biased third-party union with a direct financial interest, is inherently arbitrary

and a violation of the Fourteenth Amendment's guarantee of substantive due process.

B. Issue a permanent injunction:

- Enjoining the Defendants from seizing the lawfully earned wages of Deering and similarly situated public employees without their affirmative consent.

- Enjoining the Defendants from agreeing to and enforcing a procedure for deducting money from the lawfully earned wages of Deering and similarly situated public employees that violates the First and Fourteenth Amendments, and ordering the Defendants to implement a process providing adequate procedures for confirming public employees' voluntary and informed affirmative consent prior to the deduction of any money from their pay;

- Enjoining the Defendants from agreeing to and enforcing an inherently arbitrary procedure that violates the First and Fourteenth Amendment rights of Deering and similarly situated employees and ordering the Defendants to implement a process by which the Department must directly confirm public employees' voluntary and informed affirmative consent prior to the deduction of any money from their lawfully earned wages.

C. Enter a judgment:

- Awarding Deering compensatory damages in the amount of $1,273.50 for the monies unconstitutionally seized from his lawfully earned wages without his affirmative consent by the Defendants;

- Awarding Deering compensatory damages for the violation of his First and Fourteenth Amendment rights, in an amount to be determined at trial;

- Awarding Deering $1.00 in nominal damages for the deprivation of his First Amendment and Fourteenth Amendment Due Process rights;
- Award Deering his costs and attorneys' fees under 42 U.S.C. § 1983 and § 1988;
- Award Deering any further relief to which he may be entitled and any other relief this Court may deem just and proper.

Date: September 17, 2021

Respectfully submitted,

FREEDOM FOUNDATION

Timothy Snowball, Cal Bar No. 317379
Elena Ives, Cal Bar No. 331159
Freedom Foundation
PO Box 552
Olympia, WA 98507
Telephone: (360) 956-3482
tsnowball@freedomfoundation.com
eives@freedomfoundation.com

Attorneys for Plaintiff

APPENDIX G

[redacted] DEERING, CHRIS [redacted]

Payroll No. Employee Name (Last name first) Employee No.

Payroll Deduction Authority For Payments To:
Local Union 18, I.B.E.W.

CHIEF FINANCIAL OFFICER, Los Angeles Dept. of Water & Power

You are hereby authorized to deduct the amount specified in Local Union 18, I.B.E.W.'s Bylaws from my salary or wages earned during each pay period specified by the Department for such deductions and pay the same to Local Union 18, I.B.E.W. If at any time the amount of said charges should be changed, I hereby authorize said deductions to be changed in such sum as may be specified by said payee in writing. This authorization shall be effective until canceled by me in writing.

Date 10/31/05 Signature Chris Deering

006-76-2644

FEES, DUES AND ASSESSMENTS COVERED BY THIS AUTHORIZATION ARE NOT DEDUCTIBLE AS CHARITABLE CONTRIBUTIONS FOR FEDERAL INCOME TAX PURPOSES.

APPENDIX H

IBEW LOCAL 18
4189 W 2nd St
Los Angeles, California 90004

To whom it may concern:

Effective immediately, I resign membership in all levels of the union.

As a nonmember, I request that you immediately cease deducting all dues, fees, and political contributions from my wages, as is my constitutional right in light of the U.S. Supreme Court's ruling in *Janus v. AFSCME*.

This objection is permanent and continuing in nature and should be honored for as long as I remain in the bargaining unit.

I understand that the union has arranged to be the sole provider of workplace representation services for all employees in my bargaining unit and that I am legally prohibited from using alternative services. I understand further that, in exchange for the privilege of acting as the exclusive bargaining representative, the union must continue to represent me fairly and without discrimination in dealings with my employer and cannot, under any circumstances, deny me any wages, benefits, or protections provided under the collective bargaining agreement with my employer.

Furthermore, I request that you promptly provide me with a copy of any dues deduction authorization – written, electronic, or oral – the union has on file for me.

I trust that you will act promptly to properly observe my constitutional rights.

CHRISTOPHER DEERING

[redacted]

LOS ANGELES DEPART OF WATER AND POWER

CUSTOMER SERVICE REPRESENTATIVE

Signature and Date: _____

0029

APPENDIX I

Local Union No. 18

Serving Utility Workers in Los Angeles, Azusa, Burbank, Glendale, and Pasadena

BRIAN D'ARCY
Business Manger

A full service union – since 1893

International Brotherhood of Electrical Workers

4189 West 2nd Street, Los Angeles, CA 90004
Phone: (213) 387-8274
Fax: (213) 739-4637

Christopher Deering
[redacted]

Dear Mr. Deering:

IBEW, Local 18 is in receipt of your letter dated August 3, 2020 in which you resign from membership in the Union.

Your statement that you are "legally prohibited from using alternative services" is inaccurate. As provided in Article 5 of the Memorandum of Understanding between the LADWP and Local 18, "Section 3502 of the California Government Code grants to public employees the right to represent themselves individually in their employment activities, which include grievances" and "nothing in this MOU shall be construed as to abridge, limit or restrict that right". The MOU, accordingly, provides for a separate individual Grievance Procedure for employees who are not represented by the Union in the filing and processing of their grievances.

For your information, Article 8, section 8.5 of the MOU provides, "Employees' requests to cancel their dues withholding authorization agreement shall be processed by the Department to be effective on the ending of the first complete pay period following April 1 of each calendar year".

We have requested, on your behalf, a copy of your payroll deduction authorization from Retention Records at the Los Angeles Department of Water and Power. We will send it to you when we receive a copy.

Should you have any questions, please contact me at [redacted].

Sincerely,

/s/ Jennifer Hadley
Jennifer Hadley
Administrative Manager

APPENDIX J

From: c deering <[redacted]
Subject: Membership card
Date: January 19, 2021 at 8:08:45 AM PST
To: ibew18

Do I have a membership card?

Please send me a hard or digital copy of it. Thank you.

Christopher Deering
[redacted]

APPENDIX K

FREEDOM FOUNDATION

Our mission is to advance individual liberty, free enterprise, and limited, accountable government.

February 22, 2021

Mr. Gus Corona
IBEW 18 President
4189 W. 2nd Street
Los Angeles, CA 90004

Sent via electronic communication: ibew18@ibewlocal18.org

Re: Christopher Deering

Dear Mr. Corona:

I represent Christopher Deering, an employee of the Department of Water and Power for the City of Los Angeles ("the Department"), and represented by the International Brotherhood of Electrical Workers, Local 18 ("IBEW"). I am writing for a clarification and review of Mr. Deering's membership status.

Mr. Deering sent a letter to IBEW on August 3, 2020, requesting immediate cancellation of dues deductions and union membership. On August 13, 2020, IBEW sent a letter to Mr. Deering, confirming his resignation.

However, the letter also stated that IBEW would not stop the dues deductions until a date specified in the Memorandum of Understanding between IBEW and the Department.

Additionally, the letter stated that IBEW had requested, on Mr. Deering's behalf, a copy of his "payroll deduction authorization form from Retention Records at the Los Angeles Department of Water and

Power." Mr. Deering has not received a copy of payroll deduction authorization.

Mr. Deering does not remember joining IBEW, and states that if he had signed a membership, it would have been prior to the U.S. Supreme Court's decision in Janus v. AFSCME (2018), and therefore before he knew of his First Amendment right to abstain from financially supporting IBEW.

In order to resolve these matters, Mr. Deering requests the following:

(1) Copies of any and all dues authorizations or membership cards that IBEW has on file for Mr. Deering;

(2) Immediate removal from any and all forms of membership in IBEW;

(3) Immediate termination of dues deductions;

(4) A refund of all dues, fees, or other payments made to IBEW without authorization. The courtesy of a response from you is requested by March 8, 2021. I look forward to working with you toward an amicable solution for Mr. Deering.

Sincerely,

/s/ Elena Ives

Elena Ives, California Counsel
Freedom Foundation
EIves@FreedomFoundation.com
503-951-6208 | PO Box 18146 Salem, OR 97305
FreedomFoundation.com

APPENDIX L

* * *

8.5 – Dues Deduction

The Department hereby agrees to deduct the dues and/or the fees set forth below only on behalf of the exclusive representative designated in Article 2.

Upon receipt of a dues deduction authorization agreement from an employee, the Department agrees to deduct from the wages of an employee within the Unit, the dues in the amount set forth in the schedule on file with the Department. Such dues deductions shall be subject to the provisions of the authorization agreement, which has been agreed to by the parties. The Department agrees to continue its policy of submitting to the Union a monthly listing of dues-paying employees. The Department further agrees to remit the amounts so deducted directly to the Union.

Notwithstanding any provisions of this MOU that may conflict:

> Employees' requests to cancel their dues withholding authorization agreement shall be processed by the Department to be effective on the ending of the first complete pay period following April 1 of each calendar year.
>
> Employees in this Unit who occupy positions, which are designated confidential, may rescind their dues deduction authorization agreements at any time after such designation occurs.
>
> The Union agrees to indemnify and hold harmless the Department and the City against all claims, including costs of suits and reasonable attorneys' fees and/or other forms of liability arising from the

implementation of the provisions of this Section (8.5).

* * *

APPENDIX M

United States Constitution Amendment I

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

APPENDIX N

42 U.S.C. § 1983

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

APPENDIX O

Cal. Gov't Code §1157.12

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

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

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