

No. _____

In the
Supreme Court of the United States

CAROLYN CROUTHAMEL; DIANE
MCCALLISTER, AND JOANNE BAKER, on behalf
of themselves and all others similarly situated, as
individuals;

Petitioners-Applicants,

v.

WALLA WALLA PUBLIC SCHOOLS, a Washington
public school district, EVERGREEN PUBLIC
SCHOOL DISTRICT, a Washington public school
district, KENT PUBLIC SCHOOL DISTRICT, a
Washington public school district, and PUBLIC
SCHOOL EMPLOYEES, SERVICE EMPLOYEES
INTERNATIONAL UNION LOCAL 1948, a labor
organization, MIKE MERLINO, Superintendent of
Evergreen Public Schools, CALVIN J. WATTS,
Superintendent of Kent School District, WADE
SMITH, Superintendent of Walla Walla Public
Schools,

Respondents.

**Application to the Hon. Justice Elena Kagan for
an Extension of Time Within Which to File a
Petition for a Writ of Certiorari to The United
States Court of Appeals for The Ninth Circuit**

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Counsel for Petitioners-Applicants

Pursuant to Supreme Court Rule 13.5, all above-captioned Applicants hereby move for an extension of time of 60 days, up to and including May 10, 2024, for the filing of a petition for a writ of certiorari.

In support of this request, Applicants state as follows:

1. The United States Court of Appeals for the Ninth Circuit issued its opinion on October 23, 2023 (Exhibit 1), and issued its order denying rehearing en banc on December 12, 2023 (Exhibit 2). The mandate issued December 20, 2023. Unless an extension is granted, the deadline for filing a petition for certiorari will be March 11, 2024. Applicants are filing this application at least ten days before that date, in accordance with Supreme Court Rule 13.5. This Court has jurisdiction under 28 U.S.C. §1254(1).

2. This case concerns whether unions are acting under “color of law” (as so-called “state actors”) when

they utilize government payroll deduction systems to compel non-union public employees to pay union dues. It also concerns whether the First Amendment requires public employers to implement procedural safeguards when deducting union fees from their non-union employees' wages to ensure those employees are not being compelled to fund a union's political speech.

3. Petitioner-Appellants Carolyn Crouthamel, Diane McAllister, and Joanne Baker are non-union public school district employees in Washington who had money deducted from their wages by their employers and forwarded to Service Employees International Union, Local 1948 ("SEIU") to subsidize its political speech. Petitioner-Appellants brought constitutional claims under § 1983 against their respective school districts (and superintendents) and SEIU for compelling them to pay post-resignation nonmember fees after they had successfully resigned their union membership and objected to any further deduction of such fees. The Ninth Circuit Court of

Appeals issued a decision on October 23, 2023, affirming the district court's decision to grant summary judgment for defendants. The Ninth Circuit held that the § 1983 claims brought against SEIU fail for lack of state action, and the § 1983 damages claims against the school districts and superintendents failed because local governments cannot be liable for following state law. *See* Ex. 1. The Ninth Circuit denied rehearing en banc on December 12, 2023. *See* Ex. 2.

3. The Ninth Circuit's holding regarding state action conflicts with the United States Supreme Court's decision in *Janus v. AFSCME, Council 31*, 138 S.Ct. 2448, 2486 (2018). The panel's holding that a union is not acting under color of law pursuant to § 1983 as a "state actor" when it instructs government employers to deduct nonmember fees from the wages of non-consenting non-union public employees' wages, Appendix P.2, conflicts with the U.S. Supreme Court's long history of applying constitutional scrutiny to

unions in such circumstances. *Janus*, 138 S.Ct. at 2448; *Harris v. Quinn*, 573 U.S. 616 (2014); see *Knox v. Serv. Employees Int’l Union, Local 1000*, 567 U.S. 298, 315-16 (2012); *Chicago Tchrs. Union v. Hudson*, 475 U.S. 292, 305-10 (1986).

The Ninth Circuit’s holding also conflicts with the U.S. Supreme Court’s decisions in *Knox*, 567 U.S. at 313-14, and *Hudson*, 475 U.S. at 303, in which the Court held that the First Amendment requires government procedures for deducting union fees from objecting non-union public employees to contain specific procedural safeguards to protect those employees’ First Amendment rights.

4. Petitioners’ Counsel of Record, James Abernathy, as Senior Litigation Counsel for the Freedom Foundation, is directly involved in overseeing and writing seven other petitions for writ of certiorari due on the same day, including *Cram, et al., v. Service Employees International Union, Local 503, et al.*, No-22-35321 (9th Cir. 2023) (due March 11,

2024); *Deering v. Int'l Brotherhood of Electrical Workers Local 18, et al.*, No. 22-55458 (9th Cir. 2023) (due March 11, 2024); *Espinoza v. Union of American Physicians and Dentists. AFSCME Local 206, et al.*, No. 22-55331 (9th Cir. 2023) (due March 11, 2024); *Hubbard v. Service Employees International Union, Local 2015, et al.*, No. 21-16408 (9th Cir. 2023) (due March 11, 2024); *Jimenez v. Service Employees International Union, Local 775, et al.*, No. 22-55331 (9th Cir. 2023) (due March 11, 2024); *Kant, et al v. Service Employees International Union, Local 721, et al.*, No. 22-55904 (9th Cir. 2023) (due March 11, 2024); *Laird v. United Teacher Los Angeles, et al.*, No. 22-55780 (9th Cir. 2023) (due March 11, 2024). Counsel may seek similar extensions in these cases.

5. Additionally, Mr. Abernathy is currently filling in for two attorneys in his firm who have been on maternity leave, one since December 20, 2023, and the other since December 25, 2023. It is unknown exactly when either will return and in what capacity (full or

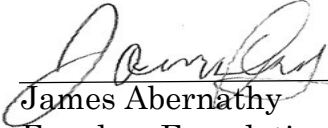
part-time). Mr. Abernathy has substantial additional argument and briefing obligations he is responsible for in the absence of his colleagues, including a reply brief in *Williams v. Amalgated Transit Union, Division 757, et al.*, No. A177950 (Or. Ct. App) (due March 25, 2024); and a cross motion for summary judgment and answering brief in *Bright v. State of Oregon, et al.*, No. 23-00320 (D. Or.) (due April 5, 2024). Additionally, Mr. Abernathy's colleagues on maternity leave serve as counsel on four of the above-mentioned petitions currently due March 11, 2024.

6. Petitioners-Applicants therefore request a sixty-day extension to allow for the preparation of a petition that fully addresses the important and far-reaching issues raised by the decision below.

7. WHEREFORE, for the foregoing reasons, Applicants request that an extension of time up to and including May 10, 2024, be granted within which Applicants may file a petition for a writ of certiorari.

Dated: February 16, 2024

Respectfully submitted,



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Counsel for Petitioners-Applicants

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INTERNATIONAL UNION LOCAL 1948, a labor
corporation, MIKE MERLINO, Superintendent of
Evergreen Public Schools, CALVIN J. WATTS,
Superintendent of Kent School District, WADE
SMITH, Superintendent of Walla Walla Public
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Respondents.

Certificate of Service

I declare under penalty of perjury under the laws of the Supreme Court of the United States that on February 16, 2024, I, James Abernathy, a member of the Supreme Court Bar, electronically filed with the Supreme Court of the United States the foregoing document, Application for Extension of Time to File Petition for Writ of Certiorari, and caused a true and correct copy of the same to be delivered via email to the following:

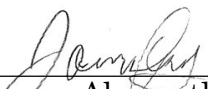
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District; Kent Public
School District; and
Calvin J. Watts,
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Public School District*



James Abernathy

EXHIBIT 1

FILED

OCT 23 2023

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

CAROLYN CROUTHAMEL; et al.,

Plaintiffs-Appellants,

v.

WALLA WALLA PUBLIC SCHOOLS, a
Washington public school district; et al.,

Defendants-Appellees,

ATTORNEY GENERAL FOR THE
STATE OF WASHINGTON,

Intervenor-Appellee.

No. 21-35387

D.C. No. 4:20-cv-05076-RMP

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of Washington
Rosanna Malouf Peterson, District Judge, Presiding

Submitted October 19, 2023**
San Francisco, California

* 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).

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

Appellants Crouthamel, McCallister, and Baker (“Appellants”) are employees of Walla Walla Public Schools, Evergreen Public School District, and Kent Public School District, respectively (the “Districts”). Each appellant voluntarily chose to become a member of SEIU 1948 (“the Union”) and a signed union membership and a deduction authorization agreement shortly after being hired. Appellants bring several federal claims under 42 U.S.C. § 1983 against the Union, the Districts, and the Districts’ superintendents (“Superintendents”), and two state-law claims for breach of contract and unjust enrichment. We may affirm the district court’s order granting summary judgment on any basis fairly supported by the record. *United States ex rel. Kelly v. Serco, Inc.*, 846 F.3d 325, 330 (9th Cir. 2017) (internal quotation marks, citation omitted). We have jurisdiction under 28 U.S.C. § 1291 and affirm.

1. The § 1983 claims brought against the Union fail for lack of state action. *See Belgau v. Inslee*, 975 F.3d 940, 950 (9th Cir. 2020); *Wright v. Serv. Emps. Int’l Union Loc. 503*, 48 F.4th 1112, 1122-25 (9th Cir. 2022).

2. The damages claims brought against the Districts fail because local governments cannot be liable under § 1983 for following state law. *See Connick v. Thompson*, 563 U.S. 51, 60 (2011) (recognizing that “under § 1983, local governments are responsible for ‘their own illegal acts.’” (emphasis in original))

(internal citation omitted)); *Monell v. Dep't of Soc. Servs. of City of New York*, 436 U.S. 658, 694 (1978). Here, the Districts were following Washington state law. Wash. Rev. Code Ann. § 41.56.110(1), (2)(c), (4) (West 2019). The § 1983 damages claims brought against the Superintendents “in their official capacity” fail for the same reason.

3. Appellants lack standing to seek injunctive relief to prevent future deductions. Appellants’ dues deductions have already stopped, and there is no basis for finding a “sufficiently real” risk of future injury. *See Ochoa v. Public Consulting Grp., Inc.*, 48 F.4th 1102, 1107 (9th Cir. 2022).

4. Because Appellants’ federal claims fail, the district court properly declined to exercise supplemental jurisdiction over Appellants’ state law claims. *See* 28 U.S.C. §1367(c)(3).

AFFIRMED.

EXHIBIT 2

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

DEC 12 2023

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

CAROLYN CROUTHAMEL; et al.,

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Defendants-Appellees,

ATTORNEY GENERAL FOR THE STATE
OF WASHINGTON,

Intervenor-Appellee.

No. 21-35387

D.C. No. 4:20-cv-05076-RMP
Eastern District of Washington,
Richland

ORDER

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

The panel has voted to deny the petition for rehearing en banc (Dkt. No. 70) 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.