

No. \_\_\_\_\_

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In the  
**Supreme Court of the United States**

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RYAN CRAM; ERICA DRAKE; LAURA BAILEY;  
RICHARD CAMPBELL; KATHERINE MANGLONA;  
DEANNE MURFIN; CORI STEPHENS; AND  
KATHLEEN TRYON, as individuals and  
representatives of the respective requested class;  
*Petitioners-Applicants,*

v.

SERVICE EMPLOYEES INTERNATIONAL UNION  
LOCAL 503, OREGON PUBLIC EMPLOYEES  
UNION, a labor organization; and KATY COBA,  
Director of the Oregon Department of Administrative  
Services,  
*Respondents.*

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**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, the above-captioned Petitioners-Applicants hereby move for an extension of time of 30 days, up to and including April 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 the constitutionality of the State of Oregon deducting a political assessment fee from objecting non-union employees' wages on behalf

of Service Employees International Union, Local 503 (“SEIU”). The employees objected to the continued deduction of their wages for SEIU’s political assessment after they resigned membership and withdrew authorization for their employer to deduct the assessments, but to no avail. Employees brought this action against the state and SEIU to protect their right against compelled political speech with regard to the political assessment.

3. The Ninth Circuit’s decision directly conflicts with Supreme Court precedent establishing that the First Amendment protects public employees from being compelled to pay for union speech. *See Janus v. AFSCME, Council 31*, 138 S. Ct. 2448, 2486 (2018). This case presents the issue of whether the First Amendment requires procedures for government-deducted political assessments from non-union public employees’ wages must be carefully tailored with safeguards to protect those employees’ First Amendment rights; specifically, whether non-union

employees have the right to an informed choice on whether to fund a union's political speech. *See Knox v. Serv. Employees Int'l Union, Local 1000*, 567 U.S. 298, 315-16 (2012); *see also Chicago Tchrs. Union, Loc. No. 1, AFT, AFL-CIO v. Hudson*, 475 U.S. 292, 301-02, 303, 308 (1986). Whether such employees have an informed choice before government employers deduct money from their wages to subsidize union political speech is a matter of exceptional importance because it is a basic prerequisite to the voluntary affirmative consent required of non-union employees before government deducts union fees from their wages. *See Janus*, 138 S.Ct. at 2486.

4. Petitioner's Counsel of Record, Rebekah Schultheiss, has been on maternity leave since December 20, 2023. Ms. Schultheiss also has substantial briefing obligations when she returns from maternity leave, including a reply brief in *Williams v. Amalgated Transit Union, Division 757, et al.*, No. A177950 (Or. Ct. App) (due March 25, 2024);

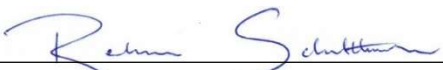
and a cross motion for summary judgment and answering brief in *Bright v. State of Oregon, et al.*, No. 23-00320 (D. Or.) (due April 5, 2024).

5. Applicants therefore request a 30 day extension to allow for the preparation of a petition that fully addresses the important and far-reaching issues raised by the decision below.

6. WHEREFORE, for the foregoing reasons, Applicants request that an extension of time up to and including April 10, 2024, be granted within which Applicants may file a Petition for a Writ of Certiorari.

Dated: February 21, 2024

Respectfully submitted,

  
\_\_\_\_\_  
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LOCAL 503, OREGON PUBLIC EMPLOYEES  
UNION, a labor organization; and KATY COBA,  
Director of the Oregon Department of Administrative  
Services,  
*Respondents.*

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**Certificate of Service**

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I declare under penalty of perjury under the laws of the Supreme Court of the United States that on February 21, 2024, I, Rebekah Schultheiss, 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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**EXHIBIT 1**

**FILED**

**NOT FOR PUBLICATION**

UNITED STATES COURT OF APPEALS

OCT 23 2023

FOR THE NINTH CIRCUIT

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

RYAN CRAM; et al.,

Plaintiffs-Appellants,

and

BARBARA GRABEL; et al.,

Plaintiffs,

v.

SERVICE EMPLOYEES  
INTERNATIONAL UNION LOCAL 503,  
OREGON PUBLIC EMPLOYEES UNION,  
a labor organization and KATY COBA, in  
her official capacity as Director of the  
Oregon Department of Administrative  
Services,

Defendants-Appellees.

No. 22-35321

D.C. No. 6:20-cv-00544-MK

U.S. District Court for Oregon,  
Eugene

MEMORANDUM\*

Appeal from the U.S. District Court  
for the District of Oregon  
Mustafa Kasubhai, Magistrate Judge, Presiding

Submitted October 19, 2023  
San Francisco, California

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

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

Plaintiffs are Oregon State employees who voluntarily joined the Service Employees International Union Local 503 (“Union”), the exclusive bargaining representative for their unit. Plaintiffs signed membership agreements that authorized the deduction of “all Union dues and other fees or assessments.” Plaintiffs later resigned their union membership, and the Union notified them that their deductions would continue until the window period for revoking authorization.<sup>1</sup> Plaintiffs raise First Amendment claims against the Union and Katy Coba, Director of the Oregon Department of Administrative Services, under Section 1983. The district court granted summary judgment for defendants. We have jurisdiction under 28 U.S.C. § 1291 and affirm.

1. Plaintiffs assert that they were not given an informed choice about whether to pay the \$2.75 per month “Issues Fund” fee, which amounts to a political charge, and that the deduction procedure was impermissibly controlled by the Union. *See Knox v. Serv. Emps. Int’l Union, Loc. 1000*, 567 U.S. 298, 316 (2012). Plaintiffs argue that they were not members of the Union when they originally executed their membership agreements and that, after they resigned their union membership, they became nonmembers. But the “procedural safeguards” that protect nonmembers from the risk of compelled political speech do not apply here since Plaintiffs were

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<sup>1</sup> Plaintiff Ryan Cram is the only exception. His payroll deductions terminated shortly after his resignation of membership.

voluntary union members. *See Knox*, 567 U.S. at 316; *Belgau v. Inslee*, 975 F.3d 940, 951–52 (9th Cir. 2020) (rejecting the argument that the language in *Janus v. Am. Fed’n of State, Cnty., & Mun. Emps., Council 31*, 138 S. Ct. 2448, 2486 (2018) about “waiver” applies to union members at the time they enter into their membership agreement).

2. Plaintiffs similarly assert that under *Janus*, defendants unconstitutionally deduced political charges from their wages as nonmembers because there is not “clear and compelling evidence” that they waived their First Amendment rights. But this Court has held that *Janus* does not reach those “who affirmatively signed up to be union members.” *Belgau*, 965 F.3d at 944.

3. The Union also 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 membership agreements which Plaintiffs freely signed. On similar facts, we declined to find state action under *Lugar* in *Belgau*, 975 F.3d at 946–47.

Nor is the Union 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). The state’s transmission of an assessment 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, “ministerial processing of payroll deductions

pursuant to [e]mployees’ authorizations” does not create a nexus between the state and the Union. *Id.* at 947–48 & n.2.

**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

RYAN CRAM; et al.,

Plaintiffs-Appellants,

and

BARBARA GRABELL; et al.,

Plaintiffs,

v.

SERVICE EMPLOYEES  
INTERNATIONAL UNION LOCAL 503,  
OREGON PUBLIC EMPLOYEES UNION,  
a labor organization; KATY COBA, in her  
official capacity as Director of the Oregon  
Department of Administrative Services,

Defendants-Appellees.

No. 22-35321

D.C. No. 6:20-cv-00544-MK  
District of Oregon,  
Eugene

ORDER

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

The panel has voted to deny the petition for rehearing en banc (Dkt. No. 51) 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.