No. 24-____

IN THE

Supreme Court of the United States

MICHAEL CRAINE,

Petitioner,

v.

AMERICAN FEDERATION OF STATE, COUNTY, AND MUNICIPAL EMPLOYEES COUNCIL 36, LOCAL 119, AN EMPLOYEE ORGANIZATION; COUNTY OF LOS ANGELES, A PUBLIC AGENCY; ROB BONTA, IN HIS OFFICIAL CAPACITY AS ATTORNEY GENERAL OF CALIFORNIA,

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 right to "dissolve the political bands which have connected" the people and government is older than the country itself and is enshrined in the First Amendment's guarantees of free association and free speech. THE DECLARATION OF INDEPENDENCE ¶ 1 (U.S. 1776). Yet, here, the Ninth Circuit failed to apply these vital protections when Los Angeles County prohibited its employee Michael Craine from severing ties with a union—a private political organization—using a discretionary policy it collectively bargained with the union which forced him to maintain membership in, and funding of, that union after he attempted to resign union membership and stop the County's deduction of dues from his wages.

This Court has never held that the First Amendment protects a public employee's rights to resign union membership and stop a government employer's union dues deductions, or that a government employer and union are liable if they violate those rights. Petitioner Craine requests that the Court do so here for the first time.

The questions presented are:

1. Whether the First Amendment's guarantee of free association protects a public employee's right to resign membership in a union.
2. Whether the First Amendment's guarantee of free speech protects a public employee's right to stop a government's deduction of union dues from his wages.
3. Whether a local municipality is liable for damages if it deprives a public employee of constitutional rights pursuant to a discretionary policy it

chose to collectively bargain with a union which compels an objecting public employee to continue union membership and dues payments.

4. Whether a union acts "under color of law" when it instructs a government employer to deduct union dues from a public employee's wages pursuant to state law and a policy it collectively bargained with the government employer which compels an objecting public employee to continue union membership and dues payments.

PARTIES TO THE PROCEEDING AND RULE 29.6 STATEMENT

Petitioner Michael Craine was the plaintiff-appellant in the court below.

Respondents American Federation of State, County, and Municipal Employees, Council 36, Local 119; County of Los Angeles; and Rob Bonta, in his official capacity as Attorney General of California were the 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. *Craine v. American Federation of State, County, and Municipal Employees Council 36, Local 119*, No. 23-55206, United States Court of Appeals for the Ninth Circuit. Judgment entered April 2, 2024.

2. *Craine v. American Federation of State, County, and Municipal Employees Council 36, Local 119*, No. 2:22-cv-03310, United States District Court for the Central District of California. Judgment entered February 1, 2023.

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The district court dismissed the petitioner's claims, *Craine v. AFSCME Council 36, Local 119*, No. 22-3310, 2023 WL 2379217 (C.D. Cal. Feb. 1, 2023); the order is reproduced as Appendix C, Pet.App. 10a-17a. The Ninth Circuit affirmed the district court's dismissal of the petitioner's complaint in a memorandum opinion, reported as *Craine v. AFSCME Council 36, Local 119*, 23-55206, 2024 WL 1405390 (9th Cir. Apr. 2, 2024) (also affirming the dismissal of *Bourque, v. Engineers and Architects,* No. 23-55369 (9th Cir. Apr. 2, 2023), *sub nom. Craine v. AFSCME Council 36, Loc. 119*, No. 23-55206, 2024 WL 1405390 (9th Cir. Apr. 2, 2024)), petition for certiorari pending, *Bourque v. Engineers and Architects,* 24-55369 (S. Ct.), reproduced as Appendix B, Pet.App. 3a-9a.

JURISDICTION

The Ninth Circuit issued its memorandum opinion on April 2, 2024. Pet.App. 3a-9a. This Court has jurisdiction pursuant to 28 U.S.C. § 1254. On June 24, 2024, Justice Kagan granted an extension of time within which to file this petition to and including July 31, 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. 74a.

42 U.S.C. § 1983 is reproduced as Appendix N, Pet.App. 75a.

California Government Code § 1157.12 is reproduced as Appendix O, Pet.App. 76a.

INTRODUCTION AND SUMMARY OF REASONS TO GRANT THE PETITION

Whether the First Amendment's guarantees of free association and free speech protect a public employees' rights to resign union membership and cancel dues payments, respectively, are important questions of federal law that have not been, but should be, settled by this Court. *See* Sup. Ct. R. 10(c). Consequently, whether government employers and unions are liable for violating such rights also constitutes an important unsettled question. This case perfectly illustrates the need for this Court to settle these matters.

The courts below permitted petitioner Michael Craine's government employer and union to compel his association and speech by forcing him to maintain union membership and dues payments after he attempted to resign membership and withdraw authorization for his employer's dues deductions. The courts did so based on the Ninth Circuit rule of law that maintenance of membership and dues payment policies established by statute and/or CBA fail to even *implicate* the First Amendment when the employee makes the (apparently) irreversible decision to join a union.

According to the Ninth Circuit, the simple act of joining a union forever forfeits First Amendment rights and leaves employees vulnerable to statutory schemes and collective bargaining agreements which force employees to remain union members and/or dues payors well after they try to resign membership and stop dues payments. *See Deering v. Int'l Bhd. of Elec. Workers, Loc. 18*, No. 22-55458, 2023 WL 6970169, at

*1 (9th Cir. Oct. 23, 2023) (a policy which prevented the appellant employee from canceling dues payments "did not violate [his] First Amendment rights since he voluntarily joined the union"), petition for certiorari pending, *Deering v. Int'l Bhd. of Elec. Workers, Loc. 18,* No. 23-1215 (S. Ct.)[1]; *Kurk v. Los Rios Classified Emps. Ass'n*, 2022 WL 3645061, at *1 (9th Cir. Aug. 24, 2022), *cert. denied*, 143 S. Ct. 2431 (2023) (upholding a policy which compelled an objecting employee to continue union membership and dues payments even though the employee never agreed to do so); *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) (allowing a policy which compelled continued union membership and dues payments because the constitutional right not to associate with a union "applie[s] to nonunion members only."); *Wright v. Serv. Emps. Int'l Union Loc. 503*, 48 F.4th 1112, 1116-17, 1121-25 (9th Cir. 2022), *cert denied,* 143 S. Ct. 749 (2023) (holding that even if a union forged an employee's signature on a membership card, the resulting compelled union membership and dues deductions do not trigger constitutional scrutiny, citing *Belgau v. Inslee*, 975 F.3d

[1] The Deering petition seeks relief similar to the instant petition with two fundamental differences. First, unlike in *Deering*, Craine's government employer and union compelled Craine to remain a union member after attempting to resign union membership. *See infra* at 5-6; *Deering*, No. 23-1215 at 5. Second, unlike here, *see infra* at 6-7, in Deering the Ninth Circuit ruled on the substantive constitutional question of whether the First Amendment protects a public employee's right to disassociate from a union by withdrawing authorization for a government employer's dues deductions. *Deering*, No. 23-1215 at 7 ("The Ninth Circuit held on the merits that the City's… unauthorized dues deductions… 'did not violate Deering's First Amendment rights since he voluntarily joined the union.'").

940 (9th Cir. 2020), *cert. denied*, 141 S. Ct. 2795 (2021)); *Belgau*, 975 F.3d at 944, 946–49, 950-52 (compelling nonmember fees after resigning membership does not require that the employee waive her right against compelled speech because "the world did not change" after *Janus v. AFSCME, Council 31*, 585 U.S. 878 (2018), for those who "signed up to be union members."). Thus, once public employees join a union, they may be forced to *continue* associating with and subsidizing that union without regard to whether they ever agreed to do so.

Courts commonly cite these cases when they dismiss government employers and unions from lawsuits such as Craine's based on a lack of local municipal liability and union state action. However, the Ninth Circuit's holdings on these threshold matters conflict with this Court's decisions and constitute a façade behind which the court permits compelled association and speech. This is exactly what happened here.

Absent intervention by this Court, the Ninth Circuit—along with several other circuits across the country, *see infra* at 13—will continue to permit government employers and unions to force public employees to maintain union membership and dues payments, thereby violating their First Amendment rights to free association and free speech. This Court should grant certiorari to recognize these constitutional rights, make clear that government employers and unions are liable when they violate these rights, and remand the case for the lower courts to determine if "clear and compelling" evidence exists that Craine waived his rights against compelled association and speech. *Janus*, 585 U.S. at 930.

STATEMENT OF THE CASE

A. Factual Background

Michael Craine is a helicopter mechanic for the Los Angeles County Sheriff's Department. Pet.App. 21a (¶ 4). Almost a quarter-century ago in 1999, Craine authorized the County to deduct union dues from his paycheck by signing a barebones authorization card drafted by the County which gave Craine the right to cancel dues payments *at any time*. Pet.App. 67a ("This authorization … shall remain in effect *until canceled by me* by written notice…") (emphasis added). The card said nothing about union membership or a collective bargaining agreement ("CBA").[2] *Id*.

Twenty-three years later in January 2022, after he became disillusioned with AFSCME's political speech related to Covid vaccine mandates, Craine tried to sever ties with the union by resigning union membership and canceling the County's dues deductions. Pet.App. 25a-26a (¶¶ 28-39). Craine did so by written notice pursuant to his right under the County's dues deduction authorization card. Pet.App. 26a (¶¶ 34-39), 67a.

Three months later in April 2022, AFSCME finally responded and told Craine that he could not leave the union for five more months because the County had agreed with AFSCME in CBA Art. 24, Sec. 2 to prevent him from severing ties with the union until a narrow month-long window period in September 2022, during which he would need to resign membership and cancel

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[2] 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 County and AFSCME.

dues payments *again*. Pet.App. 27a (¶¶ 46-47). Thus, despite the County's agreement with Craine to let him sever ties with AFSCME in writing at any time, the County had agreed with AFSCME behind Craine's back to a policy that restricted Craine from severing ties with AFSCME except during a one-month window in September of each year. Pet.App. 31a (¶¶ 75-76), 68a.

Pursuant to this policy, Respondents forced Craine to remain a union member and continued to deduct $55.35 in union dues per paycheck from Craine's wages.[3] Pet.App. 26a (¶¶ 40-41). Once Craine filed this lawsuit in May 2022, however, the respondents released him from union membership and stopped deducting dues from his wages even though they had previously intended to compel both until September 2022. Pet.App. 5a, 6a, 11a.

B. Proceedings Below

Craine filed this lawsuit on May 16, 2022 under 42 U.S.C. § 1983 seeking an injunction to stop the compelled membership and dues deductions, declaratory relief, and damages caused by the respondents' violation of his rights to free association and free speech.[4] Pet.App. 37a-39a. However, the district court

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[3] The respondents compelled Craine to remain a union member even though CBA Art. 24, Sec. 2 does not explicitly require, or even mention, union membership.

[4] Craine sought nominal, constitutional, and compensatory damages. Pet.App. 37a-39a. AFSCME repaid Craine's compensatory damages, Pet.App. 5a, 11a, but Craine's claims for nominal and constitutional damages remain. The Ninth Circuit did not dispute that Craine would be entitled to nominal and constitutional damages if the County and AFSCME were liable for violating his constitutional rights.

sidestepped the substantive constitutional questions related to free association and speech by granting Respondents' Fed. R. Civ. P. 12(b)(6) motions to dismiss without addressing whether Craine had a constitutional right to resign union membership and cancel dues payments. Pet.App. 10a.

Specifically, the court dismissed Craine's damages claim against the County under *Monell v. Dep't of Soc. Servs. of City of New York*, 436 U.S. 658, 694 (1978). Pet.App. 16a. The court also dismissed Craine's damages claim against AFSCME for lack of state action, citing *Belgau*, 975 F.3d at 947–49, and *Wright,* 48 F.4th at 1121-25 (Pet.App. 16a-17a).[5]

The Ninth Circuit affirmed in all respects, also without addressing whether Craine had the constitutional rights to resign union membership and cancel dues payments. The appellate court held that the County was not liable under *Monell* because its unauthorized deductions from Craine's wages resulted from state law (presumably Cal. Gov't Code § 1157.12) rather than its own chosen policy, Pet.App. 8a-9a, despite the fact that state law does not limit the County's ability to process employees' membership resignations and dues cancellations to September of each year. State law also does not require the County to deduct AFSCME's union dues through payroll

[5] The court also held Craine's request for an injunction was moot because the respondents released Craine from union membership and stopped the deductions after Craine filed suit. Pet.App. 11a. The court dismissed Craine's claim for nominal damages against the Attorney General under Eleventh Amendment immunity. Pet.App. 14a. Both holdings were in error but Craine does not appeal them.

deductions *at all*. The County chose these policies independent of state law. *See infra* at 17-19.

The court also held AFSCME's conduct failed to constitute "state action" under *Lugar v. Edmondson Oil Co*., 457 U.S. 922 (1982), because Craine's allegations against AFSCME amounted to a "private misuse of a state statute" that is "contrary to the relevant policy articulated by the State." Pet.App. 7a. This holding ignored this Court's recent ruling in *Lindke v. Freed* that such a "misuse of power, possessed by virtue of state law, constitutes state action." 601 U.S. 187, 199 (2024). Additionally, citing to *Belgau* and *Wright*, the Ninth Circuit also held AFSCME was not a "state actor" because a government's "ministerial processing of payroll deductions" does not subject the union to Section 1983 liability. Pet.App. 8a.[6] However, AFSCME's conduct extends well beyond passive "ministerial processing" because it bargained for and established jointly with the County the very policy under which the respondents compelled Craine to both remain an AFSCME member and subsidize AFSCME's political speech. *See infra* at 20-23.

[6] The appellate court also affirmed that Craine's claims for an injunction were moot because Respondents had released him from union membership and stopped the deductions after he filed suit. Pet.App. 5a.

REASONS FOR GRANTING THE PETITION

A. Whether the First Amendment's guarantees of free association and free speech protect a public employee's rights to resign union membership and cancel dues payments, respectively, are important questions of federal law that have not been, but should be, settled by this Court.

The First Amendment protects both the freedom of association and the freedom of speech. *Janus*, 585 U.S. at 891-93. This 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." *Id.* 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. at 892-93 (citing *Roberts v. U.S. Jaycees*, 468 U.S. 609, 623 (1984)). Indeed, "…[d]isassociation 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).

Notwithstanding this Court's language in *Janus*, Justice Powell's concurrence in *Abood*, and the other precedents cited above, no majority has explicitly recognized that the First Amendment's guarantees of free association and free speech protect a public

employee's right to resign union membership and cancel dues payments, respectively.

Here, Respondents' twofold compulsion of association (union membership) and speech (compelled dues) gives this Court an excellent opportunity to rule on these exceptionally important matters. For "[i]f 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. Afterall, the "right to speak and the right to refrain from speaking are complementary components of the broader concept of individual freedom of mind." *Wooley v. Maynard*, 430 U.S. 705, 714 (1977) (finding that a government compels speech when it compels individuals to associate with an objectionable message as a condition to driving an automobile). Here, the government chooses to force its employees to subsidize a private, inherently political organization. This Court has previously observed that such compulsion is "sinful and tyrannical" and "always demeaning." *Janus*, 585 U.S. at 893. 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 in *Janus*. *Id*. at 886.

Similarly, whether public employees have a constitutionally protected interest in resigning union

membership is also an important question this Court should address. If the Ninth Circuit is correct that forcing an employee to continue to associate with or subsidize a union does not even *implicate* the First Amendment, especially when compelled by an agreement collectively bargained by a government and a union, then nothing in the Constitution would stop unions and government employers from requiring employees to remain members in perpetuity (subjecting them to potential union discipline and fines) or compelling them to subsidize a union's political speech with forced dues. 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 provisions can also be extended to prevent employees from ever actually reaching the opt-out window periods. *See Kant, v. Serv. Emps. Int'l Union, Loc.* 721, No. 22-55904, 2023 WL 6970156 *1 (9th Cir. Oct. 23, 2023), petition for certiorari pending, No. 23-1113 (S. Ct.).[7]

Further, 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

[7] Though long durations of compulsion are certainly concerning, even short intervals cause irreparable harm. *Elrod v. Burns*, 427 U.S. 347, 373 (1976) ("The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.").

membership (which includes forced dues payments). Pennsylvania Consolidated Statutes § 1101.705 specifically singles out maintenance of membership provisions as a proper subject of collective bargaining. *See also* Penn. 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, 1988 WL 1519977 (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). In New Jersey, union members' revocation of authorization for payroll deductions are only effective "the 30th day after the anniversary date" of the employee's date of hiring. *See* N.J. Stat. Ann. § 52:14-15.9e. These policies compel union membership and/or dues payments.

While no reported case has yet decided whether public sector employees have a right to disassociate from a union, union members in the private sector have a clear right to resign union membership. Chief Justice Burger observed in *NLRB v. Granite State Joint Board, Textile Workers Union of America, Local 1029*, that "we have given special protection to the associational rights of individuals in a variety of contexts," including "in the specific context of our national scheme of collective bargaining." 409 U.S. 213, 218 (1972) (Burger, C.J., concurring). Under § 8(a)(3) of the Taft-Hartley Act, 29 U.S.C. § 158(a)(3), the only aspect of union membership that can be required pursuant to a union shop agreement is the payment of dues. *See Radio Officers v. NLRB*, 347 U.S. 17 (1954)

(union security agreements cannot be used for "any purpose other than to compel payment of union dues and fees"). "'Membership,' as a condition of employment, is whittled down to its financial core." *NLRB v. General Motors Corp*., 373 U.S. 734 (1963). That is, "membership" does not require association, but merely monetary support. *Pattern Makers' League of N. Am. v. NLRB*., 473 U.S. 95 (1985); *see also*, *Granite State Joint Bd*., 409 U.S. at 217 ("when there is a lawful dissolution of a union member relation, the union has no more control over the former member than it has over the man in the street."). When Craine resigned, AFSCME should have had no more control over him than the man on the street.[8]

Finally, the compelled association in the instant case is by no means an anomaly, as the Ninth Circuit is not alone in adopting rules that permit compelled association and speech. To date, six other circuits have done similarly, even citing Ninth Circuit cases when doing so. This includes 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);

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[8] Certainly, a public employee can waive her First Amendment rights to free association and free speech. But this is precisely the point: *the employee* must waive *her own* constitutional rights. Her constitutional rights cannot be waived by third parties such as government employers and/or unions, which is what happened here when *the County and AFSCME* agreed to waive Craine's First Amendment rights against forced association and compelled speech.

Bennett v. AFSCME 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).

It is consistent with neither the spirit nor the letter of the First Amendment for a government employer and union to force an objecting employee to remain a union member and/or to continue paying dues when that employee never agreed to do so. But no federal court has so held, and the Ninth Circuit does not recognize any such constitutional rights. This Court should grant certiorari to recognize these constitutional rights, and remand the case for the lower courts to determine if "clear and compelling" evidence exists that petitioner Craine waived his rights against compelled association and speech. *Janus*, 585 U.S. at 930.

B. The Ninth Circuit's decision to absolve the County and Union of liability for unconstitutionally compelling union membership and dues payments concerns matters of great federal importance and conflicts with this Court's decisions regarding municipal liability and state action.

1. Whether local municipalities and unions are liable for damages when they compel public employees' association and speech is an important federal question.

The rule of law that compelled association and speech schemes (such as those relevant here) fail to even *implicate* the First Amendment commonly leads courts to dismiss government employers and unions from these cases using the threshold issues of local

municipal liability and union state action. The matters are inextricably intertwined. It is *because* these schemes fail to implicate the First Amendment that, for example, courts dismiss unions because they do not act "under color of law," i.e., they are not "state actors." Addressing at least one of these threshold matters is of vital importance since these decisions leave compelled association and speech schemes entirely unexamined—making employees vulnerable to the "demeaning" harm these schemes cause. *See supra* at 10.

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—the party in these schemes that *actually seizes* employees' money—to stop the dues deductions.[9] Here, for example, AFSCME intended to take dues until September 2022, but upon

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[9] *See*, *e.g.*, *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 v. AFSCME Council 18*, 992 F.3d 950 (10th Cir. 2021).

Craine undertaking the expense of filing suit in May 2022, promptly tried to moot his case by stopping deductions and sending a check for the dues it never should have told the County to take. *See supra* at 6. Municipal employers typically hide behind *Monell* and various state laws to deflect liability for damages,[10] while unions claim they are not engaging in "state action" when they take advantage of statutory schemes and/or CBAs granting them control over a government's payroll deductions from public employees' wages.[11] The end result is that courts do not apply constitutional scrutiny to the myriad of

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[10] *See*, *e.g.*, *Bourque, v. Engineers and Architects Ass'n,* 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).

[11] *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; *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,* 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).

compelled association and speech schemes used by government employers and unions to fund the union's political speech. This charade is exactly what the County and AFSCME did here.

2. The Ninth Circuit's decision to relieve the County of liability for unconstitutionally compelling union membership and dues payments conflicts with this Court's decision in *Monell v. Department of Social Services of City of New York*.

The County is liable for damages under § 1983 if its unconstitutional conduct is based on its own officially adopted and promulgated policy. *Monell*, 436 U.S. at 690. Here, the County adopted and promulgated the CBA's policy under which it compelled Craine to continue union membership and dues payments.[12] Pet.App. 31a (¶ 75).

First, the courts below ignored Count I of Craine's lawsuit, which alleged that the County acted with AFSCME to force Craine to remain a union member after Craine attempted to resign his membership pursuant to the terms of his authorization card. Pet.App. 31a-32a (¶¶ 79-88). Only through *the County's* dues deductions could AFSCME actually compel Craine's continued membership since AFSCME requires all

[12] "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).

members to pay dues. State law does not require the County to deduct union dues from its employee's wages at all and, even if it did, it does not require the County to act jointly with AFSCME to compel Craine's union membership—thereby subjecting Craine to potential union discipline and fines.[13] Thus, the County's policy extends well beyond simply compelling Craine to pay union dues (compelled *speech*) to compelling *association*—a distinct and separate constitutional violation which results in its own damages for which the County should be liable.

Second, even if the County's conduct only compelled speech, Cal. Gov't Code § 1157.12 does not require the County to deduct AFSCME's union dues through payroll deductions *at all* and does not restrict when the County may process employees' dues deduction cancellations. *Id*. The statute left the County with "various alternatives" to choose from regarding these policies and the County chose from among them. *City of Oklahoma City v. Tuttle*, 471 U.S. 808, 823 (1985).[14]

The statute grants AFSCME the authority to instruct the County to deduct dues from an employee's wages, as the Ninth Circuit observed, Pet.App. 8a (The County "had to comply with California state law requiring them to deduct dues in reliance on the

---

[13] The County jointly acted with AFSCME to compel membership by continuing to deduct union dues from Craine's wages after he attempted to resign membership and stop dues deductions. *See infra* at 5-6.

[14] Craine does not challenge the general constitutionality of government deducting union dues from its employees' wages through payroll deductions. Agreeing to deduct dues is quite different from agreeing to restrict *when* an employee may disassociate from a union. It is discussed here to demonstrate that the City established its own policy in multiple ways on this matter.

unions' representations."), but, again, this requirement is triggered only *if* the County 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) ("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 County limit its processing of employees' membership resignations and dues deduction cancellations to September of each calendar year. *Id*. It is the County's *own* policy decision which restricts when employees can later sever ties with an inherently political exclusive representative the employees are otherwise bound by law to be represented by.

In fact, here, the County's compelled dues policy restricting employees from effectively canceling dues payments until September of each year regardless of the terms in a written authorization, *see supra* at 5-6, *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). Had the respondents followed the statute, they would have allowed Craine to resign at any time in writing. On the contrary, the respondents here compelled dues deductions pursuant to a policy in the CBA which forced continued dues payments, *not* Craine's written authorization, which gave him the right to sever ties with AFSCME at *any* time. Pet.App. 67a.

The decisions below which absolve the County of liability, therefore, cannot be squared with *Monell*.

3. The Ninth Circuit's decision to relieve the Union of liability for its joint participation with the County in unconstitutionally compelling union membership and dues payments conflicts with this Court's decisions regarding "state action."

It is well established that First Amendment protections against compelled association and speech are triggered when government grants its coercive powers to a union "under color of law" to control and receive payroll dues deductions from employees' wages, which government has done here through both statute (Cal. Gov't Code § 1157.12(a)), *see supra* at 16-19) and the CBA's compelled dues policy. *See Janus*, 585 U.S. at 929-30 (applying constitutional scrutiny under § 1983 to compelled dues scheme in Illinois law and CBA); *see also, Harris v. Quinn*, 573 U.S. 616 (2014); *Knox v. Service Emps. Int'l Union, Local 1000*, 567 U.S. 298, 314 (2012); *Chicago Tchrs. Union, Loc. No. 1, AFT, AFL-CIO v. Hudson*, 475 U.S. 292, 308 (1986); *Abood*, 431 U.S. at 234.

First, again, the courts below ignored Count I of Craine's complaint, which alleged that AFSCME acted with the County to force Craine to remain a union member even though no state law or CBA provision required the County to do so. Pet.App. 31a-32a (¶¶ 77-88). Compelling Craine's continued union membership was only possible because of AFSCME's statutory authority to demand County payroll deductions pursuant to Cal. Gov't Code § 1157.12, since AFSCME requires members to pay union dues. Thus, AFSCME's conduct extends well beyond simply compelling Craine to pay union dues (compelled *speech*) to compelling

association which, again, results in its own damages for which AFSCME should be liable.

Second, AFSCME acts under "color of law" sufficient to be liable under § 1983, i.e., engages in "state action," when it instructs the County to deduct dues from employees' wages. The well-understood meaning of "color of law" is that the actor is clothed with lawful authority, *not* that the actor's body is acting in actual accordance with that law. AFSCME's authority to make government seize employees' wages 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*, 601 U.S. at 198 (citing *Lugar*, 457 U.S. at 929). Since Craine never agreed to restrict his ability to resign union membership or stop dues payments, AFSCME's participation in the extraction of money from Craine's wages resulted *only* "from the exercise of a right or privilege having its source in state authority." *Id*. AFSCME misused the power granted it in Cal. Gov't Code § 1157.12 to extract monies from Craine's wages after he withdrew consent by continuing to extract those monies pursuant to the CBA. Under *Lindke*, this "'[m]isuse of power, possessed by virtue of state law,' constitutes state action." *Id*. at 199 (quoting *United States v. Classic*, 313 U.S. 299, 326 (1941)). After all, "to misuse power…one must possess it in the first place." *Id*. at 200.

The Ninth Circuit ignored *Lindke* (decided seventeen days before the Ninth Circuit's decision in this case) and Craine's citation to it in a post-oral argument notice of subsequent authority, Pet.App. 41a-43a, when it concluded that AFSCME's conduct pursuant to the compelled dues policy was the "private misuse of a state statute" that could not constitute "state action" (presumably because Cal. Gov't Code § 1157.12

requires "authorization" to the deductions). Pet.App. 7a. If this is true, however, it leads to the backwards result that local municipalities and unions are free to negotiate policies that compel union membership and dues payments in violation of the First Amendment without fear of liability so long as that policy is inconsistent with state law.

Such a result makes no sense given that "a private party's joint participation with state officials in the seizure of disputed property is sufficient to characterize that party as a 'state actor' for purposes of the Fourteenth Amendment." *Lugar v. Edmondson Oil Co.*, 457 U.S. at 941. For this reason, the Seventh Circuit rejected a similar argument on remand in *Janus* that the union had engaged in no state action by accepting the fees it asked the state to collect on its behalf. *See Janus v. AFSCME, Council 31*, 942 F.3d 352, 361 (7th Cir. 2019). Craine's continued forced association with AFSCME required AFSCME and the County to work hand in glove as joint actors, as AFSCME was only able to continue collecting membership dues from Craine with the aid of the County, a CBA, and a state statute.

Finally, but for California labor law under the Meyers-Milias Brown Act ("MMBA") generally, Cal. Gov't Code §§ 3500, *et seq*., AFSCME could not jointly act with the County to compel union membership. The MMBA grants unions and government employers the power to bind all employees in a bargaining unit, both union members and nonmembers, on "all matters relating to employment conditions and employer-employee relations." Cal. Gov't Code § 3504. Under this law, similar to laws in many other states, union and government employers regularly negotiate CBAs which restrict the exercise of employees' First Amendment

rights by restricting to narrow annual window periods when they can sever ties with a union. Even if AFSCME misused this authority when it compelled Craine to maintain his membership, i.e., the government did not explicitly require membership either through the CBA or statute, that use of authority still constitutes state action. *See Lindke*, 601 U.S. at 200; *see supra* at 21-22.

Contrary to the courts' reasoning below, then, AFSCME'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 County and AFSCME did to Craine when they forced him to remain a union member and continue dues payments.

C. 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 address narrow matters relevant in the context of public sector employment; specifically, whether the First Amendment protects a public employee's right to resign union membership and cancel dues payments, and whether local municipalities and unions can be held liable for damages when they violate this right. These questions are clearly presented because the lower courts dismissed Craine's claims on Fed. R. Civ. P. 12(b)(6) motions, which means Craine's allegations must be accepted as true and reasonable inferences drawn in his favor.

Further, answering the questions presented will not disrupt California's state labor system and leaves

entirely intact the ability of unions to enforce otherwise lawful private membership agreements. Craine also does not appeal other matters in this case related to mootness or due process.

Second, the County's deduction authorization card in this case does not affect the analysis. The First Amendment protection against compelled union association and speech may be waivable in theory, but Craine never signed an agreement restricting his ability to cancel dues payments. The card explicitly states that its duration "shall be effective until canceled by [Craine] in writing." Pet.App. 67a. The card is not even a union document, but even if the card made Craine a union member (which does not, by itself, waive the First Amendment right to resign membership), it certainly does not incorporate contradictory terms found in a separate unreferenced document, such as a CBA.

In any event, the Court need not decide this matter if it grants the petition, because it could hold public employees have the First Amendment rights to resign union membership and cancel dues payments and then remand the case to address whether the County's card constitutes "clear and compelling" evidence that Craine waived those rights. *Janus*, 585 U.S. at 930. Whatever else the Court chooses to do, it should make clear that the government and a union cannot waive an employee's constitutional rights on that employee's behalf. Employees must do so for themselves by providing affirmative consent government employers and/or unions must show by "clear and compelling" evidence. *Id.*

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 AFSCME'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 multiple avenues to address the central question of whether the First Amendment protects a public employee's right to resign union membership and cancel dues payments. The Ninth Circuit absolved both the County and AFSCME of liability for depriving Craine of his First Amendment rights, so this Court could vindicate public employees' First Amendment rights by holding the local municipality accountable, the union accountable, or both. This Court may also choose to protect employees' constitutional rights under either the First Amendment's protection of free association or its protection of free speech.

CONCLUSION

The Court should grant the petition.

Respectfully submitted,

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Counsel for Petitioner

July 31, 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

June 24, 2024

Clerk
United States Court of Appeals
for the Ninth Circuit
95 Seventh Street
San Francisco, CA 94103-1526

Re: Michael Craine
v. AFSCME Council 36, Local 119, et al.
Application No. 23A1131
(Your No. 23-55206)

Dear Clerk:

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 June 24, 2024, extended the time to and including July 31, 2024.

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

Sincerely,

Scott S. Harris, Clerk
/s/ Scott S. Harris, Clerk

Sara Simmons
Case Analyst

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

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

NOTIFICATION LIST

Mr. Timothy Ray Snowball
Freedom Foundation
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Olympia, WA 98507

Clerk
United States Court of Appeals
for the Ninth Circuit
95 Seventh Street
San Francisco, CA 94103-1526

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 23-55206

D.C. No. 2:22-cv-03310-DSF-SK

MICHAEL CRAINE,

Plaintiff-Appellant,

v.

AMERICAN FEDERATION OF STATE, COUNTY, AND MUNICIPAL EMPLOYEES COUNCIL 36, LOCAL 119, an employee organization; COUNTY OF LOS ANGELES, a public agency; ROB BONTA, in his official capacity as Attorney General of California,

Defendants-Appellees.

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

No. 23-55369

D.C. No. 2:21-cv-04006-JAK-PVC

CAMILLE BOURQUE, individual;
PETER MOREJON, individual,

Plaintiffs-Appellants,

v.

ENGINEERS AND ARCHITECTS ASSOCIATION, a labor organization; CITY

Appeal from the United States District Court
for the Central District of California
John A. Kronstadt, District Judge, Presiding

Argued and Submitted March 8, 2024
Pasadena, California

MEMORANDUM*

Before: CLIFTON, H.A. THOMAS, and DESAI, Circuit Judges.

Plaintiff Michael Craine is an employee of the County of Los Angeles. He alleges that he had dues deducted from his wages without his authorization and sent to the American Federation of State, County, and Municipal Employees Council 36, Local 119 ("AFSCME"), the exclusive bargaining representative for his unit. Plaintiffs Camille Bourque and Peter Morejon are employees of the City of Los Angeles. They allege that they had dues deducted from their wages without their authorization and sent to the Engineers and Architects Association ("EAA"), the exclusive bargaining representative for their units; indeed, Bourque alleges that she never joined EAA. Plaintiffs raise First and Fourteenth Amendment claims against the unions, their respective municipal employers, and California Attorney General Rob Bonta. The district court granted Defendants' motions to dismiss. We have jurisdiction under 28 U.S.C.

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

§ 1291. We review *de novo* a district court's dismissal for lack of subject matter jurisdiction under Rule 12(b)(1) and for failure to state a claim under Rule 12(b)(6). *Sabra v. Maricopa Cnty. Cmty. Coll. Dist.*, 44 F.4th 867, 878 (9th Cir. 2022). We affirm.

1. The district court properly dismissed Morejon's claims for prospective relief for a lack of standing. Morejon was removed from EAA's member list and all deductions from his wages ceased before he filed his complaint. Allegations of past injury alone, with only a highly speculative potential for future unauthorized dues deductions, are insufficient to establish standing. *Wright v. Serv. Emps. Int'l Union Loc. 503*, 48 F.4th 1112, 1118–21 (9th Cir. 2022), *cert. denied*, 143 S. Ct. 749 (2023).

2. The district court properly dismissed Plaintiffs' claims for prospective relief as moot. The unions have refunded the money at issue and added Plaintiffs' names to a list they sent to the municipalities containing the names of members who have cancelled their dues authorization. When a defendant voluntarily ceases allegedly unlawful conduct, that defendant "bears the formidable burden of showing that it is absolutely clear the allegedly wrongful behavior could not reasonably be expected to recur." *Friends of the Earth, Inc. v. Laidlaw Env't Servs. (TOC), Inc.*, 528 U.S. 167, 190 (2000). Here, Defendants have carried their burden. Plaintiffs are unlikely to authorize such deductions, and the deductions are therefore unlikely ever to resume.

3. The district court properly dismissed Plaintiffs' claims against the Attorney General because they are

barred by Eleventh Amendment sovereign immunity.[1] We have recognized that, "'absent waiver by the State or valid congressional override,' state sovereign immunity protects state officer defendants sued in federal court in their official capacities from liability in damages, including nominal damages." *Platt v. Moore*, 15 F.4th 895, 910 (9th Cir. 2021) (quoting *Kentucky v. Graham*, 473 U.S. 159, 166–69 (1985)). Plaintiffs have not shown waiver by the State or a valid congressional override.

Plaintiffs' argument that the *Ex parte Young* doctrine applies is unavailing. Plaintiffs' complaints include no allegations against the Attorney General beyond stating that he is "sued in his official capacity as the representative of the State of California charged with the enforcement of state laws . . ." But this "generalized duty to enforce state law or general supervisory power over the persons responsible for enforcing the challenged provision" is not enough to subject the Attorney General to suit. *L.A. Cnty. Bar Ass'n v. Eu*, 979 F.2d 697, 704 (9th Cir. 1992). And Plaintiffs identify no ongoing violation of federal law, as the unions have processed their membership resignations and refunded all money at issue. *See Verizon Md., Inc. v. Pub. Serv. Comm'n of Md.*, 535 U.S. 635, 645 (2002) (noting that courts determine whether *Ex parte Young* overcomes an Eleventh Amendment bar to suit by conducting a "straightforward inquiry into

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[1] Appellants filed motions for judicial notice of the Attorney General's motion for intervention in a pending case before the U.S. District Court for the Central District of California. The district court case is not relevant, however, as it involves a different state law. As such, the Motion for Judicial Notice, Dkt. No. 46, Case No. 23-55206, and the Motion for Judicial Notice, Dkt. No. 39, Case No. 23-55369, are **DENIED**.

whether [the] complaint alleges an ongoing violation of federal law and seeks relief properly characterized as prospective" (alteration in original) (quoting *Idaho v. Coeur d'Alene Tribe of Idaho*, 521 U.S. 261, 296 (1997) (O'Connor, J., concurring))).

4. The district court properly dismissed Plaintiffs' claims against the unions for lack of state action. Actions by a private actor may be subject to Section 1983 liability if the plaintiff can show that the conduct was "fairly attributable to the State." *Lugar v. Edmondson Oil Co.*, 457 U.S. 922, 937 (1982). To establish fair attribution, two criteria must be met: (1) "the deprivation must be caused by the exercise of some right or privilege created by the State or by a rule of conduct imposed the [S]tate or by a person for whom the State is responsible," and (2) "the party charged with the deprivation must be a person who may fairly be said to be a state actor." *Id.*

First, Plaintiffs' allegations that the unions failed to timely process their resignations and notify their municipal employers amount to a "private misuse of a state statute" that is "contrary to the relevant policy articulated by the State." *Wright*, 48 F.4th at 1123 (quoting *Lugar*, 457 U.S. at 940–41). As such, Plaintiffs cannot satisfy the first *Lugar* prong.

Second, we reject Plaintiffs' argument that the unions are state actors under the "joint action" or "governmental nexus" tests. *See Tsao v. Desert Palace, Inc.*, 698 F.3d 1128, 1140 (9th Cir. 2012). We have held that the mere fact that a state transmits dues payments to a union does not give rise to a Section 1983 claim against a union under these tests. *Belgau v. Inslee*, 975 F.3d 940, 947–49 (9th Cir. 2020), *cert. denied*, 141 S. Ct. 2795 (2021); *see also Wright*, 48 F.4th at 1122 n.6 (noting that the joint action test

"largely subsume[s]" the governmental nexus test (quoting *Naoko Ohno v. Yuko Yasuma*, 723 F.3d 984, 996 n.13 (9th Cir. 2013))). And a state employer's "ministerial processing of payroll deductions" does not create a sufficient nexus between the state and a union to subject the union to Section 1983 liability. *Belgau*, 975 F.3d at 948; *see also Wright*, 48 F.4th at 1123–24. Accordingly, Plaintiffs cannot satisfy the second *Lugar* prong.

5. The district court properly dismissed Plaintiffs' claims against the municipalities for failure to establish *Monell* liability. *See Monell v. Dep't of Soc. Servs. of City of New York*, 436 U.S. 658, 694 (1978). Plaintiffs do not allege that the municipalities intended to withhold unauthorized dues. *See Ochoa v. Pub. Consulting Grp., Inc.*, 48 F.4th 1102, 1110 (9th Cir. 2022), *cert. denied*, 143 S. Ct. 783 (2023). Nor have Plaintiffs alleged that the municipalities were "even aware that the deductions were unauthorized." *Id.* We have noted that "*Janus* imposes no affirmative duty on government entities to ensure that membership agreements and dues deductions are genuine," and "does not require that [a state] ensure the accuracy of [a union's] certification of those employees who have authorized dues deductions." *Wright*, 48 F.4th at 1125 (citing *Janus v. Am. Fed'n of State, Cnty., & Mun. Emps., Council 31*, 585 U.S. 878, 929–30 (2018)).

Plaintiffs also cannot point to any deliberate choice the municipalities made, as the municipalities had to comply with California state law requiring them to deduct dues in reliance on the unions' representations. *See Connick v. Thompson*, 563 U.S. 51, 60 (2011) ("[U]nder § 1983, local governments are responsible only for 'their *own* illegal acts.'" (quoting *Pembaur v.*

Cincinnati, 475 U.S. 469, 479 (1986))); *Castro v. County of Los Angeles*, 833 F.3d 1060, 1075 (9th Cir. 2016) (en banc) ("The custom or policy must be a 'deliberate choice to follow a course of action . . . made from among various alternatives by the official or officials responsible for establishing final policy with respect to the subject matter in question.'" (quoting *Pembaur*, 475 U.S. at 483)).

AFFIRMED.

APPENDIX C

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CV 22-3310 DSF (SKx)

MICHAEL CRAINE,

Plaintiff,

v.

AMERICAN FEDERATION OF STATE, COUNTY, AND MUNICIPAL EMPLOYEES COUNCIL 36, LOCAL 119, et al.,

Defendants.

Order GRANTING Motions to Dismiss
(Dkt. 24, 25, 26)

Defendants American Federation of State, County, and Municipal Employees Council 36, Local 119 (Local 119), California Attorney General Rob Bonta, and the County of Los Angeles filed separate motions to dismiss Plaintiff Michael Craine's complaint. The Court deems this matter appropriate for decision without oral argument. *See* Fed. R. Civ. P. 78; Local Rule 7-15.

I. Factual Background

Plaintiff is an employee of the County of Los Angeles with a position that is within a bargaining unit represented by Local 119. Plaintiff joined Local 119 in 1999 and signed a written authorization for the deduction of membership dues from his paycheck. More recently, Plaintiff decided to withdraw from the union. He alleges that he sent a letter to Local 119 on

January 19, 2022, resigning from the union and withdrawing authorization for dues deductions. Plaintiff alleges that the dues deduction was not processed and that he was told by Local 119 it would not be processed until September 2022 under a Memorandum of Understanding (MOU) between Local 119 and the County. That MOU established a 30-day annual window in September for cancelling dues deductions and Local 119 would not process cancellations outside of that time. The MOU in question had expired in 2021, and, therefore, Plaintiff argues that it should not have applied to his request in any case. After the filing of this lawsuit in May 2022, Local 119 cancelled Plaintiff's dues deductions and on May 19 mailed Plaintiff a check reimbursing him for dues deducted after January 19, along with interest on that amount.

Plaintiff has sued Local 119, the County, and the California Attorney General, alleging that the dues deductions without his permission violated his rights under the United States Constitution because it forced him to fund political speech without his authorization or consent.

II. Analysis

A. Mootness

Defendants argue that the dispute is moot and therefore there is no subject matter jurisdiction for this Court to order prospective relief. The Court agrees.

"To establish Article III standing, a plaintiff must demonstrate that: (1) she suffered an actual or imminent injury as a result of the alleged illegal conduct; (2) there is a causal connection between the injury and the conduct complained of; and (3) the injury will likely be redressed by a favorable decision of the

court." *Wright v. Serv. Emps. Int'l Union Loc. 503*, 48 F.4th 1112, 1118 (9th Cir. 2022) (simplified). "The plaintiff has the burden of establishing standing for each claim she seeks to press and for each form of relief that is sought." *Id*. (simplified).

It is undisputed that the dues deductions that Plaintiff complains of have been stopped. Therefore, there is no current ongoing injury to be remedied. Plaintiff argues that this does not moot claims for prospective relief because (1) there is no assurance that Defendants will not resume the deductions, (2) the deduction issue is a recurring issue that will evade review if Defendants are allowed to moot cases repeatedly, and (3) public policy considerations weigh against a finding of mootness because Plaintiff's claims seek to vindicate important constitutional rights.

"[A] defendant claiming that its voluntary compliance moots a case bears the formidable burden of showing that it is absolutely clear the allegedly wrongful behavior could not reasonably be expected to recur." *McCormack v. Herzog*, 788 F.3d 1017, 1025 (9th Cir. 2015). Defendants have established to the Court's satisfaction that it is clear that they will not resume the deductions. The deductions have ended and Plaintiff has left the union. The deductions at issue are taken only from union members. There is no reason to believe that Defendants would begin to withhold money from a non-member and provide it to the union as there is no evidence or even an allegation that Defendants do this more generally. Plaintiff also provides no support for the notion that generic public policy arguments can override the requirements for Article III standing developed by the courts.

Plaintiff's argument that this is a situation of recurring behavior that is capable of evading review is potentially more meritorious. This exception applies where "(1) the challenged action is in its duration too short to be fully litigated prior to cessation or expiration, and (2) there is a reasonable expectation that *the same complaining party* will be subject to the same action again." *Kingdomware Techs., Inc. v. United States*, 579 U.S. 162, 170 (2016) (simplified) (emphasis added).

Even if the Court assumes that the first element of the test applies, Plaintiff fails to meet the second for the same reasons stated above. There is virtually no likelihood that Defendants will resume deducting money from *Plaintiff's* income given that he is no longer a member of the union. If this were to happen, it would be because Plaintiff voluntarily rejoined the union, agreed to deductions, tried to cease the deductions, and was prevented or delayed from doing so by Defendants. This is a very unlikely chain of events given Plaintiff's allegations regarding his beliefs and motivations. *See also Wright*, 48 F.4th at 1120 ("While the scenario [plaintiff] posits may be theoretically possible, it is not 'certainly impending,' and she cannot show a sufficient likelihood that she will be wronged again in such a way.") (simplified); *Bain v. California Tchrs. Ass'n*, 891 F.3d 1206, 1214 (9th Cir. 2018) ("The assertion that Bhakta could *conceivably* return to her old job, without more, is precisely the type of speculative 'some day' intention the Supreme Court has rejected as insufficient to confer standing.") (emphasis in original).[1]

[1] The Court also hesitates to apply the recurring behavior exception to mootness where the only plausible way the Plaintiff could be expected to be subject to the behavior again is through a

B. Damages

Although his prospective relief claims are mooted, Plaintiff also has claims for retrospective compensation. However, these claims also fail.

1. Attorney General

Plaintiff argues that the California Attorney General can be subjected to nominal damages without running afoul of Eleventh Amendment sovereign immunity.[2] This is incorrect. "[S]tate sovereign immunity protects state officer defendants sued in federal court in their official capacities from liability in damages, including nominal damages." *Platt v. Moore*, 15 F.4th 895, 910 (9th Cir. 2021).

2. County

The analysis is more complex with regard to the County. Plaintiff argues that the County can be subject to *Monell* liability because it engaged in a discretionary policy rather than one required by state statute. The alleged discretionary policy at issue is the MOU between the County and Local 119 that designated an opt-out period for cancelling dues. That is, the MOU did not allow a Local 119 member to cancel dues withholding at any time and instead allowed such cancellation only during the opt-out period. But even assuming that the MOU could be considered a "policy" for purposes of *Monell* liability, Plaintiff

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series of voluntary choices that would appear to be specifically designed to subject himself to the complained- of behavior. *Cf. Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 416 (2013) ("[R]espondents cannot manufacture standing merely by inflicting harm on themselves based on their fears of hypothetical future harm that is not certainly impending.").

[2] There is no argument that either of the governmental defendants has waived sovereign immunity.

admits that the MOU was no longer in force when Plaintiff attempted to cancel the dues deductions. *See* Compl. ¶ 48. After the expiration of the MOU, the County was no longer part of an agreement about when union dues deductions could be cancelled and had no involvement in Local 119's decisions on honoring the cancellation of dues.[3] The County was then statutorily required by Section 1157.12 to be solely reliant on the determination of Local 119 and Local 119's notice to the County that Plaintiff's dues deductions should be cancelled.

> Public employers other than the state that provide for the administration of payroll deductions authorized by employees for employee organizations . . . *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 . . . .
>
> (b) Direct employee requests to cancel or change deductions for employee organiza-

[3] While Local 119 is alleged to have cited the expired MOU as its reason for failing to end Plaintiff's dues deductions, there is nothing to suggest that Local 119 was bound at that point to do so by any policy of, or agreement with, the County.

> tions 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 . . . .

Cal. Gov't Code § 1157.12 (emphasis added).

In short, the MOU, even if it could be considered a policy for *Monell* purposes, was not the cause of Plaintiff's alleged injury. Without the MOU as a policy, Plaintiff's claims for retrospective relief reduce into a claim against the County for following California state law and not for the creation of a policy or custom by the County itself as required for *Monell* liability.[4]

3. Local 119

Finally, Plaintiff's compensation claims against Local 119 fail because Local 119's acts were not state action that would make it liable for the Constitutional violations alleged in the complaint. The Ninth Circuit has twice held that state statutory union deduction schemes very similar to the one at issue here did not transform the union's acts into state action. *Wright v. Serv. Emps. Int'l Union Loc. 503*, 48 F.4th 1112, 1121-25 (9th Cir. 2022); *Belgau v. Inslee*, 975 F.3d 940, 947–48 (9th Cir. 2020). Plaintiff tries to distinguish *Wright* and *Belgau* because "Craine's constitutional injuries

[4] Such a retrospective claim is also possibly barred by the Eleventh Amendment because it would implicate the actions of the State in enacting Section 1157.12. *Cf. State of Hawaii v. Gordon*, 373 U.S. 57, 58 (1963) ("The general rule is that relief sought nominally against an officer is in fact against the sovereign if the decree would operate against the latter.").

could have resulted only from the Union's exercise of a privilege the State of California granted it through Section 1157.12 and the MOU, specifically, the ability to control the process of dues collected from public employees." Rule 12(b)(6) Opp'n at 8. But this was the same issue presented in *Wright* and *Belgau* – whether state statutory authority allowing a union to certify authorization of public employee union deductions meant that the union's actions in doing so were state action. The Ninth Circuit has twice said that the union was not engaging in state action.

III. Conclusion

The motions to dismiss are GRANTED with prejudice.

IT IS SO ORDERED.

Date: February 1, 2023

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

APPENDIX D

UNITED STATES DISTRICT COURT CENTRAL DISTRICT OF CALIFORNIA

CV 22-3310 DSF (SKx)

MICHAEL CRAINE,

Plaintiff,

v.

AMERICAN FEDERATION OF STATE, COUNTY, AND MUNICIPAL EMPLOYEES COUNCIL 36, LOCAL 119, et al.,

Defendants.

JUDGMENT

The Court having dismissed all claims against all Defendants either for mootness or on the merits,

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: February 1, 2023

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

APPENDIX E

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

Case No.:

MICHAEL CRAINE, individual,

Plaintiff,

v.

AMERICAN FEDERATION OF STATE, COUNTY, AND MUNICIPAL EMPLOYEES COUNCIL 36, LOCAL 119, an employee organization; COUNTY OF LOS ANGELES, a public agency; and ROB BONTA, in his official capacity as Attorney General of California,

Defendants.

VERIFIED COMPLAINT FOR DECLARATORY JUDGMENT, INJUNCTIVE RELIEF, AND DAMAGES FOR VIOLATION OF CIVIL RIGHTS.

[42 U.S.C. § 1983]

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INTRODUCTION

Michael Craine has been a dues' paying member of American Federation of State, County and Municipal Employees, Council 36, Local 119, (Local 119) for over twenty years. During his time as both a member and as Vice-President of the Local, Craine became well-aware that the union is more interested in pushing a political agenda than it is in representing members. But when the County of Los Angeles (the County) employees began to lose their jobs and livelihoods because they refused to take the Covid-19 vaccine, Craine decided enough was enough.

According to the plain terms on the membership and dues' authorization card he signed with the County and Local 119 in 1999, the only requirement for him to end both his membership and authorization was to submit a "written notice." On January 19, 2022, he did so. But the County and Local 119 has continued taking and spending his money on political speech anyway, under Cal Gov't Code § 1157.12 (Section 1157.12), even though he has neither contractually authorized nor affirmative consented to these deductions. Local 119 justified these violations of Craine's First and Fourteenth Amendment rights by citing an expired MOU between the County and union. An MOU for which Craine was never a direct party.

For these reasons, Craine brings this action under 42 U.S.C. § 1983 seeking compensatory damages for the money taken and spent on political speech without his contractual authorization or affirmative consent, additional compensatory and nominal damages for the deprivation of his constitutional rights, and equitable relief.

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), including relief pursuant to Federal Rule of Civil Procedure 65 (permanent injunctive 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 Michael Craine is a Helicopter Mechanic for the Los Angeles County Sheriff's Department. Craine lives in the City of Long Beach, in Los Angeles County, California. Craine signed a membership and dues' authorization card with the County on behalf of Local 119 in 1999. This card allowed him to end his union membership at any time without restriction, and to end the dues' deduction authorization by submitting a simple written notice. He exercised this right on January 19, 2022. The County has continued to take his lawfully earned wages and sent the money to Local 119 for use in political speech anyway. Craine challenges the state system allowing for these continuing deductions as unconstitutional.

5. Defendant American Federation of State, County and Municipal Employees, Council 36, Local 119, is a "recognized employee organization," Cal. Gov't Code

§3513(b), and is the exclusive representative for Craine's bargaining unit within the Los Angeles County Sheriff's Department. Under Section 1157.12 and the terms of the now expired Memorandum of Understanding (MOU),[1] Local 119 authorizes the continuing deductions from Craine's lawfully earned wages without contractual authorization or affirmative consent, which the union then uses to fund its political speech. For the purpose of service of process, Local 119 is located at 3375 E. Slauson Ave., Vernon, CA 90058.

6. Defendant County of Los Angeles is a "public agency," Cal. Gov't Code § 3501(c), headquartered in Los Angeles, California. Under Section 1157.12 and the terms of the now expired Memorandum of Understanding (MOU), the County deducts money from Craine's lawfully earned wages without contractual authorization or affirmative consent, which Local 119 then uses to fund its political speech. For the purpose of service of process, the County may be served with process at 500 W Temple 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 Section 1157.12. Section 1157.12, as the Attorney General interprets and applies it, authorizes the actions of the County and Local 119 challenged as unconstitutional by Craine.

8. For the purpose of service of process, the Attorney General's office is located at 300 South Spring Street, Los Angeles, California 90013.

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[1] http://file.lacounty.gov/SDSInter/lac/1031004_421.pdf

FACTUAL ALLEGATIONS

A. Michael Craine: Veteran and Long-time Public Employee.

9. Michael Craine proudly served his country as a member of the United States Army for a period of four years.

10. After being honorably discharged, Craine took the skills he acquired during his service and began work as a helicopter mechanic with a private news media company in the Los Angeles area.

11. In 1999, he joined the public sector and began work as a helicopter mechanic for the Los Angeles County Sheriff's Department.

12. In this role, which he has held for twenty three years, Craine maintains, and repairs helicopters used by the Department in its law enforcement activities.

13. Shortly after he began work for the Department, Craine was approached by a representative for Local 119, the exclusive representative for his bargaining unit within the Department.

14. While Craine was reluctant to join Local 119 or sign the authorization, he did not want to stand out as the only employee in his unit to refuse membership and dues' deductions.

15. On May 26, 1999, Craine signed the membership and dues' authorization card with the County on behalf of Local 119.

16. This 1999 authorization card states, in relevant part: "I hereby authorize the Auditor of the County of Los Angeles or his agents to deduct monthly from salary earned by me in any department or district of

the County of Los Angeles, the amount shown hereon and to pay the same to: Local 119." Ex. A.

17. The card further states that: "This authorization... shall remain in effect until cancelled by me by written notice." *Id.*

18. No further conditions are contained on the card for Craine to end his membership and dues' authorization, including no mention of additional conditions pursuant to the current or future MOU between the County and Local 119.

19. Since June 1999, and continuing to this day, money is deducted by the County from each of Craine's bi-weekly pay checks and sent to Local 119.

B. Local 119: Political Lobby and Labor Union.

20. Since 1999 Craine has also had plenty of experience with Local 119, and the quality of representation provided by the union.

21. Craine's experience with Local 119 has been one of dissatisfaction, pessimism, and a feeling that his money has been taken by the union and wasted on issues that have nothing to do with improving the working conditions of members.

22. In particular, Craine took issue with the union using his money to produce propaganda for the Democratic Party and Democrat candidates.

23. Over the years, there were many times when Craine considered leaving Local 119 and ending his dues' deduction authorization.

24. But again, based on social pressure, he decided against it.

25. In a last-ditch effort to turn around the activities of Local 119 and make it more responsive to members'

needs, in 2014 Craine ran for and was elected Vice President of Local 119.

26. He served in this role for approximately three years, until 2017.

27. Despite his best efforts, Local 119 remained committed to politicking with members' dues money rather than maximizing representation and improving benefits and working conditions.

C. Local 119's Failure regarding Mandatory Covid-19 Vaccinations.

28. In the fall and winter of 2021, the County began implementing a mandatory Covid-19 vaccination policy for all employees.

29. Under this policy, County employees refusing vaccination could be terminated from their jobs, lose benefits, and in many cases spell financial and personal ruin for themselves and their families.

30. While the Los Angeles County Sheriff resisted this regime, and hence Craine and his co-workers were not forced to decide between a personal medical or moral choice and their jobs and livelihood, Craine took issue with the lack of public position or response by AFSCME.

31. While Craine was personally not in favor of mandatory Covid-19 vaccinations, he thought it major failure for the union to not take any position on the issue on behalf of its members, for whom the consequences could be dire.

32. This was especially true, in Craine's view, given the union's propensity to regularly spend members' dues on political speech and other non-labor issues.

33. For Craine, Local 119's failure on the issue of mandatory Covid-19 vaccinations was the final straw.

D. Craine Ends his Membership and Dues' Authorization.

34. On January 19, 2022, Craine mailed a letter to Local 119. Ex. B.

35. In this letter, Craine resigned his membership with Local 119 and ended the authorization to continue deducting dues from his lawfully earned wages.

36. While Craine did not retain a copy of the original letter he sent Local 119, an identical copy can be found included as Ex. C.

37. The January 19, 2022, letter complied with the "written notice" requirement of the card he signed with County on behalf of Local 119 in 1999.

38. Again, no other conditions for Craine to end his membership and dues' authorization are contained on the 1999 card.

39. As of February 2022, Craine should have been released from union membership and the deductions from his lawfully earned wages for Local 119's political speech should have ceased.

E. The Defendants Continue Taking and Spending Craine's Money on Politics.

40. Despite having fully complied with the terms of the 1999 card by submitting a written notice, the County has continued deducting $55.35 from each of Craine's bi-weekly paychecks and sending the money to Local 119. Ex. D.

41. Local 119 continues to use Craine's money on political speech without his contractual authorization or affirmative consent.

42. On April 12, 2022, Craine called and left a voicemail message for Igor Kagan, the Business Manager for Local 119.

43. On April 13, 2022, Kagan responded to Craine via text message and promised to return his call the following morning on April 14, 2022. Ex. E.

44. During the April 14, 2022, call, Kagan informed Craine that Craine is purportedly bound by "window period" language contained in the MOU between the County and Local 119.

45. Craine then requested and Kagan later provided him with a copy of the MOU via email. Ex. F.

46. According to Kagan, based on this MOU, Ex. G, Craine was supposedly bound to continue his membership and the dues' authorization until September 2022.

47. At that point, again according to Kagan, in order to be released Craine is required to submit another notice complying with specific requirements between September 1 and September 30, 2022.

48. The MOU Kagan sent to Craine expired in August 2021, five months prior to the point at which Craine submitted his written notice ending his membership and dues' authorization according to his 1999 card.

49. Even if the status quo regarding the previous MOU terms was maintained, restrictive window periods do not qualify for this standard, as they are not related to wages, hours, or working conditions.

50. Additionally, while a member and part-time official with Local 119 in labor negotiations with the County over the years, Craine was never a direct party to any MOU sufficient to bind him individually to any window period.

51. Rather, the 1999 dues' authorization card is the only document Craine ever signed establishing any kind of relationship with Local 119.

52. On the April 14, 2022, call, Craine also requested Kagan provide him with any specific documentation purportedly binding him to the window period.

53. Having not heard from Kagan, Craine followed this request up with a text message on April 15, 2022. Ex. E.

54. On April 19, 2022, Kagan responded to Craine and stated that he "did not yet have an answer," and would let him know. Ex. H.

55. Later that same day, Kagan emailed Craine a simple copy of Craine's 1999 membership and dues' authorization card. Ex. I.

56. Since January 2022, the County has taken, and Local 119 has spent on political speech, $387.45 of Craine's lawfully earned wages without contractual authorization or consent.

F. Allegations Applicable to Claims for Retrospective and Prospective Relief.

57. The controversy between Craine and the Defendants is a concrete dispute concerning the legal relations of parties with adverse legal interests.

58. Specifically, Craine and the Defendants dispute the constitutionality of the continuing seizure and spending of Craine's lawfully earned wages on Local 119's political speech.

59. Since January 2022, when Craine should have been released from both his membership and dues' authorization, the County has continued to take, and

Local 119 has continued to spend, Craine's lawfully earned wages with neither contractual authorization nor affirmative consent.

60. To date, neither Local 119 nor the other Defendants have offered to return the money taken without his contractual authorization or affirmative consent.

61. Nor would such a simple compensatory refund be sufficient to cure Craine's injuries, given the damage to his constitutional rights.

62. Further, neither Local 119 nor the other Defendants have offered to cease their unconstitutional behavior by allowing Craine to end his membership and dues' authorization with Local 119.

63. Instead, they act in concert under Section 1157.12 and the expired MOU and continue deducting money to fund Local 119's political speech with Craine's money without his contractual authorization or affirmative consent.

64. The Defendants maintain the constitutionality of their actions.

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

66. Rather, Craine asks the Court to declare the legal rights of parties with adverse interests in a continuing controversy.

67. Injunctive relief is appropriate, as Craine is suffering a continuing irreparable injury to his First and Fourteenth Amendment rights.

68. There is no adequate remedy at law for these continuing injuries.

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

G. Additional Allegations Concerning the Challenged State System.

70. The Defendants utilize a state system allowing the County to seize money from Craine's lawfully earned wages without contractual authorization or affirmative consent and sending to Local 119 for use in political speech.

71. This system is comprised of state law, Section 1157.12, and the MOU between the County and Local 119.

72. Section 1157.12 provides: "Public employers... shall...[r]ely 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."

73. Section 1157.12 provides: "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."

74. Section 1157.12 provides: "Public employers... shall...[d]irect 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."

75. Further, the MOU between the County and Local 119 contain policy choices that are not required by Section 1157.12, and which amount to a deliberate indifference to Craine's constitutional rights and was a moving force behind the deprivations of his rights.

76. Specifically, but not limited to, the MOU's provision that employees purportedly are only allowed to end their membership's during a specified window period between September 1 and September 30.

77. It is not just the coordinated action of the County and Local 119 to take and spend Craine's lawfully earned wages under state law and the MOU that renders Local 119 subject to 42 U.S.C. § 1983, but that these continuing deductions are occurring without any contractual authorization or affirmative consent by Craine.

78. Hence, the only authority by which the County and Local 119 continue to take Craine's lawfully earned wages for use in Local 119's political speech, is the state system he challenges.

CAUSES OF ACTION

COUNT I
Freedom of Association
(42 U.S.C. § 1983)

79. Craine re-alleges and incorporates by reference each and every paragraph included above.

80. The Free Association Clause of the First Amendment prohibits the Defendants from compelling Craine to remain a member of Local 119 beyond the terms of his 1999 agreement and against his will.

81. Craine effectively ended both his Local 119 membership and dues' authorization in January 2022.

82. After January 2022, the County and Local 119 had no contractual authorization to maintain Craine's membership with Local 119.

83. This includes no authorization based on Craine's 1999 card, the expired MOU, or maintenance of the expired MOU's terms.

84. Since January 19, 2022, through the present Craine does not agree with to continued membership and forced association with Local 119.

85. Craine actively opposes continued membership with Local 119.

86. The Defendants have, however, continued to retain Craine's membership, and force his association with Local 119, against his will.

87. Craine has suffered, and continues to suffer, injuries to his rights to free association under the First Amendment.

88. Therefore, Craine seeks compensatory damages against Local 119 for injuries to his free association rights, and nominal damages and equitable relief against all the Defendants to end the continuing deprivations, pursuant to 42 U.S.C. § 1983 and 28 U.S.C. §§ 2201-2202.

COUNT II
Freedom of Speech
(42 U.S.C. § 1983)

89. Craine re-alleges and incorporates by reference each and every paragraph included above.

90. The Free Speech Clause of the First Amendment prohibits the Defendants from compelling Craine from

subsidizing the political speech of Local 119 by taking and spending his lawfully earned wages without contractual authorization or affirmative consent.

91. There is no substantive difference between "agency fees" taken without contract or consent and spent on politics by unions, and "security fees" taken without contract or consent and spent on politics by unions.

92. This spending includes expenditures not only on discrete political candidates and issues, but also any expenditures on general union activities, including collective bargaining activities.

93. Because of their unique position in the public labor sector, every activity engaged in by government unions, including Local 119, are forms of political speech falling within the First Amendment.

94. Craine effectively ended both his Local 119 membership and dues' authorization in January 2022.

95. After January 2022, the County and Local 119 did not have contractual authorization to take and spend even a single penny of Craine's lawfully earned wages.

96. Craine does not affirmatively consent to continued deductions.

97. But the Defendants have continued to both take and spend Craine's lawfully earned wages on political speech.

98. These continued deductions and expenditures, taken without contractual authorization or affirmative consent, independently violated and continue to violate Craine's First Amendment rights against compelled speech.

99. Even a single deduction by the County, and single expenditure by Local 119, without contractual authorization or affirmative consent, would both be violations of Craine's First Amendment right against compelled speech.

100. Craine has suffered, and continues to suffer, injuries to his right to freedom from compelled speech under the First Amendment.

101. Therefore, Craine seeks compensatory damages against Local 119 and the County for injuries to free speech rights, and nominal damages and equitable relief against all the Defendants to end the continuing deprivations, pursuant to 42 U.S.C. § 1983 and 28 U.S.C. §§ 2201-2202.

COUNT III
Procedural Due Process
(42 U.S.C. § 1983)

102. Craine re-alleges and incorporates by reference each and every paragraph included above.

103. The procedural component of the Due Process Clause requires the provision of constitutionally adequate procedures before an individual is deprived of liberty interests, like the free speech interests protected by the First Amendment.

104. The Due Process Clause also requires the provision of constitutionally adequate procedures before an individual is deprived of property interests, such as those represented by lawfully earned wages.

105. Craine has a liberty interest in his First Amendment right to be free from compelled speech.

106. Craine has a property interest in his lawfully earned wages.

107. Neither Section 1157.12 or the MOU provide or provided Craine notice of the deprivations of his liberty and property interests.

108. Neither Section 1157.12 or the MOU provide or provided Craine with any pre or post-deprivation opportunity to contest the deprivations.

109. Neither Section 1157.12 or the MOU provide or provided Craine access to a neutral decision-maker to determine his rights and liabilities.

110. The complete lack of procedures furnished to Craine by Section 1157.12 and the MOU, under which the Defendants act in concert to take and spend his money on political speech with neither contractual authorization or affirmative consent, violated and continue to violate Craine's right to procedural due process, both on their face and as-applied.

111. Even a single deduction by the County, and single expenditure by Local 119, without contractual authorization or affirmative consent would both be violations of Craine's right to procedural due process.

112. Craine has suffered, and continues to suffer, these injuries.

113. Therefore, Craine seeks compensatory damages against Local 119 and the County for injuries to procedural due process rights, and nominal damages and equitable relief against all the Defendants to end the continuing deprivations, pursuant to 42 U.S.C. § 1983 and 28 U.S.C. §§ 2201-2202.

COUNT IV
Substantive Due Process
(42 U.S.C. § 1983)

114. Craine re-alleges and incorporates by reference each and every paragraph included above.

115. The substantive component of the Due Process Clause prohibits restraints on liberty interests, like the free speech interests protected by the First Amendment, that are inherently arbitrary.

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

117. Craine has a liberty interest in his First Amendment right against compelled speech.

118. Under Section 1153.12 and the MOU, the County has no ability to independently verify whether employees such as Craine have contractually authorized or affirmatively consented to deductions.

119. Instead, Craine is required to direct his union-related payroll preferences to Local 119, rather than directly to his employer.

120. Local 119 is an inherently biased party with a direct pecuniary interest in continuing to authorize deductions from Craine's lawfully earned wages without contractual authorization or affirmative consent.

121. Thus, Section 1153. 12 and the MOU create an inherent and arbitrary conflict of interest with the purpose and effect of arbitrarily burdening Craine's ability to exercise his First Amendment rights to refuse to subsidize the political speech of Local 119, both facially and as-applied.

122. Arguments that this system is preferable based on ease of administrability are insufficient to justify Craine's constitutional injuries.

123. Even a single deduction by the County, and single expenditure by Local 119, without contractual authorization or affirmative consent would both be violations of Craine's right to substantive due process.

124. Craine has suffered, and continues to suffer, these injuries.

125. Therefore, Craine seeks compensatory damages against Local 119 and the County for injuries to substantive due process rights, and nominal damages and equitable relief against all the Defendants to end the continuing deprivations, pursuant to 42 U.S.C. § 1983 and 28 U.S.C. §§ 2201-2202.

PRAYER FOR RELIEF

Wherefore, Michael Craine respectfully requests that this Court:

A. Emergency injunctive relief:

• Issue an immediate emergency injunction directing Local 119 to release Craine from union membership and directing the County to cease taking Craine's lawfully earned wages for Local 119's political speech without his contractual authorization or affirmative consent.

B. Declaratory judgment:

• Issue an order that Local 119's continued refusal to release Craine from union membership when properly requested under the terms of his 1999 card is a violation of his First Amendment right to free association.

• Issue an order that the County's continued deductions from Craine's lawfully earned wages without contractual authorization or affirmative consent is a violation of his First Amendment right to free speech and Fourteenth Amendment due process rights.

• Issue an order that Local 119's continued authorization of deductions from Craine's lawfully earned wages without contractual authorization or affirmative consent, is a violation of his First Amendment right to

free speech and Fourteenth Amendment due process rights.

• Issue an order that Local 119's continued spending of Craine's lawfully earned wages without contractual authorization or affirmative consent on political speech, is a violation of his First Amendment right to free speech and Fourteenth Amendment due process rights.

C. Permanent injunctive relief:

• Enjoin Local 119 from refusing to allow Craine to end his union membership and immediately dissociate from Local 119.

• Enjoin the County's continued deductions from Craine's lawfully earned wages without contractual authorization or affirmative consent;

• Enjoin Local 119's continued authorization of deductions from Craine's lawfully earned wages without contractual authorization or affirmative consent;

• Enjoin Local 119's continued spending of Craine's lawfully earned wages without contractual authorization or affirmative consent on political speech;

• Enjoin the Attorney General from future enforcement or defense of the system established by Section 1157.12, whereby public employees' lawfully earned wages may be taken and spent by labor unions without contractual authorization or affirmative consent as required by the First Amendment.

D. Enter judgment:

• Award Craine damages in the amount of $387.45 from Local 119 and the County for the money taken by the County from Craine's lawfully earned wages without contractual authorization or affirmative consent since January 2022 and spent on political speech by Local 119.

- Award Craine additional compensatory damages from Local 119 and the County for the deprivation of his First and Fourteenth Amendment rights.

- Award Craine $1.00 in nominal damages from each of the Defendants for the deprivation of his First and Fourteenth Amendment rights.

- Award Craine his costs and attorneys' fees under 42 U.S.C. § 1988.

- Award Craine any further relief to which he may be entitled and other relief this Court deems just and proper.

Date: May 16, 2022

Respectfully submitted,

FREEDOM FOUNDATION

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Attorneys for Plaintiff

Verification

I, Michael Craine, declare as follows:

1. I am the Plaintiff in the present case, a citizen of the United States of America, and a resident of the State of California.

2. I have personal knowledge of myself, my activities, and my intentions, including those set out in the foregoing Verified Complaint for Declaratory Judgment, Injunctive Relief, and Damages for Violation of Civil Rights, and if called I would competently testify as to the matters stated herein.

3. I verify under penalty of I declare under penalties of perjury, under the laws of the United States, that the foregoing statements are true and correct.

Executed on: May 16, 2022

/s/Michael Craine
Michael Craine

APPENDIX F

FREEDOM FOUNDATION

[LOGO]

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

March 19, 2024

Molly C. Dwyer, Clerk of Court
United States Court of Appeals for the Ninth Circuit
P.O. Box 193939
95 Seventh Street
San Francisco, CA 94119-3939

Re: Rule 28(j) Notice of Supplemental Authority *Craine v. AFSCME Council 36, Local 119, et al.*, No. 23-55206

Dear Ms. Dwyer:

Appellant Michael Craine respectfully gives notice of the following subsequent authority decided by the Supreme Court of the United States on March 15, 2024. A copy of the Opinion in *Lindke v. Freed*, No. 22–611, slip op. at 1 (U. S., Mar. 15, 2024), is attached as **Exhibit A**.

In *Lindke*, the Court clarifies the requirements necessary to satisfy the first prong of the so-called *Lugar* test for state action, viz., the state policy requirement. This clarification has direct bearing on the instant case.

First, the Court makes clear that it is the source of the power being exercised, not the identity of the actor, that controls the inquiry. *Id.* at 6. So long as the actor was possessed of state authority, and exercised that authority in such a way that a constitutional injury resulted, the state policy requirement is satisfied. *Id.*

at 9 (citing *Griffin v. Maryland*, 378 U. S. 130, 135 (1964); *West v. Atkins*, 487 U. S. 42, 49 (1988); *United States v. Classic*, 313 U. S. 299, 326 (1941)).

In this case, to avoid a finding that it acted pursuant to a state policy, AFSCME would have to show that its conduct entailed functions in no way dependent on state authority. *Id.* (citing *Polk County v. Dodson*, 454 U. S. 312, 318–319 (1981). It cannot do so. But for the State authority given the union to enter into contractual agreements with the County binding Craine to a restrictive opt-out window pursuant to the Meyers-Milias Brown Act, and the authority to control the County's payroll deduction system pursuant to California Government Code § 1157.12, Craine's speech would not have been compelled. The State's empowerment of AFSCME, and AFSCME's use of that authority, satisfies the first prong of the *Lugar* test under *Lindke*.

Second, an alleged "misuse" of the authority the State gives AFSCME is no excuse. As the Court makes clear in *Lindke*, the "[*m*]*isuse* of power, possessed by virtue of state law," constitutes state action. *Id.* at 10 (citing *Classic*, 313 U. S., at 326 (emphasis added); *Screws v. United States*, 325 U. S. 91, 110 (1945) (state action where "the power which [state officers] were authorized to exercise was misused"); *Home Telephone & Telegraph Co. v. Los Angeles*, 227 U. S. 278, 287–288 (1913) (the Fourteenth Amendment encompasses "abuse by a state officer . . . of the powers possessed")). In other words, "[e]very §1983 suit alleges a misuse of power, because no state actor has the authority to deprive someone of a federal right." *Id.* at 11.

Contrary to the arguments raised by AFSCME at oral argument, it is irrelevant that the allegedly injurious action taken pursuant to State authority

may have violated some other state or federal law. *Id.* at 10 ("While the state-action doctrine requires that the State have granted an official the type of authority that he used to violate rights…it encompasses cases where his "particular action…violated state or federal law."). The only question is whether state law made the action possible.

A finding that AFSCME acted pursuant to state policy requires only that the union had the statutory power to divert the Craine's lawfully earned wages without affirmative consent, and that it exercised this power. *Id.* at 9. It did.

Respectfully Submitted,

/s/ Timothy R. Snowball
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Freedom Foundation | P.O. Box 552, Olympia, WA 97507 | (360)-956-3482

Exhibit A

(Slip Opinion) OCTOBER TERM, 2023

Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.,* 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

LINDKE *v*. FREED

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

No. 22–611. Argued October 31, 2023—Decided March 15, 2024

James Freed, like countless other Americans, created a private Facebook profile sometime before 2008. He eventually converted his profile to a public "page," meaning that *anyone* could see and comment on his posts. In 2014, Freed updated his Facebook page to reflect that he was appointed city manager of Port Huron, Michigan, describing himself as "Daddy to Lucy, Husband to Jessie and City Manager, Chief Administrative Officer for the citizens of Port Huron, MI." Freed continued to operate his Facebook page himself and continued to post prolifically (and primarily) about his personal life. Freed also posted information related to his job, such as highlighting communications from other city officials and soliciting feedback from the public on issues of concern. Freed

often responded to comments on his posts, including those left by city residents with inquiries about community matters. He occasionally deleted comments that he considered "derogatory" or "stupid."

After the COVID–19 pandemic began, Freed posted about it. Some posts were personal, and some contained information related to his job. Facebook user Kevin Lindke commented on some of Freed's posts, unequivocally expressing his displeasure with the city's approach to the pandemic. Initially, Freed deleted Lindke's comments; ultimately, he blocked him from commenting at all. Lindke sued Freed under 42 U. S. C. §1983, alleging that Freed had violated his First Amendment rights. As Lindke saw it, he had the right to comment on Freed's Facebook page because it was a public forum. The District Court determined that because Freed managed his Facebook page in his private capacity, and because only state action can give rise to liability under §1983, Lindke's claim failed. The Sixth Circuit affirmed.

Held: A public official who prevents someone from commenting on the official's social-media page engages in state action under §1983 only if the official both (1) possessed actual authority to speak on the State's behalf on a particular matter, and (2) purported to exercise that authority when speaking in the relevant social-media posts. Pp. 5–15.

(a) Section 1983 provides a cause of action against "[e]very person who, *under color of any statute, ordinance, regulation, custom, or usage, of any State*" deprives someone of a federal constitutional or statutory right. (Emphasis added.) Section 1983's "under color of" text makes clear that it is a provision designed as a protection against acts attributable to a State, not those of a private person. In the run-of-the-

mill case, state action is easy to spot. Courts do not ordinarily pause to consider whether §1983 applies to the actions of police officers, public schools, or prison officials. Sometimes, however, the line between private conduct and state action is difficult to draw. In *Griffin* v. *Maryland*, 378 U. S. 130, for example, it was the source of the power, not the identity of the employer, which controlled in the case of a deputized sheriff who was held to have engaged in state action while employed by a privately owned amusement park. Since *Griffin*, most state-action precedents have grappled with whether a nominally private person engaged in state action, but this case requires analyzing whether a *state official* engaged in state action or functioned as a private citizen.

Freed's status as a state employee is not determinative. The distinction between private conduct and state action turns on substance, not labels: Private parties can act with the authority of the State, and state officials have private lives and their own constitutional rights—including the First Amendment right to speak about their jobs and exercise editorial control over speech and speakers on their personal platforms. Here, if Freed acted in his private capacity when he blocked Lindke and deleted his comments, he did not violate Lindke's First Amendment rights—instead, he exercised his own. Pp. 5–8.

(b) In the case of a public official using social media, a close look is definitely necessary to categorize conduct. In cases analogous to this one, precedent articulates principles to distinguish between personal and official communication in the social-media context. A public official's social-media activity constitutes state action under §1983 only if the official (1) possessed actual authority to speak on the State's

behalf, and (2) purported to exercise that authority when he spoke on social media. The appearance and function of the social-media activity are relevant at the second step, but they cannot make up for a lack of state authority at the first. Pp. 8–15.

(1) The test's first prong is grounded in the bedrock requirement that "the conduct allegedly causing the deprivation of a federal right be *fairly attributable to the State*." *Lugar* v. *Edmondson Oil Co.*, 457 U. S. 922, 937 (emphasis added). Lindke's focus on appearance skips over this critical step. Unless Freed was "possessed of state authority" to post city updates and register citizen concerns, *Griffin*, 378 U. S., at 135, his conduct is not attributable to the State. Importantly, Lindke must show more than that Freed had *some* authority to communicate with residents on behalf of Port Huron. The alleged censorship must be connected to speech on a matter within Freed's bailiwick. There must be a tie between the official's authority and "the gravamen of the plaintiff's complaint." *Blum* v. *Yaretsky*, 457 U. S. 991, 1003.

To misuse power, one must possess it in the first place, and §1983 lists the potential sources: "statute, ordinance, regulation, custom, or usage." Determining the scope of an official's power requires careful attention to the relevant source of that power and what authority it reasonably encompasses. The threshold inquiry to establish state action is not whether making official announcements *could* fit within a job description but whether making such announcements is *actually* part of the job that the State entrusted the official to do. Pp. 9–12.

(2) For social-media activity to constitute state action, an official must not only have state authority, he must also purport to use it. If the official does not

speak in furtherance of his official responsibilities, he speaks with his own voice. Here, if Freed's account had carried a label—*e.g.,* "this is the personal page of James R. Freed"—he would be entitled to a heavy presumption that all of his posts were personal, but Freed's page was not designated either "personal" or "official." The ambiguity surrounding Freed's page requires a fact-specific undertaking in which posts' content and function are the most important considerations. A post that expressly invokes state authority to make an announcement not available elsewhere is official, while a post that merely repeats or shares otherwise available information is more likely personal. Lest any official lose the right to speak about public affairs in his personal capacity, the plaintiff must show that the official purports to exercise state authority in specific posts. The nature of the social-media technology matters to this analysis. For example, because Facebook's blocking tool operates on a page-wide basis, a court would have to consider whether Freed had engaged in state action with respect to any post on which Lindke wished to comment. Pp. 12–15.

37 F. 4th 1199, vacated and remanded.

BARRETT, J., delivered the opinion for a unanimous Court.

NOTICE: This opinion is subject to formal revision before publication in the United States Reports. Readers are requested to notify the Reporter of Decisions, Supreme Court of the United States, Washington, D.C. 20543, pio@supremecourt.gov, of any typographical or other formal errors.

SUPREME COURT OF THE UNITED STATES

No. 22–611

KEVIN LINDKE, PETITIONER *v.* JAMES R. FREED

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

[March 15, 2024]

JUSTICE BARRETT delivered the opinion of the Court.

Like millions of Americans, James Freed maintained a Facebook account on which he posted about a wide range of topics, including his family and his job. Like most of those Americans, Freed occasionally received unwelcome comments on his posts. In response, Freed took a step familiar to Facebook users: He deleted the comments and blocked those who made them.

For most people with a Facebook account, that would have been the end of it. But Kevin Lindke, one of the unwelcome commenters, sued Freed for violating his right to free speech. Because the First

Amendment binds only the government, this claim is a nonstarter if Freed posted as a private citizen. Freed, however, is not only a private citizen but also the city manager of Port Huron, Michigan—and while Freed insists that his Facebook account was strictly personal, Lindke argues that Freed acted in his official capacity when he silenced Lindke's speech.

When a government official posts about job-related topics on social media, it can be difficult to tell whether the speech is official or private. We hold that such speech is attributable to the State only if the official (1) possessed actual authority to speak on the State's behalf, and (2) purported to exercise that authority when he spoke on social media.

I

A

Sometime before 2008, while he was a college student, James Freed created a private Facebook profile that he shared only with "friends." In Facebook lingo, "friends" are not necessarily confidants or even real-life acquaintances. Users become "friends" when one accepts a "friend request" from another; after that, the two can generally see and comment on one another's posts and photos. When Freed, an avid Facebook user, began nearing the platform's 5,000-friend limit, he converted his profile to a public "page." This meant that *anyone* could see and comment on his posts. Freed chose "public figure" for his page's category, "James Freed" for its title, and "JamesRFreed1" as his username. Facebook did not require Freed to satisfy any special criteria either to convert his Facebook profile to a public page or to describe himself as a public figure.

In 2014, Freed was appointed city manager of Port Huron, Michigan, and he updated his Facebook page to reflect the new job. For his profile picture, Freed chose a photo of himself in a suit with a city lapel pin. In the "About" section, Freed added his title, a link to the city's website, and the city's general email address. He described himself as "Daddy to Lucy, Husband to Jessie and City Manager, Chief Administrative Officer for the citizens of Port Huron, MI."

As before his appointment, Freed operated his Facebook page himself. And, as before his appointment, Freed posted prolifically (and primarily) about his personal life. He uploaded hundreds of photos of his daughter. He shared about outings like the Daddy Daughter Dance, dinner with his wife, and a family nature walk. He posted Bible verses, updates on home-improvement projects, and pictures of his dog, Winston.

Freed also posted information related to his job. He described mundane activities, like visiting local high schools, as well as splashier ones, like starting reconstruction of the city's boat launch. He shared news about the city's efforts to streamline leaf pickup and stabilize water intake from a local river. He highlighted communications from other city officials, like a press release from the fire chief and an annual financial report from the finance department. On occasion, Freed solicited feedback from the public—for instance, he once posted a link to a city survey about housing and encouraged his audience to complete it.

Freed's readers frequently commented on his posts, sometimes with reactions (for example, "Good job it takes skills" on a picture of his sleeping daughter) and sometimes with questions (for example, "Can you allow city residents to have chickens?"). Freed often

replied to the comments, including by answering inquiries from city residents. (City residents can have chickens and should "call the Planning Dept for details.") He occasionally deleted comments that he thought were "derogatory" or "stupid."

After the COVID–19 pandemic began, Freed posted about that. Some posts were personal, like pictures of his family spending time at home and outdoors to "[s]tay safe" and "[s]ave lives." Some contained general information, like case counts and weekly hospitalization numbers. Others related to Freed's job, like a description of the city's hiring freeze and a screenshot of a press release about a relief package that he helped prepare.

Enter Kevin Lindke. Unhappy with the city's approach to the pandemic, Lindke visited Freed's page and said so. For example, in response to one of Freed's posts, Lindke commented that the city's pandemic response was "abysmal" and that "the city deserves better." When Freed posted a photo of himself and the mayor picking up takeout from a local restaurant, Lindke complained that while "residents [we]re suffering," the city's leaders were eating at an expensive restaurant "instead of out talking to the commu nity." Initially, Freed deleted Lindke's comments; ultimately, he blocked him. Once blocked, Lindke could see Freed's posts but could no longer comment on them.

B

Lindke sued Freed under 42 U. S. C. § 1983, alleging that Freed had violated his First Amendment rights. As Lindke saw it, he had the right to comment on Freed's Facebook page, which he characterized as a public forum. Freed, Lindke claimed, had engaged in

impermissible viewpoint discrimination by deleting unfavorable comments and blocking the people who made them.

The District Court granted summary judgment to Freed. Because only state action can give rise to liability under §1983, Lindke's claim depended on whether Freed acted in a "private" or "public" capacity. 563 F. Supp. 3d 704, 714 (ED Mich. 2021). The "prevailing personal quality of Freed's post[s]," the absence of "government involvement" with his account, and the lack of posts conducting official business led the court to conclude that Freed managed his Facebook page in his private capacity, so Lindke's claim failed. *Ibid*.

The Sixth Circuit affirmed. It noted that "the caselaw is murky as to when a state official acts personally and when he acts officially" for purposes of §1983. 37 F. 4th 1199, 1202 (2022). To sort the personal from the official, that court "asks whether the official is 'performing an actual or apparent duty of his office,' or if he could not have behaved as he did 'without the authority of his office.'" *Id*., at 1203 (quoting *Waters* v. *Morristown*, 242 F. 3d 353, 359 (CA6 2001)). Applying this precedent to the social-media context, the Sixth Circuit held that an official's activity is state action if the "text of state law requires an officeholder to maintain a social-media account," the official "use[s] . . . state resources" or "government staff " to run the account, or the "accoun[t] belong[s] to an office, rather than an individual officeholder." 37 F. 4th, at 1203–1204. These situations, the Sixth Circuit explained, make an official's social-media activity "'fairly attributable'" to the State. *Id*., at 1204 (quoting *Lugar* v. *Edmondson Oil Co.*, 457 U. S. 922, 937 (1982)). And it concluded that Freed's activity was not.

The Sixth Circuit's approach to state action in the social-media context differs from that of the Second and Ninth Circuits, which focus less on the connection between the official's authority and the account and more on whether the account's appearance and content look official. See, *e.g.*, *Garnier* v. *O'Connor-Ratcliff*, 41 F. 4th 1158, 1170–1171 (CA9 2022); *Knight First Amdt. Inst. at Columbia Univ.* v. *Trump*, 928 F. 3d 226, 236 (CA2 2019), vacated as moot *sub nom*. *Biden* v. *Knight First Amdt. Inst. at Columbia Univ*., 593 U. S. ___ (2021). We granted certiorari. 598 U. S. ____(2023).

II

Section 1983 provides a cause of action against "[e]very person who, *under color of any statute, ordinance, regulation, custom, or usage, of any State*" deprives someone of a federal constitutional or statutory right. (Emphasis added.) As its text makes clear, this provision protects against acts attributable to a State, not those of a private person. This limit tracks that of the Fourteenth Amendment, which obligates *States* to honor the constitutional rights that §1983 protects. §1 ("No *State* shall . . . nor shall any *State* deprive . . . " (emphasis added)); see also *Lugar*, 457 U. S., at 929 ("[T]he statutory requirement of action 'under color of state law' and the 'state action' requirement of the Fourteenth Amendment are identical"). The need for governmental action is also explicit in the Free Speech Clause, the guarantee that Lindke invokes in this case. Amdt. 1 ("*Congress* shall make no law . . . abridging the freedom of speech . . . " (emphasis added)); see also *Manhattan Community Access Corp.* v. *Halleck*, 587 U. S. 802, 808 (2019) ("[T]he Free Speech Clause prohibits only *governmental* abridgment of speech," not "*private* abridgment of

speech"). In short, the state-action requirement is both well established and reinforced by multiple sources.[1]

In the run-of-the-mill case, state action is easy to spot. Courts do not ordinarily pause to consider whether §1983 applies to the actions of police officers, public schools, or prison officials. See, *e.g.*, *Graham* v. *Connor*, 490 U. S. 386, 388 (1989) (police officers); *Tinker* v. *Des Moines Independent Community School Dist.*, 393 U. S. 503, 504–505 (1969) (public schools); *Estelle* v. *Gamble*, 429 U. S. 97, 98 (1976) (prison officials). And, absent some very unusual facts, no one would credit a child's assertion of free speech rights against a parent, or a plaintiff 's complaint that a nosy neighbor unlawfully searched his garage.

Sometimes, however, the line between private conduct and state action is difficult to draw. *Griffin* v. *Maryland* is a good example. 378 U. S. 130 (1964). There, we held that a security guard at a privately owned amusement park engaged in state action when he enforced the park's policy of segregation against black protesters. *Id*., at 132–135. Though employed by the park, the guard had been "deputized as a sheriff of Montgomery County" and possessed "'the same power and authority'" as any other deputy sheriff. *Id*., at 132, and n. 1. The State had therefore allowed its power to be exercised by someone in the private sector. And the source of the power, not the identity of the employer, controlled.

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[1] Because local governments are subdivisions of the State, actions taken under color of a local government's law, custom, or usage count as "state" action for purposes of §1983. See *Monell* v. *New York City Dept. of Social Servs.*, 436 U. S. 658, 690–691 (1978). And when a state or municipal employee violates a federal right while acting "under color of law," he can be sued in an individual capacity, as Freed was here.

By and large, our state-action precedents have grappled with variations of the question posed in *Griffin*: whether a nominally private person has engaged in state action for purposes of §1983. See, *e.g.*, *Marsh* v. *Alabama*, 326 U. S. 501, 502–503 (1946) (company town); *Adickes* v. *S. H. Kress & Co.*, 398 U. S. 144, 146–147 (1970) (restaurant); *Flagg Bros., Inc.* v. *Brooks*, 436 U. S. 149, 151–152 (1978) (warehouse company). Today's case, by contrast, requires us to analyze whether a *state official* engaged in state action or functioned as a private citizen. This Court has had little occasion to consider how the state-action requirement applies in this circumstance.

The question is difficult, especially in a case involving a state or local official who routinely interacts with the public. Such officials may look like they are always on the clock, making it tempting to characterize every encounter as part of the job. But the state-action doctrine avoids such broad-brush assumptions—for good reason. While public officials can act on behalf of the State, they are also private citizens with their own constitutional rights. By excluding from liability "acts of officers in the ambit of their personal pursuits," *Screws* v. *United States*, 325 U. S. 91, 111 (1945) (plurality opinion), the state-action requirement "protects a robust sphere of individual liberty" for those who serve as public officials or employees, *Halleck*, 587 U. S., at 808.

The dispute between Lindke and Freed illustrates this dynamic. Freed did not relinquish his First Amendment rights when he became city manager. On the contrary, "the First Amendment protects a public employee's right, in certain circumstances, to speak as a citizen addressing matters of public concern." *Garcetti* v. *Ceballos*, 547 U. S. 410, 417 (2006). This

right includes the ability to speak about "information related to or learned through public employment," so long as the speech is not "itself ordinarily within the scope of [the] employee's duties." *Lane* v. *Franks*, 573 U. S. 228, 236, 240 (2014). Where the right exists, "editorial control over speech and speakers on [the public employee's] properties or platforms" is part and parcel of it. *Halleck*, 587 U. S., at 816. Thus, if Freed acted in his private capacity when he blocked Lindke and deleted his comments, he did not violate Lindke's First Amendment rights—instead, he exercised his own.

So Lindke cannot hang his hat on Freed's status as a state employee. The distinction between private conduct and state action turns on substance, not labels: Private parties can act with the authority of the State, and state officials have private lives and their own constitutional rights. Categorizing conduct, therefore, can require a close look.

III

A close look is definitely necessary in the context of a public official using social media. There are approximately 20 million state and local government employees across the Nation, with an extraordinarily wide range of job descriptions—from Governors, mayors, and police chiefs to teachers, healthcare professionals, and transportation workers. Many use social media for personal communication, official communication, or both—and the line between the two is often blurred. Moreover, social media involves a variety of different and rapidly changing platforms, each with distinct features for speaking, viewing, and removing speech. The Court has frequently emphasized that the state-action doctrine demands a fact-intensive inquiry. See, *e.g.*, *Reitman* v. *Mulkey*, 387

U. S. 369, 378 (1967); *Gilmore* v. *Montgomery*, 417 U. S. 556, 574 (1974). We repeat that caution here.

That said, our precedent articulates principles that govern cases analogous to this one. For the reasons we explain below, a public official's social-media activity constitutes state action under §1983 only if the official (1) possessed actual authority to speak on the State's behalf, and (2) purported to exercise that authority when he spoke on social media. The appearance and function of the social-media activity are relevant at the second step, but they cannot make up for a lack of state authority at the first.

A

The first prong of this test is grounded in the bedrock requirement that "the conduct allegedly causing the deprivation of a federal right be *fairly attributable to the State*." *Lugar*, 457 U. S., at 937 (emphasis added). An act is not attributable to a State unless it is traceable to the State's power or authority. Private action—no matter how "official" it looks—lacks the necessary lineage.

This rule runs through our cases. *Griffin* stresses that the security guard was "possessed of state authority" and "purport[ed] to act under that authority." 378 U. S., at 135. *West* v. *Atkins* states that the "traditional definition" of state action "requires that the defendant . . . have exercised power 'possessed by virtue of state law and made possible only because the wrongdoer is clothed with the authority of state law.'" 487 U. S. 42, 49 (1988) (quoting *United States* v. *Classic*, 313 U. S. 299, 326 (1941)). *Lugar* emphasizes that state action exists only when "the claimed deprivation has resulted from the exercise of a right or privilege having its source in state authority." 457 U. S., at 939; see also, *e.g.*, *Edmonson* v. *Leesville Concrete Co.*, 500 U. S. 614,

620 (1991) (describing state action as the "exercise of a right or privilege having its source in state authority"); *Screws*, 325 U. S., at 111 (plurality opinion) (police-officer defendants "were authorized to make an arrest and to take such steps as were necessary to make the arrest effective"). By contrast, when the challenged conduct "entail[s] functions and obligations in no way dependent on state authority," state action does not exist. *Polk County* v. *Dodson*, 454 U. S. 312, 318–319 (1981) (no state action because criminal defense "is essentially a private function . . . for which state office and authority are not needed"); see also *Jackson* v. *Metropolitan Edison Co.*, 419 U. S. 345, 358–359 (1974).

Lindke's focus on appearance skips over this crucial step. He insists that Freed's social-media activity constitutes state action because Freed's Facebook page looks and functions like an outlet for city updates and citizen concerns. But Freed's conduct is not attributable to the State unless he was "possessed of state authority" to post city updates and register citizen concerns. *Griffin*, 378 U. S., at 135. If the State did not entrust Freed with these responsibilities, it cannot "fairly be blamed" for the way he discharged them. *Lugar*, 457 U. S., at 936. Lindke imagines that Freed can conjure the power of the State through his own efforts. Yet the presence of state authority must be real, not a mirage.

Importantly, Lindke must show more than that Freed had *some* authority to communicate with residents on behalf of Port Huron. The alleged censorship must be connected to speech on a matter within Freed's bailiwick. For example, imagine that Freed posted a list of local restaurants with health-code violations and deleted snarky comments made by

other users. If public health is not within the portfolio of the city manager, then neither the post nor the deletions would be traceable to Freed's state authority—because he had none. For state action to exist, the State must be "responsible for the specific conduct of which the plaintiff complains." *Blum* v. *Yaretsky*, 457 U. S. 991, 1004 (1982) (emphasis deleted). There must be a tie between the official's authority and "the gravamen of the plaintiff's complaint." *Id*., at 1003.

To be clear, the "[*m*]*isuse* of power, possessed by virtue of state law," constitutes state action. *Classic*, 313 U. S., at 326 (emphasis added); see also, *e.g*., *Screws*, 325 U. S., at 110 (plurality opinion) (state action where "the power which [state officers] were authorized to exercise was misused"). While the state-action doctrine requires that the State have granted an official the type of authority that he used to violate rights—*e.g*., the power to arrest—it encompasses cases where his "particular action"—*e.g.*, an arrest made with excessive force—violated state or federal law. *Griffin*, 378 U. S., at 135; see also *Home Telephone & Telegraph Co.* v. *Los Angeles*, 227 U. S. 278, 287–288 (1913) (the Fourteenth Amendment encompasses "abuse by a state officer . . . of the powers possessed"). Every §1983 suit alleges a misuse of power, because no state actor has the authority to deprive someone of a federal right. To misuse power, however, one must possess it in the first place.

Where does the power come from? Section 1983 lists the potential sources: "statute, ordinance, regulation, custom, or usage." Statutes, ordinances, and regulations refer to written law through which a State can authorize an official to speak on its behalf. "Custom" and "usage" encompass "persistent practices of state

officials" that are "so permanent and well settled" that they carry "the force of law." *Adickes*, 398 U. S., at 167–168. So a city manager like Freed would be authorized to speak for the city if written law like an ordinance empowered him to make official announcements. He would also have that authority even in the absence of written law if, for instance, prior city managers have purported to speak on its behalf and have been recognized to have that authority for so long that the manager's power to do so has become "permanent and well settled." *Id.*, at 168. And if an official has authority to speak for the State, he may have the authority to do so on social media even if the law does not make that explicit.

Determining the scope of an official's power requires careful attention to the relevant statute, ordinance, regulation, custom, or usage. In some cases, a grant of authority over particular subject matter may reasonably encompass authority to speak about it officially. For example, state law might grant a high-ranking official like the director of the state department of transportation broad responsibility for the state highway system that, in context, includes authority to make official announcements on that subject. At the same time, courts must not rely on "'excessively broad job descriptions'" to conclude that a government employee is authorized to speak for the State. *Kennedy* v. *Bremerton School Dist.*, 597 U. S. 507, 529 (2022) (quoting *Garcetti*, 547 U. S., at 424). The inquiry is not whether making official announcements *could* fit within the job description; it is whether making official announcements is *actually* part of the job that the State entrusted the official to do.

In sum, a defendant like Freed must have actual authority rooted in written law or longstanding

custom to speak for the State. That authority must extend to speech of the sort that caused the alleged rights deprivation. If the plaintiff cannot make this threshold showing of authority, he cannot establish state action.

B

For social-media activity to constitute state action, an official must not only have state authority—he must also purport to use it. *Griffin*, 378 U. S., at 135. State officials have a choice about the capacity in which they choose to speak. "[G]enerally, a public employee" purports to speak on behalf of the State while speaking "in his official capacity or" when he uses his speech to fulfill "his responsibilities pursuant to state law." *West*, 487 U. S., at 50. If the public employee does not use his speech in furtherance of his official responsibilities, he is speaking in his own voice.

Consider a hypothetical from the offline world. A school board president announces at a school board meeting that the board has lifted pandemic-era restrictions on public schools. The next evening, at a backyard barbecue with friends whose children attend public schools, he shares that the board has lifted the pandemic-era restrictions. The former is state action taken in his official capacity as school board president; the latter is private action taken in his personal capacity as a friend and neighbor. While the substance of the announcement is the same, the context—an official meeting versus a private event—differs. He invoked his official authority only when he acted as school board president.

The context of Freed's speech is hazier than that of the hypothetical school board president. Had Freed's

account carried a label (*e.g.*, "this is the personal page of James R. Freed") or a disclaimer (*e.g.*, "the views expressed are strictly my own"), he would be entitled to a heavy (though not irrebuttable) presumption that all of the posts on his page were personal. Markers like these give speech the benefit of clear context: Just as we can safely presume that speech at a backyard barbeque is personal, we can safely presume that speech on a "personal" page is personal (absent significant evidence indicating that a post is official).[2] Conversely, context can make clear that a social-media account purports to speak for the government—for instance, when an account belongs to a political subdivision (*e.g.*, a "City of Port Huron" Facebook page) or is passed down to whomever occupies a particular office (*e.g.*, an "@PHuronCityMgr" Instagram account). Freed's page, however, was not designated either "personal" or "official," raising the prospect that it was "mixed use"—a place where he made some posts in his personal capacity and others in his capacity as city manager.

Categorizing posts that appear on an ambiguous page like Freed's is a fact-specific undertaking in which the post's content and function are the most

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[2] An official cannot insulate government business from scrutiny by conducting it on a personal page. The Solicitor General offers the particularly clear example of an official who designates space on his nominally personal page as the official channel for receiving comments on a proposed regulation. Because the power to conduct notice-and-comment rulemaking belongs exclusively to the State, its exercise is necessarily governmental. Similarly, a mayor would engage in state action if he hosted a city council meeting online by streaming it only on his personal Facebook page. By contrast, a post that is compatible with either a "personal capacity" or "official capacity" designation is "personal" if it appears on a personal page.

important considerations. In some circumstances, the post's content and function might make the plaintiff's argument a slam dunk. Take a mayor who makes the following announcement exclusively on his Facebook page: "Pursuant to Municipal Ordinance 22.1, I am temporarily suspending enforcement of alternate-side parking rules." The post's express invocation of state authority, its immediate legal effect, and the fact that the order is not available elsewhere make clear that the mayor is purporting to discharge an official duty. If, by contrast, the mayor merely repeats or shares otherwise available information—for example, by linking to the parking announcement on the city's webpage—it is far less likely that he is purporting to exercise the power of his office. Instead, it is much more likely that he is engaging in private speech "relate[d] to his public employment" or "concern[ing] information learned during that employment." *Lane*, 573 U. S., at 238.

Hard-to-classify cases require awareness that an official does not necessarily purport to exercise his authority simply by posting about a matter within it. He might post job-related information for any number of personal reasons, from a desire to raise public awareness to promoting his prospects for reelection. Moreover, many public officials possess a broad portfolio of governmental authority that includes routine interaction with the public, and it may not be easy to discern a boundary between their public and private lives. Yet these officials too have the right to speak about public affairs in their personal capacities. See, *e.g.*, *id.*, at 235–236. Lest any official lose that right, it is crucial for the plaintiff to show that the official is purporting to exercise state authority in specific posts. And when there is doubt, additional factors might cast light—for example, an official who uses government

staff to make a post will be hard pressed to deny that he was conducting government business.

One last point: The nature of the technology matters to the state-action analysis. Freed performed two actions to which Lindke objected: He deleted Lindke's comments and blocked him from commenting again. So far as deletion goes, the only relevant posts are those from which Lindke's comments were removed. Blocking, however, is a different story. Because blocking operated on a page-wide basis, a court would have to consider whether Freed had engaged in state action with respect to any post on which Lindke wished to comment. The bluntness of Facebook's blocking tool highlights the cost of a "mixed use" social-media account: If page-wide blocking is the only option, a public official might be unable to prevent someone from commenting on his personal posts without risking liability for also preventing comments on his official posts.[3] A public official who fails to keep personal posts in a clearly designated personal account therefore exposes himself to greater potential liability.

* * *

The state-action doctrine requires Lindke to show that Freed (1) had actual authority to speak on behalf of the State on a particular matter, and (2) purported to exercise that authority in the relevant posts. To the

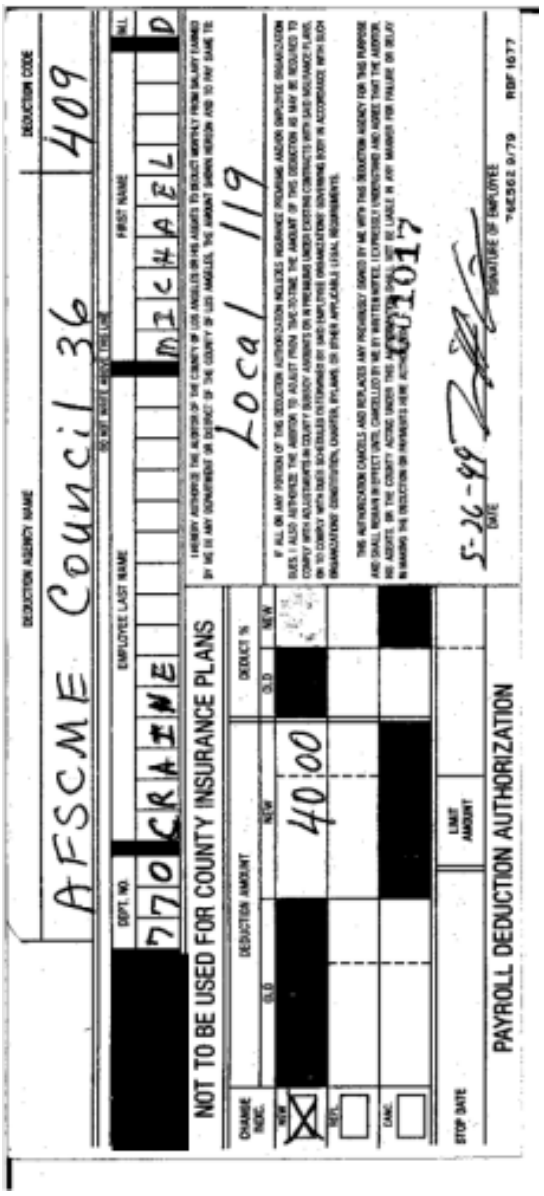
[3] On some platforms, a blocked user might be unable even to *see* the blocker's posts. See, *e.g.*, *Garnier* v. *O'Connor-Ratcliff*, 41 F. 4th, 1158, 1164 (CA9 2022) (noting that "on Twitter, once a user has been 'blocked,' the individual can neither interact with nor view the blocker's Twitter feed"); *Knight First Amdt. Inst. at Columbia Univ*. v. *Trump*, 928 F. 3d 226, 231 (CA2 2019) (noting that a blocked user is unable to see, reply to, retweet, or like the blocker's tweets).

extent that this test differs from the one applied by the Sixth Circuit, we vacate its judgment and remand the case for further proceedings consistent with this opinion.

It is so ordered.

APPENDIX G

Los Angeles County's Dues Deduction Authorization Card



APPENDIX H

ARTICLE 24 PAYROLL DEDUCTIONS AND DUES/ AGENCY SHOP

Section 1. Deductions and Dues

It is agreed that Union dues and such other deductions as may be properly requested and lawfully permitted shall be deducted, in accordance with the provisions of applicable State law, monthly by Management from the salary of each employee covered hereby who files with County a written authorization requesting that such deduction be made.

Remittance of the aggregate amount of all dues and other proper deductions made from the salaries of employees covered hereunder shall be made to the Union by Management within thirty (30) working days after the conclusion of the month in which said dues and deductions were deducted.

Section 2. Security Clause

Any employee in this unit who has authorized Union dues deductions on the effective date of this agreement or at any time subsequent to the effective date of this agreement shall continue to have such dues deductions made by the County during the term of this agreement; provided, however, that any employee in the Unit may terminate such Union dues during the period September 1st through September 30th, in any year of the contract by notifying the Union of their termination of Union dues deduction. Such notification shall be by certified mail and should be in the form of a letter containing the following information: employee's name, employee number, job classification, department name, and name of Union from which dues deductions are to be canceled.

The union will provide the County's Auditor-Controller with the appropriate documentation to process these dues cancellations within ten (10) business days after the close of the withdrawal period.

Section 3. Agency Shop Election

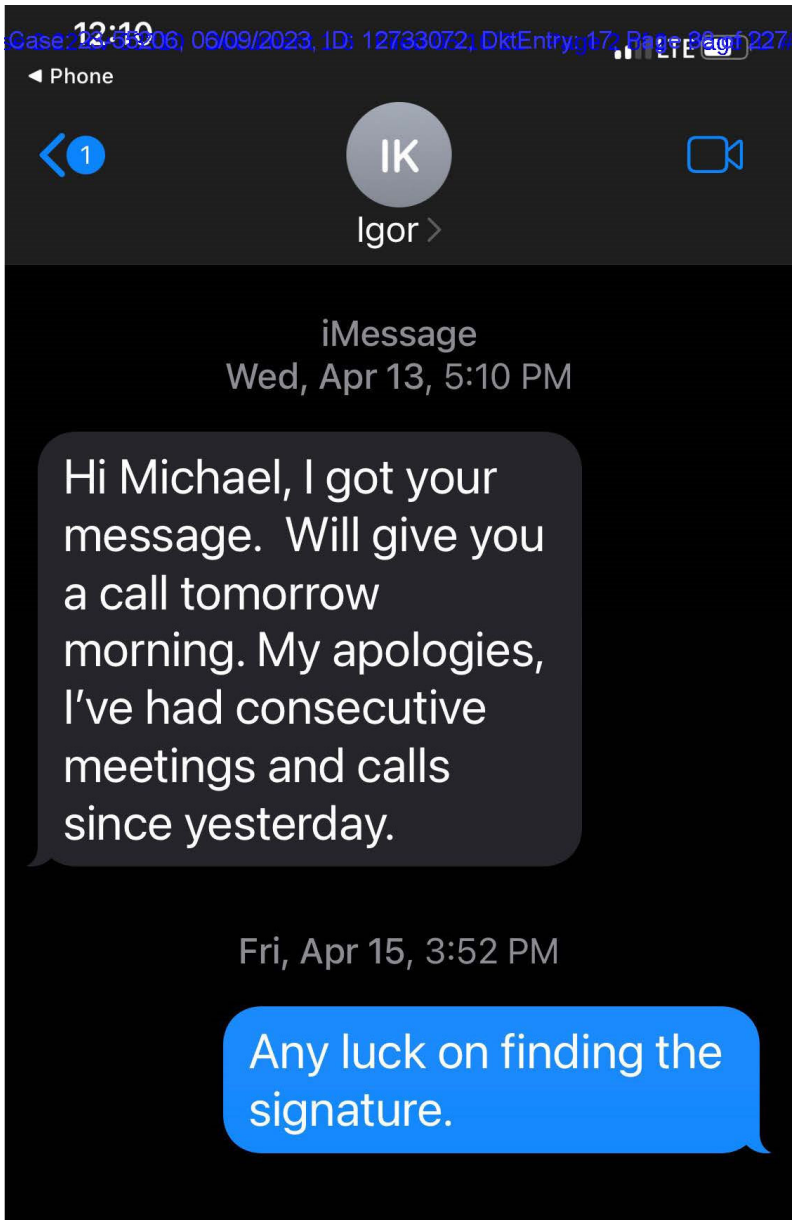
If, at any time during the term of this Memorandum of Understanding, 30 percent of the employees represented by this Bargaining Unit sign a petition to request an agency shop agreement, the Union shall have the right to conduct a secret ballot election at any time during the term of the Memorandum of Understanding to determine whether a majority of the employees in the Bargaining Unit, who vote, are in favor of an agency fee agreement provided in G.C. 3502.5.

This election shall be administered by the Employee Relations Commission. The Employee Relations Commission shall notify the County and the Union of the results of the election. The Union shall be responsible for the cost of the election.

If a majority of the employees in the Bargaining Unit who cast ballots, vote in favor of an agency shop fee, then the Union shall notify the County of its intent to implement an agency shop agreement., Immediately, thereafter, the Union shall notify all employees in the Bargaining Unit that they will be required, as a condition of continued employment, either to join the Union, or to pay the Union a service fee as provided in G.C. 3502.5(a).

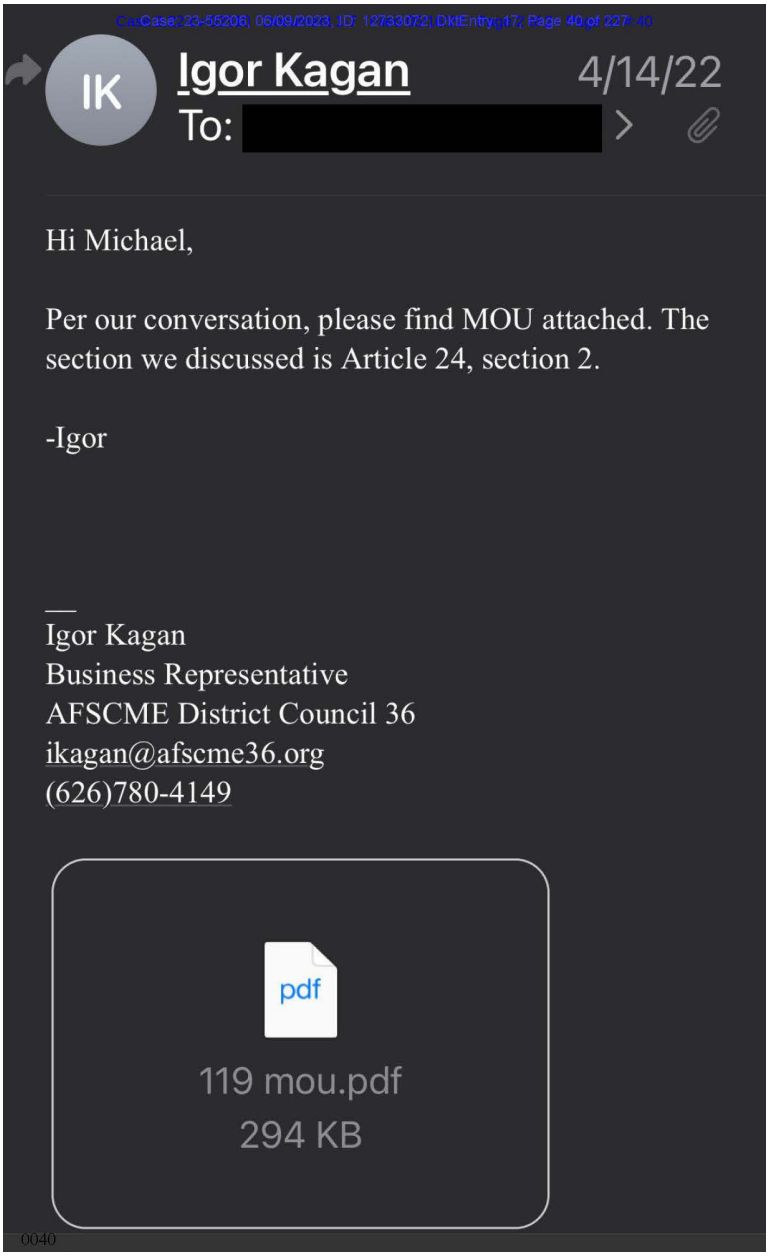
APPENDIX I

Text Thread 1 with the Business Manager for Local 119



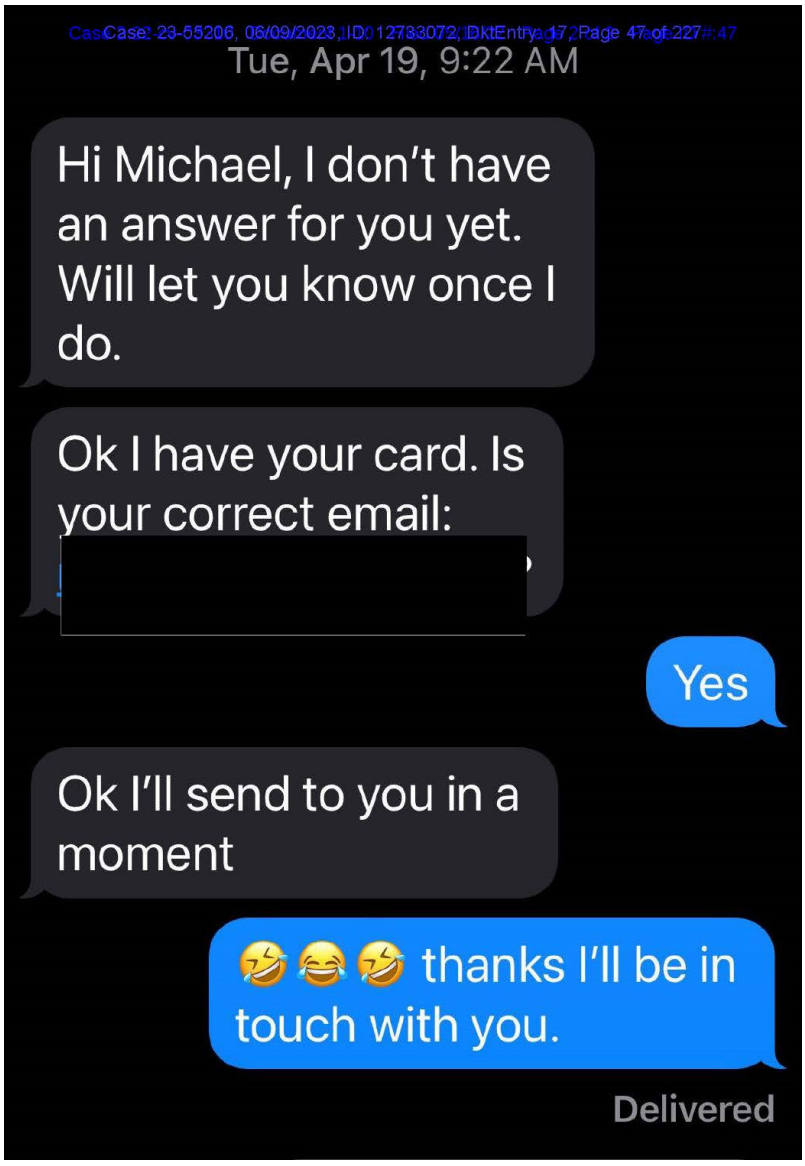
APPENDIX J

Email with the attached MOU



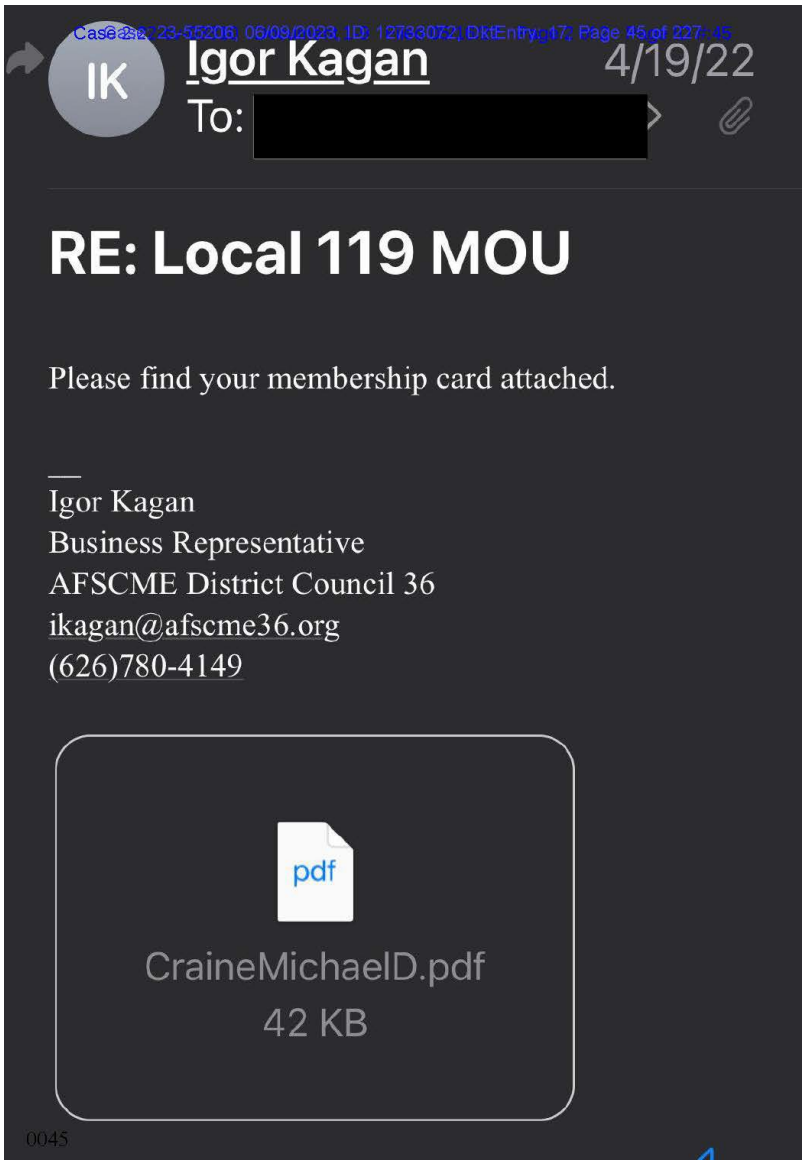
APPENDIX K

Text thread 2 with Business Manager for Local 119



APPENDIX L

Email from Union with attached Membership Card



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.