No. 23-179

IN THE

Supreme Court of the United States

STATE OF ALASKA, ET AL.,

Petitioners,

v.

ALASKA STATE EMPLOYEES ASSOCIATION/ AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES LOCAL 52, AFL-CIO,

Respondent.

On Petition for Writ of Certiorari to the Supreme Court of the State of Alaska

BRIEF OF FREEDOM FOUNDATION AS *AMICUS CURIAE* IN SUPPORT OF PETITIONERS

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QUESTION PRESENTED

Whether the First Amendment prohibits a state from taking money from employees' paychecks to subsidize union speech when the state lacks sufficient evidence that the employees knowingly and voluntarily waived their First Amendment rights.

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INTERESTS OF *AMICUS CURIAE*[1]

Freedom Foundation (the Foundation) is a nonprofit, nonpartisan organization working to protect the First Amendment rights of public employees regarding union membership and payroll dues deductions. Pursuant to this mission, the Foundation regularly files *amicus curiae* briefs with this Court. *See, e.g.*, *Bennett v. Am. Fed'n of State, Cnty., & Mun. Emps., Council 31*, 142 S.Ct. 424 (2021); *Janus v. Am. Fed'n of State, Cnty., & Mun. Emps., Council 31*, 138 S.Ct. 2448 (2018); *Friedrichs v. California Tchrs., Ass'n*, 136 S.Ct. 1083 (2016).

The Foundation works to protect the rights of public sector employees by assisting public employees in understanding and exercising those rights. The Foundation is active in Washington, Oregon, and California, among other states. As such, the Foundation has an interest in the Court accepting review of the instant case to settle the question whether states may deduct money from public employees' paychecks when the state lacks clear and compelling evidence that the employees knowingly and voluntarily consented to those deductions.

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[1] Pursuant to Rule 37.2, all parties received notice of the filing of this brief and granted consent to file. Pursuant to Rule 37.6, *Amicus* affirms that no party's counsel authored this brief in whole or in part, and no person or entity, other than *Amicus* and its counsel, made a monetary contribution intended to fund the preparation or submission of this brief.

INTRODUCTION AND SUMMARY OF REASONS TO GRANT THE PETITION

The instant case is an ideal vehicle for this Court to settle an important federal question: Must a state ensure it has clear and compelling evidence that its public employees have affirmatively, knowingly, and voluntarily consented to union dues or any other payment to the union before the state deducts money from the employees' paychecks and transfers it to the union?

The *Janus* Court clearly stated that public employees must affirmatively consent before "an agency fee [or] any other payment to the union" is deducted from their paychecks and transferred to the exclusive bargaining representative (union) to be used for collective bargaining and other political speech. *Janus*, 138 S.Ct. at 2486. States cannot assume employees consent to such financial support. *Id.* Washington, Oregon, California, and other states cabined *Janus* to only apply to "agency fees." These states deem the unions, acknowledged self-interested parties, to be sufficient guardians of employees' First Amendment rights by allowing the unions to acquire "consent" and certify such to the public employer that then deducts union payments from employees' paychecks. Cal. Gov't Code § 1153; Or. Rev. Stat. § 243.806; Wash. Rev. Code §§ 41.56.110, 41.80.100.

Conversely, the State of Alaska (Alaska) chose to comply with the *Janus* directive to not extract money from non-consenting employees by ensuring that Alaska obtained clear and compelling evidence that its public employees affirmatively, knowingly, and voluntarily consented to the deduction of union dues or any other union payment from their paychecks before such monies were deducted. If states ensured

public sector employees affirmatively, knowingly, and voluntarily consented before money is deducted from those employees' paychecks and transferred to a union to use for political speech, that would eliminate most, if not all, of the barriers public sector employees face when denying having granted or withdrawing, consent.

Such barriers include unions refusing to acknowledge receipt of employee communications asking the union to stop certifying that the employee authorized dues deductions, asking the union to provide any evidence it may possess that demonstrates employee consent, and withdrawing previously-given consent because the union changed its political speech. The Foundation advises and represents public employees facing these situations who frequently retain legal counsel to get a response from their union—an organization that purports to represent the rights and interests of those employees through the exclusive bargaining agreement with the public employer. Although these employees often resolve their union-related issues through extra-judicial means such as demand letters, that employees need retain counsel at all demonstrates the union barriers that Alaska seeks to minimize.

The Foundation relates below the stories of public employees who have sought Foundation-provided legal assistance as unions have defied and resisted *Janus*, that illustrate the need for a non-interested party, such as the State of Alaska, to ensure there is "clear and compelling" evidence of public employee consent before payroll deductions occur.

The petition should be granted.

REASONS TO GRANT THE PETITION

I. ALASKA WOULD ENSURE ITS EMPLOYEES KNOW THEIR FIRST AMENDMENT RIGHTS BEFORE WAIVING THOSE RIGHTS BY CONSENTING TO PAYROLL DUES DEDUCTIONS

The Alaska Supreme Court acknowledged that "[w]aiver is the '*intentional* relinquishment or abandonment of a *known* right.'" *Alaska v. ASEA*, No. 7657, 14 (Alaska May 26, 2023) (emphasis added). Yet it rejected Alaska's duty to ensure its public employees *know* they have the right to not financially support the union's speech before they sign away that right. *Id.* at 14-15. This case presents a state court refusing to allow that state's duly elected leaders to implement changes upholding state residents' First Amendment rights. *Id.* at 15 n.38. Public employees who contact the Foundation frequently express their wish that they had known they had a First Amendment right to refuse to join and financially support the union before they were asked to authorize payroll dues deductions.

Alaska Statute § 23.40.220, like similar statutes in Oregon and Washington, is silent as to whether the public employer or the union need inform public employees of their rights to refrain from joining and financially supporting the union. *See* Or. Rev. Stat. § 243.806; Wash. Rev. Code §§ 41.56.110, 41.80.100. Other state's laws *prohibit* employers from informing new employees. *See, e.g.*, Cal. Gov't Code § 3550. Consequently, many public employees are unaware they do not have to financially support union speech before they sign a union-drafted card. Due to its extensive work in the public sector labor field, the Foundation has seen first-hand that unions are not informing public employees that they have the right to

refrain from joining and financially supporting the union.

Alaska chose to ensure new employees know their constitutional rights before waiving those rights.

II. ALASKA WOULD VERIFY PUBLIC EMPLOYEES' AFFIRMATIVE CONSENT RATHER THAN PRESUME EMPLOYEES CONSENT

"By [affirmatively consenting] to pay, those nonmembers are waiving their First Amendment rights, and such a waiver cannot be presumed." *Janus*, 138 S.Ct. at 2486. An effective waiver must be "freely given and shown by clear and compelling evidence." *Id.* (internal quotation omitted). However, many public employees contend with ongoing unauthorized deductions from their paycheck that the state then transfers to fund union speech to which they object. Many have turned to the Foundation for help—these are their stories.[2]

A. Employee Payments Transferred Without Any Union-Obtained Consent

Service Employees International Union 503 (SEIU 503) continued to require Oregon deduct an "associate membership" fee from public employees, John Cummings and Deanna Salvo, even after they were promoted to positions represented instead by American Federation of State, County and Municipal Employees 75 (AFSCME 75). AFSCME 75 agency fees ceased after *Janus*, but the SEIU 503 "associate membership" fee continued. Mr. Cummings and Ms. Salvo had never

[2] These are a representative sample, given word limitations. Many stories are categorized by their primary issue, although they contain multiple union abuses.

authorized any deduction and SEIU 503 never produced any evidence of an authorization. SEIU 503 attempted to hold them to an unspecified "irrevocability window" but agreed to stop the deduction after Mr. Cummings and Ms. Salvo retained a Foundation attorney. SEIU 503 also repaid the years of "associate fees" it had wrongfully deducted from Mr. Cummings and Ms. Salvo.

Californian Camille Bourque also never signed any kind of union membership or dues authorization. Opening Br., *Bourque v. EAA*, No. 23-55369, 10 (9th Cir. Aug. 28, 2023). Nevertheless, her government employer continued to divert payments from her paychecks to the Engineers and Architects Association (EAA) for nearly three years after *Janus*, even after she clearly notified them in writing that she had never authorized the deductions. *Id.* at 10-11.[3]

Victoria Bright resigned as an Oregon state employee in early 2022, ending her union membership. Ver. Compl., *Bright v. Oregon*, No. 3:23-cv-00320, 3-4 (D. Or. Mar. 6, 2023). Later that fall, she accepted a different state job but, despite not rejoining the union or consenting to dues deductions, the state immediately began to deduct SEIU union dues from her paychecks. *Id.* at 4. After unsuccessfully trying to contact SEIU, she retained Foundation attorneys who sent SEIU a demand letter. *Id.* In response, the union agreed to tell the state to end the deductions. *Id.* at 4-5. The state continued to deduct dues for another three months despite SEIU assurances that it had

[3] EAA justified the continued deductions based on an "opt-out" window, to which Bourque also never agreed, contained in the Collective Bargaining Agreement (CBA) between the union and public employer. *See infra*, Sec. IV.B.

instructed the state to stop. *Id.* at 5. The state only stopped dues deductions when the court issued a TRO against the state. Order Granting TRO, *Bright v. Oregon*, No. 3:23-cv-00320 (D. Or. Mar. 8, 2023).

B. Employee Payments Transferred with Union-Claimed But Invalid "Consent"

In some cases, when employees who never consented to dues deductions challenged the unions' certification to the public employer, the unions defended receiving dues by producing documents they claimed showed the employees' consent. Frequently, pending resolution of these conflicts, public employees are required by operation of statute to continue to financially support union speech. This impermissibly maintains the pre-*Janus* opt-out scheme rather than requiring employees opt-in to financially support the union. Alaska would bar the unions' claim to employees' wages from taking precedence over the employees' claim.

Cindy Ochoa, a Washington state individual provider (IP), never chose to support SEIU 775. First Am. Compl., *Ochoa v. SEIU 775*, No. 2:18-CV-0297, 5-11 (E.D. Wash. Sept. 4, 2019). SEIU 775 required the state to automatically deduct dues from her salary when Ms. Ochoa began working in 2012. *Id.* at 10. However, Ms. Ochoa objected to the dues deductions after the Court's decision in *Harris v. Quinn*, 134 S.Ct. 2618 (2014), and the dues deductions stopped. *Ochoa*, No. 2:18-CV-0297, 10-11.

In October 2016, the state began transferring dues payments from Ms. Ochoa's paychecks to SEIU 775 because the union certified to Washington state that Ms. Ochoa authorized the dues deduction through a signature. *Id.* at 11. However, the SEIU 775 secretary

treasurer later admitted the signature did not match any other signature on file for Ms. Ochoa. *Id.* at 14. Ten months later, after retaining Foundation attorneys, SEIU 775 reimbursed Ms. Ochoa for the wrongfully transferred payments from her paycheck. *Id.* at 14-15.

A year later, the state again began transferring payments from Ms. Ochoa's paycheck to SEIU 775. *Id.* at 16. Ms. Ochoa's attorney contacted SEIU 775 to stop the transfer. *Id.* at 17. This transfer of payments was allegedly caused by "discrepancies between the lists" SEIU 775 provided to the state after this Court's *Janus* decision. *Ochoa v. Public Consulting Grp., Inc.*, 48 F.4th 1102, 1106 (9th Cir. 2022). Ms. Ochoa never affirmatively consented to any of these transfers of payments to the union from her paycheck. *See also Zielinski v. SEIU Loc. 503*, 499 F.Supp.3d 804, 807 (D. Or. 2020) (Union produced two membership cards, neither of which Plaintiff signed.)

Washington IP Kristy Jimenez never joined SEIU 775 or consented to pay union dues or fees. Ver. Compl., *Jimenez v. SEIU 775*, No. 1:21-cv-03128, 1 (E.D. Wash. Mar. 4, 2022). Ms. Jimenez tried to stop dues deductions and get a copy of any dues deduction authorization the union might have. *Id.* at 9-11. She contacted SEIU 775 multiple times through USPS, phone calls, and email. *Id.* Over fifteen months after her first request, she finally received a copy of the purported signed membership agreement. *Id.* That agreement was completed digitally and "signed" digitally in August 2016 with a Seattle IP address. *Id.* at 11. Ms. Jimenez did not sign an electronic membership form and had not been in Seattle, Washington at any time in 2016. *Id.* Yet Ms. Jimenez could not stop her employer from deducting union

payments from her paycheck without SEIU 775 itself notifying her employer.

Staci Trees sued SEIU 503 in federal court after it alleged, wrongly, she had signed an electronic membership card in 2016. *Trees v. SEIU Local 503*, No. 6:21–cv–00468 (D. Or. Dec. 8, 2021). In response, SEIU 503 promptly filed an unfair labor practice charge against Ms. Trees before the Oregon State Employment Relations Board (ERB) for allegedly trying to get out of a valid card, claiming that Oregon law places all disputes concerning membership cards within the exclusive jurisdiction of the ERB. *SEIU Local 503 v. Oregon*, No: UP-024-21 (Or. ERB June 8, 2021).[4]

Maria Antonia Gatdula, a Washington IP, never wanted to financially support SEIU 775 and never knowingly consented to pay union dues. Ver. Compl., *Gatdula v. SEIU 775*, No. 2:20-cv-00476, 7 (W.D. Wash. Mar. 26, 2021). In 2014, Ms. Gatdula refused to sign a union-drafted dues authorization deduction. *Id.* Nevertheless, SEIU 775 directed the State to deduct dues in the absence of an affirmative opt-out requirement. *Id.* at 7-8. After *Harris*, SEIU 775 contacted Ms. Gatdula by telephone, quickly read through a seventy-second legal blurb and requested she verbally agree. *Id.* at 8, 11-12. She answered with a tentative "yes" despite not wanting to financially support the union. *Id.* When Ms. Gatdula learned, after *Janus*, that she was not required to financially support the union, she told the union to stop taking

[4] Ms. Trees has appealed the ERB's decision that she, a public employee, committed an unfair labor practice against SEIU 503 by bringing suit. *SEIU Loc. 503 v. Trees*, CA A179824 (Or.Ct.App. Feb. 17, 2023).

dues. *Id.* at 9. However, the union then claimed that she had signed an electronic dues authorization on February 2, 2019, and told her she could not revoke that authorization for a year. *Id.* To the best of her knowledge, Ms. Gatdula had never visited the union website for any reason and the electronic signature on the card was not her signature. *Id.*

Kirsti Parde, a court reporter for the Superior Court of Los Angeles County, did not sign a card in 2020, as SEIU 721 claimed. Opening Br., *Parde v. SEIU Loc. 721,* No. 23-55021, 12 (9th Cir. May 22, 2023). She signed a membership agreement in 1998, but that agreement stated that she could resign union membership at any time. *Id*. at 5. She resigned union membership in January 2022, yet her government employer continued to deduct money from her paycheck for four months based on a provision in a 2020 Membership Agreement she never signed. *Id*. at 6-7.

Alaska's process avoids all these constitutional harms.

III. ALASKA SEEKS TO ENSURE ITS EMPLOYEES ARE NOT MISLED OR COERCED INTO SIGNING AN AUTHORIZATION FOR DUES DEDUCTIONS OR MAINTAINING UNION MEMBERSHIP

Foundation staff and attorneys also assist public employees whom unions tricked or threatened into signing a dues deduction authorization or whom unions hindered when attempting to end dues deductions.

A. Unions Mislead Employees

Frequently, public employees assert that the only union forms they knew they completed appeared to be union requests to update the employees' contact information with the union.

Ramona Christensen-Russell, a nonmember, sought union assistance in gaining a wage increase for her position. Washington State Dep't of Labor and Indus., Decision 13089, at 2-5 (PSRA, 2019). The union employee repeatedly told her that she needed to first "show her support for the union." *Id.* Ms. Christensen-Russell asserted that she did not realize she had signed something that made her a union member until the state continued to deduct dues from her paychecks after this Court's *Janus* decision. *Id.* at 6-7. At that point, she was locked into dues payments for an entire year by the terms and conditions to which she unknowingly agreed. *Id.* at 7.

The Oregon Education Association (OEA) asked its represented public employees, Jeremy Durst, Deanne Tanner, and Michael Gracie, to sign a form pre-filled with their personal information titled "2018-19 Individual Contact Sheet." Compl., *Durst v. Oregon Educ. Ass'n*, No. 1:19-cv-00905, 3-4 (D. Or. June 11, 2019). Although Mr. Durst contacted his union representative to inquire about whether there were changes to his options based on the *Janus* decision, the union representative did not tell him how to exercise his newly recognized rights or that the new form contained small print restricting him to a pre-defined one-month period during which he could choose to stop dues deductions. *Id.* at 4-5. When Mr. Durst learned he no longer had to continue financially supporting the union and tried to stop dues deductions, he was held to the fine print on that "Individual Contact Sheet." *Id.*

SEIU 2015 led Peter and Lien Loi—for whom English is not their first language—to believe that they *had* to sign union membership cards in order to become in-home support workers. *Polk v. Yee*, 36 F.4th 939 (9th Cir. 2022). Craig Brayfield, a previously homeless public employee under extreme financial hardship, retained a Foundation attorney because he believed he had been tricked into signing a SEIU 2015 dues deduction authorization. These claims were never addressed by any level of court, but Alaska's plan would provide a safety net ensuring employees like these understand they have a choice.

B. Unions Threaten to Exclude Employees Who Stop Dues Deductions From Representation

Gregory Harobin's employer began deducting dues from his paycheck and transferring that money to Amalgamated Transit Union Local 758 (ATU) in 2014 despite Mr. Harobin never seeking to join the union nor signing anything to indicate he wished to financially support the union. Ver. Compl., *Harobin v. Amalgamated Transit Union Loc. 758*, No. 3:20-cv-05002, 4 (W.D. Wash. Jan. 3, 2020). After the *Janus* decision, Mr. Harobin contacted ATU to stop the dues deductions and union membership. *Id.* ATU refused to do either until Mr. Harobin filled out and signed a "statement of nonrepresentation" that declined ATU representation rights required of the exclusive bargaining agent. *Id.* at 5. Mr. Harobin refused to sign, and his public employer continued to deduct dues for another six months. *Id.* at 6-7.

Four union members tried to opt-out of the Association of Oregon Corrections Employees (AOCE). Compl., *Cox v. AOCE*, No. 6:22-cv-00906, 2 (D. Or. June 22, 2022). The union ignored the requests, told

members they had to sign a form giving up their right to fair representation by the exclusive bargaining agent, and explained they would be charged a punitive $500 fee if they ever wanted to rejoin the union. *Id.* at 4-12. When Tracy Cox asked for documentation showing the union could require her to sign the Membership Cancellation form, AOCE told her *Janus* gave unions the authority to "establish a form for such revocations." *Id.* at 9.

Ray Yarbrough, an OEA-represented teacher, chose not to be a member. He requested OEA advocate for him on a CBA matter, and the union refused because he was not a dues-paying member. The union representative stated "[t]he union is under no obligation to use union resources for requests from nonmembers. If you decide to join TLEA and OEA, then let me know and we can revisit this conversation." *Yarbrough v. Oregon Educ. Ass'n*, No. UP-029-22 (Or. ERB 2022).

C. Unions Mis-inform or Ignore Inquiries About Time to Opt-Out

SEIU 721 gave four public employees incorrect information that resulted in them paying dues for longer than necessary. They did not receive satisfactory responses from SEIU 721 until after they retained Foundation attorneys who determined their correct opt-out windows and contacted SEIU 721 on their behalf.

Michelle Moen attempted to resign from the Public School Employees Local 1948 (PSE) and stop dues deductions. When PSE refused to stop certifying that she had authorized those dues deductions, Ms. Moen sought legal help from the Foundation. Foundation

attorneys determined PSE had given Ms. Moen the incorrect dates for her annual "window" to stop dues deductions and had neglected to inform Ms. Moen that, according to the terms and conditions of her signed agreement, she had an additional option to stop dues deductions when the current CBA expired—a date which occurred much earlier than her anniversary date.

Washington Public Employees Association (WPEA) neglected to inform Yu Pei that union membership and dues payments were not required for her job. Therefore, Yu Pei signed a WPEA authorization card. Shortly after being hired, her colleagues told her that union membership and dues payments were not required, and she attempted to stop dues deductions. WPEA told her that she was required to continue paying dues until a narrow window of time before the anniversary of the date she signed the authorization, but neglected to inform her that the terms of her card also specified that she could stop dues deductions when the CBA between her employer and WPEA expired in a few weeks. Ms. Pei retained Foundation attorneys and dues deductions stopped shortly thereafter.

Alaska ensures employees know they are not required to join a union which would avoid these types of injuries.

IV. ALASKA REJECTS HOLDING EMPLOYEES TO THE TERMS AND CONDITIONS OF *JANUS*-DEFICIENT CARDS AND COLLECTIVE BARGAINING AGREEMENTS

Lower courts, including the Alaska Supreme Court, regularly uphold any terms and conditions imposed by private agreements between the union and public

employees, whether or not the public employees knew their First Amendment rights before signing any such private agreement. *Alaska v. ASEA*, No. 7657, 17-18; *see, e.g.*, *Durst*, No. 1:19-cv-00905, Dkt. #34 at 2-3 (refusing to address whether public employees knowingly waived their First Amendment rights by signing an agreement); *Belgau v. Inslee*, 975 F.3d 940, 947 (9th Cir. 2020) (concluding the employees did not suffer a First Amendment violation although the union-drafted agreement between the union and public employees did not inform the employees of their right to refrain from financially supporting the union). Public employees are often asked to sign these union-drafted cards during union-hosted sessions—where they are presented with the union's position on public sector collective bargaining but not told how it differs from private sector collective bargaining or that they have specific First Amendment rights because they are in the public sector.

A. Employees Held to The Terms and Conditions of Union-drafted Cards

The Foundation has never seen a union-drafted card include information necessary for employees to provide voluntary, knowing, informed consent. Yet public employees are held to the terms and conditions of those cards.

Glenn Laird personally modified a union card with United Teachers of Los Angeles (UTLA) to allow him to end the deductions from his lawfully earned wages to fund the Union's speech at any time. Opening Br., *Laird v. UTLA*, No. 22-55780, 7 (9th Cir. Dec. 15, 2022). Nevertheless, the Los Angeles Unified School District continued the deductions to UTLA for seven months after he sent the Union a letter withdrawing

his authorization. *Id.* at 7-8. It was not until Laird sent two additional letters to UTLA requesting it end the unauthorized and unconsented-to deductions, and several union officials attempted to hold Laird to the unmodified card language, that the Union finally released Laird from future deductions. *Id.* at 9.

Dr. Robert Espinoza signed a union card with the Union of American Physicians and Dentists, Local 206 (UAPD), that specified an opt-out window to end dues deductions, but the union President wrote confirming he could end a separate union political action fee at any time. Opening Br., *Espinoza v. UAPD*, No. 22-55331, 5 (9th Cir. July 5, 2022). When he attempted to opt-out because he disagreed with UAPD's extreme political speech, the UAPD attorney said the union would hold the card until the window period when the MOU expired. But even after the MOU expired his government employer continued taking both dues and the political action fee without his affirmative consent. *Id.* at 6-8.

Dori Yates, a school bus driver, and three other school-support staff challenged the union including a one-month opt-out window and automatic renewal of "authorization" to union-drafted authorization cards unless the public employee revoked the authorization during June. Compl., *Yates v. Am. Fed'n of Tchrs.*, No. 3:19-cv-01975, 4-8 (D. Or. Dec. 5, 2019). The card contained contradictory terms: one clause stating that employees must pay dues for a minimum of a year, and another clause stating that employees may only revoke dues authorizations during an arbitrary thirty-day window each June. *Id.* Instead of letting members resign membership and cease paying dues either a year after they signed or in June, the union applied both rules in a specific order to keep objecting staff

paying dues for the maximum amount of time (close to two years in some cases). *Id.*

SEIU 503 charges all members a political assessment of $2.75 in addition to union dues for a political fund supporting state ballot initiative campaigns. Ryan Cram and other employees are former union members who opted out, but who were forced to keep paying the political assessment through the end of their "opt-out window." SEIU 503 claims this was authorized by the union's membership card. The membership card states that the employee authorizes the deduction of dues, fees, and assessments, but does not explicitly authorize political assessments. *Cram v. Loc. 503 SEIU*, 2021 WL 1041134 (D. Or. 2021).

In 1999, Charlene Wagner, a Washington public employee, joined SEIU 925 by signing a union dues deduction authorization that also contained a union membership provision. Opening Br., *Wagner v. SEIU 925*, No. 20-35879, 3 (9th Cir. July 10, 2023). The 1999 authorization did not restrict Ms. Wagner's right to resign union membership or revoke the authorization for dues deduction. *Id.* at 3-4. In 2018, SEIU 925 required Ms. Wagner to sign a new dues deduction authorization that introduced new restrictions on her future ability to revoke the authorization. *Id.* at 4. The 2018 authorization contained language that implied the employee must sign the new authorization to remain a union member. *Id.* After the *Janus* decision offered Ms. Wagner a meaningful choice between membership and non-membership, Ms. Wagner attempted to leave SEIU 925 and stop dues deductions. *Id.* at 8. However, Ms. Wagner was held to the more restrictive terms of the 2018 authorization to deduct dues while simultaneously being removed from union membership. *Id.* at 7-9.

B. Employees Are Held to Terms and Conditions in Documents to Which They Did Not Agree or Consent

Only the public employer and the union agree upon and sign CBAs and Memorandums of Understanding (MOUs). Presumptively, the union represents the interests of the public employees. But these agreements contain provisions that limit the public employees' ability to terminate their association with, or financial support of, the union itself—making a mockery of the voluntary consent *Janus* requires.

Decades ago, Christopher Deering signed a union card with the International Brotherhood of Electrical Workers, Local 18 (IBEW 18), allowing him to end payroll deductions at any time provided he did so in writing. Opening Br., *Deering v. IBEW*, No. 22-55458, 6 (9th Cir. Sept. 7, 2022). Because he objected to certain union political endorsements Mr. Deering withdrew his authorization in writing according to the terms and conditions of the card, but Los Angeles continued deductions for another eight months. *Id.* at 9-10. IBEW 18's justification for the continued deductions was an opt-out window, to which Deering never agreed, contained in the CBA between the union and city. *Id.*

SEIU 721 required Atishma Kant and Marlene Hernandez, California Superior Court employees, to continue paying dues for two years based on an MOU extension. Opening Br., *Kant v. SEIU Loc. 721,* No. 22-55904, 7-8 (9th Cir. Jan. 30, 2023). In 2016 and 2018, each signed membership forms when they began their employment that stated they could opt-out of SEIU 721 membership only during the last thirty days of the MOU that was in operation at the time they signed their membership forms. *Id*. at 4-5. In 2019, both

sought to resign SEIU 721 membership in accordance with the then expiring 2015-2019 MOU. *Id*. at 5-6. Unbeknownst to them, SEIU 721 and the Superior Court agreed to extend the MOU through 2021. *Id*. at 6. This extension purportedly eliminated their original opt-out window. *Id*. at 7. SEIU 721 and the Superior Court agreed to a *second* extension and would have held them until its expiration but released Ms. Kant and Ms. Hernandez after they filed suit.

Twenty-two California lifeguards, members of California State Law Enforcement Agency (CSLEA), signed union-drafted cards that vaguely stated that there might be limitations on when they could withdraw from CSLEA. Compl., *Savas v. California State Law Enf't Agency*, No. 3:20-cv-00032, 4-6 (S.D. Cal. Jan. 5, 2020). When the lifeguards attempted to leave CSLEA, they were told that there was a MOU, authorized by Cal. Gov't Code § 3515.7, that included a provision that required them to remain members through the end of MOU—four years later. *Id.* CSLEA held them to the terms of the cards as modified by unidentified state law and an MOU between the union and the public employer. *Id.*

Alaska's requirement for employees to renew consent each year would eliminate these abuses.

V. ALASKA WOULD ENSURE EMPLOYEES CAN WITHDRAW CONSENT AT LEAST ONCE A YEAR

Unions hold most Foundation-assisted public employees to an automatically renewing one-year commitment to pay union dues through paycheck deductions once the employees have initially consented. When West Coast public employees attempt to contact

their employer—the entity deducting the money from their paycheck—to stop paycheck dues deductions, they are told that only the union can authorize the employer to stop the deductions. Because this immense power has been placed in union hands, the unions avoid acknowledging employee communications that request information about how to stop dues deductions, demand that dues deductions stop, or request copies of any dues authorization the union believes it possesses. This leaves the employees without recourse through their employer or through the union that purports to represent the employee's interests. Many of these employees resolve their issues only after they retain legal counsel to speak to the union on their behalf. Alaska would confirm annually that employees consent to deductions thus ensuring employee consent before payments are transferred to the unions to support union political speech.

A. Unions Refuse to Acknowledge Receipt of Individual Employee Requests to Stop Dues Deductions

Sometimes public employees simply cannot get the union to acknowledge their communications to the union. Kytonya Rogers, an IP represented by SEIU 775, tried to stop payroll dues deductions that she did not remember ever authorizing. Compl., *Rogers v. SEIU 775*, No. 21-2-01678-34, 5 (Thurston Cnty. Super. Ct. Wash. Sept. 30, 2021). Ms. Rogers mailed two letters to SEIU 775, one via certified mail that showed it was delivered to the union, but the union denied receiving either letter. *Id.* The union told her over the phone to submit yet another letter revoking any prior authorization. *Id.* SEIU 775 also did not provide a copy of the purported authorization to Ms. Rogers for several months. *Id.* 6-7.

SEIU 775 also failed to provide a copy of Cindy Dickenson's purported dues deduction authorization when she requested it. *Id.* at 7. She had sent a dues cancellation request in January through Federal Express and knew it had been delivered three days after she sent it. *Id.* Eight months later, SEIU 775 had not yet either responded to the request to stop dues deductions or provided a copy of any authorization they had on record for the dues deductions. *Id.*

June Garmon, a public employee represented by WFSE, sent certified mail to WFSE that USPS tracking confirmed was delivered late April 2022. However, when Ms. Garmon contacted WFSE in July to find out why they had not yet responded, WFSE denied ever receiving the mail. Ten months later, after Ms. Garmon retained Foundation attorneys, WFSE claimed it accidentally missed processing Ms. Garmon's communication and took action in response to Ms. Garmon's demand letter.

Lindsey Diederichs, a public employee represented by Washington State Council of County and City Employees, Council 2 (Council 2), requested paycheck deductions stop and a copy was sent to Council 2 in December 2021. Council 2 did not reply, but her union life insurance policy carrier notified Ms. Diederichs in January 2022 that her policy was terminated because she was no longer a union member. Upon returning to work after several months of maternity leave, she did not immediately notice that dues continued to be deducted from her paycheck. She tried to contact Council 2 to find out why it was still authorizing dues deductions from her paycheck, but Council 2 refused to answer until January 2023. Even then, she was

unable to achieve any satisfactory resolution to the issue until after she retained Foundation attorneys.

B. Unions Refuse to Acknowledge Receipt of Foundation-Assisted Employee Requests to Stop Dues Deductions

In an apparent attempt to avoid responsibility to current members or dues payers, unions have started refusing to accept USPS mail that contains communications from public sector employees who wish to leave the union and stop paying union dues. In 2021, several Washington-based unions began refusing to accept certified mail they identified as sent by the Foundation. The Foundation, upon request by and as a service to employees, forwards and tracks employee opt-out requests to avoid unions' claims that they never received such requests. Employees are required to submit any request to stop dues deductions from their paycheck to the union, not the public employer. Wash. Rev. Code §§ 41.56.110, 41.80.100.

Council 2 adopted a policy of "not accept[ing] forms requesting to drop individuals dues payments from undisclosed or any third parties." Compl., *Wichert v. Washington State Council of Cnty. and City Emps., AFSCME, AFL-CIO, Council 2*, No. 3:23-cv-05368, Dkt. 1-3 (W.D. Wash. Apr. 25, 2023). When Mr. Wichert attempted to opt-out, Council 2 told Mr. Wichert that he needed to send in another opt-out letter within the dates specified by his signed Authorization for Payroll Deduction and Representation card—specifically, he needed to resubmit an opt-out less than two weeks later. *Id.* at 6; Dkt. 1-1. Mr. Wichert then personally sent, in Foundation-provided envelopes, multiple opt-out letters that Council 2 either refused or returned. *Id.* at 6-10. Council 2 finally accepted delivery of Mr. Wichert's final opt-out letter,

sent by certified mail in an envelope he scrounged from a title company. *Id.* at p. 8.

The Foundation sued the International Brotherhood of Teamsters Locals 117, 760, and 763 alleging the unions violated public employees' rights by refusing to accept the employees' requests to stop union membership and payroll dues deductions when those requests were mailed by the Foundation. Ver. Compl., *Freedom Found. v. Int'l Bhd. of Teamsters Loc. 117*, No. 3:22-cv-05273, 2, 9 (W.D. Wash. May 15, 2023). The court concluded the unions' refusal of employee communications mailed by the Foundation was not synonymous with the unions refusing to accept employee communications because "public employees can personally contact their bargaining representatives to effectuate their withdrawal decision." Order Granting Summ. J., Dkt. 54, 10-11. Within a week of that decision, the Washington Federation of State Employees began refusing mail containing public-employee-signed opt-outs mailed by the Foundation.

Alaska would eliminate these union games.

CONCLUSION

The current plight of public sector employees is dire. They have the right to refuse to join and financially support the union—but they likely do not know they have that right. State statutes, CBAs, or other agreements frequently bar their public employer from informing them; and the unions have no incentive to tell them. While they must affirmatively, knowingly, and voluntarily consent before money is deducted from their paychecks and transferred to the union, only the self-interested union obtains this "consent." Alaska's solution to this situation puts the onus to ensure employees affirmatively, knowingly, and voluntarily

consented on the public employer—the entity actually deducting money from the employees' paycheck and transferring that money to the union.

Respectfully submitted,

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