No. ______

In the
Supreme Court of the United States

FREEDOM FOUNDATION,

Petitioner,

v.

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, LOCAL 117, a non-profit corporation; INTERNATIONAL BROTHERHOOD OF TEAMSTERS, LOCAL 763, an unincorporated association; INTERNATIONAL BROTHERHOOD OF TEAMSTERS, LOCAL 760, an unincorporated association; BOB FERGUSON, in his official capacity as Governor of the State of Washington,

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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July 10, 2025

QUESTION PRESENTED

In *Janus v. AFSCME, Council 31*, 585 U.S. 878 (2018), this Court held that public-sector employees have a First Amendment right to decline to pay dues to public-sector unions. Unions and recalcitrant states have been trying to circumvent that decision even since. This case provides a striking example. Under Washington law, if an employee authorized the state to deduct union dues from her wages in the past, the state must continue deductions unless and until *the union* informs it that the employee has revoked her authorization. And unions go to great lengths to prevent employees from effectuating such revocations. Here, petitioner mailed revocation forms to unions on behalf of employees, but the unions refused to open mail bearing petitioner's logo or an associated return address—and continued to ask the state to deduct dues from the nonconsenting employees. Petitioner sued the unions under 42 U.S.C. §1983 to vindicate both the employees' *Janus* rights and its own rights to associate with those employees and communicate on their behalf. But the Ninth Circuit held that petitioner has no remedy for those constitutional violations because the unions purportedly did not act "under color of state law" when invoking the state's aid to seize objecting employees' wages. That decision renders *Janus* nugatory, conflicts with this Court's state-action precedent, and entrenches a circuit split.

The question presented is:

Whether public-sector unions that invoke the aid of state officials to deduct union dues from a nonconsenting public-sector employee act "under color of law" for purposes of 42 U.S.C. §1983.

PARTIES TO THE PROCEEDING

Pursuant to this Court's Rule 14.1(b)(i), petitioner states that there are no parties to the proceeding other than those named in the caption of the case.

Petitioner (plaintiff-appellant below) is Freedom Foundation.

Respondents (defendants-appellees below) are International Brotherhood of Teamsters, Local 117, a non-profit corporation; International Brotherhood of Teamsters, Local 763, an unincorporated association; International Brotherhood of Teamsters, Local 760, an unincorporated association; Bob Ferguson, in his official capacity as Governor of the State of Washington. Governor Ferguson has replaced Governor Jay Inslee as a party to these proceedings pursuant to this Court's Rule 35.3.

CORPORATE DISCLOSURE STATEMENT

Pursuant to this Court's Rules 14.1(b)(ii) and 29.6, petitioner states as follows:

Freedom Foundation is a Texas incorporated 501(c)(3) nonprofit corporation with no parent company, affiliates, or subsidiaries. Because Freedom Foundation issues no stock, no publicly held corporation owns ten percent or more of its stock. In addition, no publicly held company has a financial interest in the outcome of the proceeding.

STATEMENT OF RELATED PROCEEDINGS

This case arises from and is directly related to the following proceedings in the U.S. District Court for the Western District of Washington and the U.S. Court of Appeals for the Ninth Circuit:

Freedom Foundation v. Int'l Brotherhood of Teamsters Local 117, No. 3:22-cv-05273-DGE (W.D. Wash.) (Jan. 3, 2024);

Freedom Foundation v. Int'l Brotherhood of Teamsters Local 117, No. 23-3946 (9th Cir.) (Dec. 31, 2024).

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PETITION FOR WRIT OF CERTIORARI

This case concerns yet another joint effort by public-sector unions and obstinate states to evade this Court's decision in *Janus v. AFSCME, Council 31*, 585 U.S. 878 (2018). In *Janus*, this Court affirmed that public-sector employees have a First Amendment right to decline to pay membership fees to public-sector unions that fund union speech with which the employee disagrees. Because that decision poses a serious threat to valuable income streams for unions, they have searched for creative ways to neutralize its effects ever since. This case is a prime example of the extreme lengths to which unions will go to do just that.

Petitioner Freedom Foundation is a nonprofit organization that seeks to educate public-sector employees about public-sector unions—including how to resign from them. In many states, that resignation process is deliberately complex. As relevant here, in the state of Washington, legislation enacted in response to *Janus* requires an employee to inform the union—and *only* the union—that she no longer wishes to have union dues deducted from her wages. The union is then supposed to relay that message to the state, and only at that point may the state cease withholding dues payments. In addition to informing employees about this game-of-telephone opt-out procedure, Freedom Foundation has created a mechanism to facilitate employee resignations from unions as well: It provides interested employees with legally effective opt-out forms and covers the costs of sending those forms by certified mail directly to the unions.

Unsurprisingly, unions have used their state-conferred gatekeeping power to make it exceedingly difficult for employees to successfully exercise their *Janus* rights—a dynamic on full display here. Wise to fact that mail from Freedom Foundation likely contains notices revoking employees' prior approval to have the state deduct union dues from their wages, three Washington unions have simply refused to open that mail altogether. In fact, these unions rejected not only packages bearing Freedom Foundation's logo, but also any unmarked packages with return addresses associated with Freedom Foundation. And when Freedom Foundation attempted to resend the revocation forms (at additional cost) via other unmarked packages from other addresses, the unions began rejecting them too as soon as they uncovered that tactical shift.

Hoping to put a stop to this chicanery, Freedom Foundation sued the unions under 42 U.S.C. §1983, alleging that, by refusing its mail, the unions had unconstitutionally burdened the employees' rights under *Janus* to resign their union membership and had impinged on Freedom Foundation's own right to associate with them to do so. But the district court awarded summary judgment to respondents, and the Ninth Circuit affirmed in the decision below, holding that the unions had not engaged in the state action necessary to prevail in a §1983 action. The court reached that conclusion even though Washington law requires public-sector employees to go through the unions to resign their union membership, thus giving the unions full control over whether the state will continue to extract dues from public-sector employees over their objection.

That decision is wrong, plain and simple. More than that, it is just the latest in a long line of Ninth Circuit decisions that have deployed the same mistaken state-action analysis to undermine public-sector employees' exercise of their *Janus* rights. That infamous string of precedent includes the decision at issue in the recently filed petition for certiorari in *Klee v. International Union of Operating Engineers, Local 501*, No. 24-1306 (U.S. filed June 20, 2025). As explained in that petition, this Court has made clear that a private party who is empowered by state law to use the state's aid to seize disputed property qualifies as a state actor for §1983 purposes and thus is subject to liability for constitutional violations. That is precisely what the unions did here—all while trampling on Freedom Foundation's own First Amendment rights to communicate with and on behalf of public-sector employees. Because this case presents the same question as *Klee*—and implicates the same circuit split—the Court should either grant both cases or grant plenary review in *Klee* and hold this petition in the interim. Either way, the Court should not allow recalcitrant unions and states to continue to pose an existential threat to *Janus* without repercussion.

OPINIONS BELOW

The Ninth Circuit's opinion is reported at 2024 WL 5252228 and reproduced at App.1-6. The district court's decision granting respondent unions' motion for summary judgment is reported at 2023 WL 3456881 and reproduced at App.9-26. The district court's decision granting the respondent governor's motion for summary judgment is reported at 2023 WL 8004719 and reproduced at App.27-30.

JURISDICTION

The Ninth Circuit issued its opinion on December 31, 2024, and denied a timely filed petition for rehearing en banc on February 10, 2025. Justice Kagan extended the deadline to file a petition for writ of certiorari to and including July 10, 2025. This Court has jurisdiction under 28 U.S.C. §1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The First Amendment to the U.S. Constitution, *see* U.S. Const. amend. I, provides in pertinent part:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech …

Section 1983 of Title 42, *see* 42 U.S.C. §1983, provides in pertinent part:

> 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[.]

The relevant section of the Revised Code of Washington, *see* Wash. Rev. Code §41.56.110, is reproduced at App.33-34.

STATEMENT OF THE CASE

1. Freedom Foundation is a non-profit organization operating in 30 states that seeks to educate public-sector employees about their First Amendment rights vis-à-vis public-sector unions—*i.e.*, the employees' rights to abstain from union membership and to decline to provide financial support for objectionable union speech. *See* App.10-11; CA9.ER.10, 39. As an integral part of that mission, Freedom Foundation has assisted public-sector employees in resigning their union membership by providing them with a streamlined process for completing a form to opt out of the union and by mailing such forms on their behalf via certified mail (since unions previously professed not to have received opt-out requests sent by regular mail). *See* App.3-4, 11; CA9.ER.27-29, 221. Freedom Foundation expends approximately $33.00 per employee to facilitate the completion and mailing of the resignation forms and to confirm their delivery to the union. *See* CA9.ER.29.

Freedom Foundation has engaged in this practice since 2014, following the Court's decision in *Harris v. Quinn*, 573 U.S. 616 (2014). *See* CA9.ER.27. And that practice has assumed even greater importance since this Court's decision in *Janus*. There, the Court affirmed that public-sector employees have the right under the First Amendment to "eschew association" with public-sector unions and that "neither an agency fee nor any other payment to the union may be deducted from a nonmember's wages … unless the employee affirmatively consents to pay." *Janus*, 585 U.S. at 892, 930. In the intervening years since those pronouncements, Freedom Foundation has assisted hundreds of thousands of public-sector employees in exercising their First Amendment rights under *Janus* to resign from unions. *See* CA9.ER.30. But its efforts have hit major roadblocks in several states—including, here, Washington, where Freedom Foundation has its principal place of business.

By legislative grace, Washington has given public-sector unions pride of place. Under state law, the Washington State Public Employment Relations Commission certifies specific unions as the "*exclusive* bargaining representative" of public-sector employees, thereby enabling the certified union to represent public-sector employees, including those who are not union members. *See* Wash. Rev. Code §41.56.080 (emphasis added). That statutorily granted exclusive-bargaining authority also carries with it the privilege of dictating when employee paychecks are subject to dues deductions. Under that scheme, the state shall not withhold portions of employee paychecks and transfer them to unions without the employee's authorization, and the state shall cease those transfers if an employee submits a written request to revoke that authorization. *See id.* §41.56.110(2)(a), (3)(a). But in either case, the employee *must* direct the request to start or stop deductions *to the union* certified as the exclusive bargaining authority; employees cannot direct those requests to the state that is deducting the dues from their wages. *See id.* §41.56.110(2)(a) ("An employee's … authorization to have the employer deduct membership dues … must be made … to the exclusive bargaining representative."); *accord id.* §41.56.110(2)(b) (employers can deduct dues "[u]pon receiving notice of the employee's authorization from the exclusive bargaining representative"). Washington law also provides that an employee's "request to revoke authorization for payroll deductions must be … submitted by the employee to the exclusive bargaining representative in accordance with the terms and conditions of the authorization." *Id.* §41.56.110(3)(a). Because "[t]he employer *shall* rely on information provided by the exclusive bargaining representative regarding the authorization and revocation of deductions," *id.* §41.56.110(4) (emphasis added), unions are statutorily empowered to act as gatekeepers that control when the state will withhold dues from employees' wages to subsidize their own union activities.

Several Washington unions have taken full advantage of that statutory privilege, including respondents International Brotherhood of Teamsters, Local 117 ("Local 117"), International Brotherhood of Teamsters, Local 763 ("Local 763"), and International Brotherhood of Teamsters, Local 760 ("Local 760"). Each of those unions represents various public-sector employees in Washington, and each has obstructed Freedom Foundation's efforts to assist public-sector employees in resigning their union memberships. *See* App.10-11. To varying degrees, each union has refused to accept or open mailings with Freedom Foundation's logo and/or associated return mailing address (each beginning this practice around the same time), *see* CA9.ER.30-31, presumably because those markings serve as forewarning that the packages contain employee revocation forms that require the state to cease deducting dues. This mail-refusal scheme has forced Freedom Foundation to identify workarounds, including by resending (at additional expense) any refused mail via *unmarked* packages—often with new return addresses not previously associated with Freedom Foundation—so that the unions cannot anticipate the packages' contents. *See* CA9.ER.30-31, 34. But that strategic shift has achieved only modest success, as some of the unions have refused to open mail from any additional addresses that Freedom Foundation uses. *See* CA9.ER.30-31, 34.

As Freedom Foundation's unopened or unread mail has piled up, the unions have continued to demand that the state deduct union dues from employees who would rather have no association with those unions or their activities. *See* CA9.ER.5, 18, 34. In other words, the unions' obstructionist tactics have forced employees to fork over some of their wages to subsidize objectionable union conduct in violation of their First Amendment rights under *Janus*,[1] while also imposing costly burdens on Freedom Foundation's exercise of its own First Amendment rights to associate with those public-sector employees and to communicate with the unions on their behalf. *See* CA9.ER.15-18, 21-22, 34.

2. Hoping to put an end to these shenanigans, Freedom Foundation filed this §1983 action in April 2022 against the unions and Washington's governor. App.3. Freedom Foundation alleged that Washington's regime violates the First Amendment

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[1] Unions often provide only short windows each year (*e.g.*, two weeks) for employees to opt out. *See* CA9.ER.28. Accordingly, if unions reject mail containing opt-out notices, nonconsenting employees may find themselves paying dues deductions for another *year*.

and due-process rights of public-sector employees under *Janus*, as it enables unions to require the state to continue sending them dues even after employees have resigned their union membership and revoked their authorizations for the state to deduct those dues from their wages. *See* App.3, 11. Freedom Foundation further alleged that the unions' refusal to open its mail has burdened its own rights to effectively associate with and advocate for the rights of these employees by facilitating their withdrawal from the unions and effectuating the cessation of unwanted dues deductions through its (refused) mailings. *See* CA9.ER.20-22.

The district court granted summary judgment to respondents and dismissed all of Freedom Foundation's claims. *See* App.9, 27-30. As to the claims against the unions, the court held that Freedom Foundation lacks standing to assert either its own rights to advocate for public-sector employees seeking to resign their union membership—notwithstanding the costs Freedom Foundation has had to shoulder to try to prevent the unions from refusing its mail a second (or even third) time around—or the rights of the employees on whose behalf Freedom Foundation has tried to act. *See* App.12-16. The court also dismissed its claim against the governor for lack of standing on the theory that Washington's legal regime does not infringe Freedom Foundation's First Amendment rights. *See* App.27-30.

Apparently recognizing that its standing analysis may not be airtight, the court addressed the merits of Freedom Foundation's claims against the unions, too. And the court dismissed the claims on the theory that the unions are not state actors when they exercise their statutory authority to direct the state to collect dues from public-sector employees. *See* App.16-25. In the court's view, this entire dispute turns on a disagreement over whether the unions must open Freedom Foundation's mail, which the court deemed a private matter—even though it is Washington's legal scheme that leaves public-sector employees with no choice but to go through the union to get the state to stop deducting union dues from their paychecks.[2] *See* App.19-25. In reaching that conclusion, the court drew support from a pair of Ninth Circuit decisions: *Belgau v. Inslee*, 975 F.3d 940 (9th Cir. 2020), and *Wright v. SEIU*, 48 F.4th 1112 (9th Cir. 2022). *See* App.23-25. As the court explained, under that circuit precedent, because the employees initially authorized the deductions and the unions made "[t]he decision to reject [Freedom Foundation's] mail," there is somehow no joint action between the unions and the state when the former directs the latter to deduct fees from an objecting employee's paycheck. App.22-23.

3. The Ninth Circuit affirmed the award of summary judgment. The court rejected the district court's conclusion that Freedom Foundation lacks standing to press its claims against the unions. App.3-4. The court concluded that the unrebutted evidence in the record demonstrated that assisting employees

[2] The court suggested that the unions are not impinging on the employees' First Amendment rights because they have not refused "communications from public employees." App.25. But the employees communicated their desire to resign through mail sent by an agent (*i.e.*, Freedom Foundation), and the unions indisputably refused those communications.

in revoking state authorization to collect dues is a core component of Freedom Foundation's mission. *See* App.2-3. And the court held that having to resend revocation forms "at a cost of approximately $14 for each rejected form" "hinder[s] that core activity," constituting injury in fact.[3] App.3.

Although the Ninth Circuit concluded that the district court had erred in its standing analysis, it nonetheless agreed with that court's "state action" holding. *See* App.3-4. Relying exclusively on circuit precedent—*viz.*, its earlier decision in *Wright*—the court of appeals held that the unions' refusal to open Freedom Foundation's mail so they could continue to get the state to deduct fees was purely private activity. App.3-4. And the court concluded that it could not hold the state responsible for the mail refusal because the state "may not even have known about" it. App.4.

The Ninth Circuit likewise affirmed the dismissal of the claim against the governor on standing grounds. App.4. According to the court, Freedom Foundation's inability to communicate employees' revocation requests to the unions does not impinge on its own rights because it can still engage in general advocacy. App.4. And the court brushed aside the unions' constructive denial of Freedom Foundation's ability to act as employees' agents as mere limitations on "the *effects*" of that advocacy, rather than restrictions on the advocacy itself. App.4.

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[3] While Judge Molloy (sitting by designation) joined the entirety of the Ninth Circuit's decision, he stated that he would also affirm the district court's standing determination. App.6.

Freedom Foundation sought rehearing en banc, which the Ninth Circuit denied. *See* App.6.

REASONS FOR GRANTING THE PETITION

This case presents the question whether public-sector unions that are empowered by state law to act as the sole gatekeeper in determining whether state officials will deduct union dues from a nonconsenting public-sector employee act "under color of law" for purposes of 42 U.S.C. §1983. In case after case, the Ninth Circuit has answered that question in the negative—including in *Klee v. International Union of Operating Engineers, Local 501*, 2025 WL 252478 (9th Cir. Jan. 21, 2025). A petition for certiorari seeking this Court's review has been filed in *Klee*, and that petition tees up the same question presented here. *See* Pet.i, *Klee*, No. 24-1306, *supra*. As the petition in *Klee* explains, the Ninth Circuit's approach to the state-action question is not just exceptionally wrong, but also implicates a circuit split and has far-reaching consequences for the exercise of *Janus* rights.

Indeed, as this case powerfully illustrates, the Ninth Circuit's approach allows unions to escape §1983 liability even when they intentionally refuse to open mail containing notices informing them that employees want the state to stop deducting union fees from their wages—and then turn around and invoke the aid of state officials to continue extracting dues from those same (nonconsenting) employees. And although unions in Washington are the offenders here, this mail-refusal phenomenon is hardly unique to the Evergreen State. Based on its experience sending 250 opt-out notices to unions in 30 states each week, Freedom Foundation can attest that 10 different unions in eight different states are now refusing its mail.

This Court should put an end to these efforts to nullify *Janus* before they spread further by either granting plenary review in both *Klee* and this case, or by granting review in *Klee* and holding this petition in the interim and then disposing of it as appropriate in light of *Klee*. Either way, the Court should not allow the *Janus*-decimating state-action doctrine deployed by the Ninth Circuit below to remain standing.

CONCLUSION

For the foregoing reasons, the Court should grant this petition or hold it pending the disposition of *Klee v. International Union of Operating Engineers, Local 501*, No. 24-1306 (U.S. filed June 20, 2025).

Respectfully submitted,

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July 10, 2025

APPENDIX

TABLE OF APPENDICES

Appendix A

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 23-3946

FREEDOM FOUNDATION, a Washington nonprofit corporation,

Plaintiff-Appellant,

v.

INTERNATIONAL BROTHERHOOD OF TEAMSTERS LOCAL 117, a nonprofit corporation; INTERNATIONAL BROTHERHOOD OF TEAMSTERS LOCAL 763, an unincorporated association; INTERNATIONAL BROTHERHOOD OF TEAMSTERS LOCAL 760, an unincorporated association; JAY INSLEE, Governor, State of Washington,

Defendants-Appellees.

Argued and Submitted: Nov. 13, 2024
Filed: Dec. 31, 2024

Before: S.R. Thomas and Miller, Circuit Judges, and Molloy, District Judge.*

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* The Honorable Donald W. Molloy, United States District Judge for the District of Montana, sitting by designation.

MEMORANDUM†

Freedom Foundation, a nonprofit organization that advocates for public employees to refrain from paying union dues, appeals the grant of summary judgment to the defendants on its claims for damages and injunctive relief under 42 U.S.C. § 1983 against three unions that represent public employees in Washington and against Washington Governor Jay Inslee. In Washington, a public employee who has agreed to pay union dues can revoke that authorization only by making a written revocation request to the union. Wash. Rev. Code § 41.56.110(3)(a).

In its claims against the unions, Freedom Foundation argues that the unions violate public employees' First Amendment rights against compelled speech and association by rejecting packages of dues revocation forms that it mails on their behalf. *See Janus v. American Fed'n of State, Cnty., & Mun. Emps., Council 31*, 585 U.S. 878 (2018). In its claim against Governor Inslee, Freedom Foundation brings a facial constitutional challenge to the Washington statute that sets dues authorization and revocation procedures.

The district court held that Freedom Foundation lacks Article III standing and also that its claims against the unions fail on the merits. We have

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

jurisdiction under 28 U.S.C. § 1291, and we review de novo the district court's grant of summary judgment. *La Asociacion de Trabajadores de Lake Forest v. City of Lake Forest*, 624 F.3d 1083, 1087 (9th Cir. 2010). We affirm.

1. Freedom Foundation has organizational standing to assert its claims against the unions. "[O]rganizations must satisfy the usual standards for injury in fact, causation, and redressability that apply to individuals." *FDA v. Alliance for Hippocratic Med.*, 602 U.S. 367, 393-94 (2024). To demonstrate injury in fact, an organization must "show that a challenged . . . action directly injures the organization's pre-existing core activities and does so *apart* from the plaintiffs' response to that . . . action." *Arizona All. for Retired Americans v. Mayes*, 117 F.4th 1165, 1170 (9th Cir. 2024).

Freedom Foundation has successfully shown injury through declarations which, "for purposes of the summary judgment motion," must "be taken to be true." *Washington Env't Council v. Bellon*, 732 F.3d 1131, 1139 (9th Cir. 2013) (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992)). Those declarations show that the organization "has dedicated itself to . . . helping interested employees" to "cancel their financial support of unions," including by mailing an average of about 250 revocation forms per week on behalf of employees in more than 20 unions in five States and by maintaining a website that helps employees create and send revocation forms. Helping public employees revoke their dues authorizations is therefore a core activity of the organization in which it engaged before any of the alleged conduct by the unions. Taking the declarations as true, the unions hinder that core activity by rejecting revocation forms mailed by Freedom Foundation, at a cost of approximately $14 for each rejected form. Those expenditures, necessary to continue a pre-existing core activity, are sufficient injuries in fact. *See Mayes*, 117 F.4th at 1170, 1177.

Freedom Foundation has also shown causation and redressability. If the unions did not refuse the organization's mail, then it would not have to resend the revocation forms. Money damages would remedy the alleged past injury, and the requested injunction would prevent future injury.

Because we conclude that Freedom Foundation has standing to assert its claims against the unions based on the originally submitted appellate record, we deny its motion to supplement the record (Dkt. No. 55).

2. Freedom Foundation's claims against the unions fail for lack of state action. In *Wright v. Service Employees International Union Local 503*, we held that a union's forgery of a public employee's dues authorization was not state action under an Oregon statute nearly identical to the Washington statute at issue here. 48 F.4th 1112, 1116-18, 1121-22 (9th Cir. 2022). A union's refusal to accept delivery of a public employee's dues revocation is not state action either. Freedom Foundation's "alleged constitutional deprivation did not result from 'the exercise of some right or privilege created by the State or by a rule of conduct imposed by the state or by a person for whom the State is responsible.'" *Id.* at 1122 (quoting *Naoko Ohno v. Yuko Yasuma*, 723 F.3d 984, 994 (9th Cir.

2013)). The unions "further cannot fairly be 'described . . . as . . . state actor[s].'" *Id.* at 1123 (first alteration in original) (quoting *Naoko Ohno*, 723 F.3d at 994). Washington "did not 'affirm[], authorize[], encourage[], or facilitate[] unconstitutional conduct'" by failing to process revocation requests that it may not even have known about. *Id.* (alterations in original) (quoting *Naoko Ohno*, 723 F.3d at 996).

3. Freedom Foundation lacks standing to assert its claim against Governor Inslee. Freedom Foundation argues that it has been injured by the Washington statute because the statute prevents it from associating with public employees for the purpose of expressive activity. But it has not shown that the statute limits any association or expression. Even if the statute did allow unions to reject revocation forms sent by Freedom Foundation, that would not prevent the organization from associating with public employees or from expressing its views on public-sector unions. At most, the statute obstructs the *effects* that Freedom Foundation would like its association and expression to have—namely, to reduce the amount sent to those unions in dues. But "[t]he First Amendment right to associate and to advocate 'provides no guarantee that a speech will persuade or that advocacy will be effective.'" *Smith v. Arkansas State Highway Emp., Loc. 1315*, 441 U.S. 463, 464-65 (1979) (quoting *Hanover Twp. Fed'n of Tchrs., Loc. 1954 (AFL-CIO) v. Hanover Cmty. Sch. Corp.*, 457 F.2d 456, 461 (7th Cir. 1972)).

AFFIRMED.

MOLLOY, District Judge, concurring:

Although I agree with the majority's conclusion that Freedom Foundation's claims against the unions fail for lack of state action, I would affirm the district court's finding that Freedom Foundation lacks organizational standing. *See Ariz. Alliance for Retired Ams. v. Mayes*, 117 F.4th 1165, 1178 (9th Cir. 2024) ("[S]pending money voluntarily in response to a governmental policy cannot be an injury in fact.").

Appendix B

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 23-3946

FREEDOM FOUNDATION, a Washington nonprofit corporation,

Plaintiff-Appellant,

v.

INTERNATIONAL BROTHERHOOD OF TEAMSTERS LOCAL 117, a nonprofit corporation; INTERNATIONAL BROTHERHOOD OF TEAMSTERS LOCAL 763, an unincorporated association; INTERNATIONAL BROTHERHOOD OF TEAMSTERS LOCAL 760, an unincorporated association; JAY INSLEE, Governor, State of Washington,

Defendants-Appellees.

Filed: Feb. 10, 2025

Before: S.R. Thomas and Miller, Circuit Judges, and Molloy, District Judge.*

ORDER

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* The Honorable Donald W. Molloy, United States District Judge for the District of Montana, sitting by designation.

Judge Miller has voted to deny appellant's petition for rehearing en banc. Judge Thomas and Judge Molloy so recommend.

The full court has been advised of the petition for rehearing en banc, and no judge has requested a vote on whether to rehear the matter en banc. Fed. R. App. P. 40. The petition for rehearing en banc, filed January 14, 2025, is DENIED.

Appellant's motion to supplement the record (Dkt. No. 59) is also DENIED.

Appendix C

UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF WASHINGTON

No. 22-cv-05273

FREEDOM FOUNDATION, a Washington nonprofit corporation,

Plaintiff,

v.

INTERNATIONAL BROTHERHOOD OF TEAMSTERS LOCAL 117, a nonprofit corporation, et al.,

Defendants.

Filed: May 15, 2023

ORDER GRANTING SUMMARY JUDGMENT

I. INTRODUCTION

This matter comes before the Court on Defendants' joint motion for summary judgment. (Dkt. No. 39.) For the reasons stated herein, the Court GRANTS summary judgment and dismisses Plaintiff Freedom Foundation's claims.[1]

[1] Plaintiff requests oral argument. (Dkt. No. 41 at 1.) However, the Court determines oral argument would not help the Court's disposition of this motion and denies Plaintiff's request. *See* LCR 7(b)(4).

II. BACKGROUND

Plaintiff sues three affiliated local unions of the International Brotherhood of Teamsters that represent private and public sector workers in Washington State: Local 117, Local 763, and Local 760 (collectively, "Union Defendants"). (Dkt. Nos. 19 at 1; 21 at 2; 22 at 2.) None of the collective bargaining agreements between Union Defendants and public employers require employees to join the union as a condition of employment. (*Id.*) Employees may choose to join Union Defendants by completing membership agreements. (*Id.*) Public employees may also authorize their employer to deduct and transmit dues directly to their requisite union, although this is not required. (*Id.*) *See also* Wash. Rev. Code § 41.56.110(1) ("Upon the authorization of an employee within the bargaining unit . . . , the employer shall deduct from the payments to the employee the monthly amount of dues . . . and shall transmit the same to the treasurer of the exclusive bargaining representative."). An employee's authorization remains in effect until revoked. Wash. Rev. Code § 41.56.110(2)(c). "An employee's request to revoke authorization for payroll deductions must be in writing and submitted by the employee to the exclusive bargaining representative in accordance with the terms and conditions of the authorization." Wash. Rev. Code § 41.56.110(3)(a).

Plaintiff is a "non-profit Washington organization." (Dkt. No. 3-2 at 2.) Freedom Foundation Labor Policy Director Maxford Nelsen describes Plaintiff as an "organization that presents alternative views on labor unions to public employees[,]" "educates public employees about their

First Amendment rights[,] and assists dissenting public employees to exercise those rights[.]" (*Id.*) Plaintiff helps public employees resign their union membership through its website OptOutToday.com. (Dkt. No. 3-1 at 2.) "An interested party may visit OptOutToday.com" to complete an opt-out form to mail to their union or, if the employee desires, "there is a box that can be checked which will trigger [Plaintiff] to send a copy of the opt-out demand with an envelope addressed to the respective union." (*Id.* at 3.) Plaintiff alleges Union Defendants refuse to accept mail arriving in packaging with Plaintiff's logo or from Plaintiff's return address. (Dkt. No. 3 at 2.)

Plaintiff pleads four causes of action: (1) § 1983 claim for violating dissenting public employees' First Amendment rights; (2) claim under 28 U.S.C. § 2201 "[f]or failing to provide procedural safeguards to ensure adequate protection of public employees' First Amendment rights"; (3) § 1983 claim for conspiracy to violate public employee's First Amendment rights; and (4) common law conspiracy. (Dkt. No. 1 at 14-19.) Plaintiff also moved to enjoin Union Defendants from refusing its mail, which the Court denied. (Dkt. No. 33.) Union Defendants move for summary judgment, arguing Plaintiff lacks standing and its § 1983 claims fail for lack of state action and because Union Defendants' conduct does not violate public employees' First Amendment rights.

III. DISCUSSION

A. Legal Standard

A "court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). The moving party may meet this burden by showing the non-moving party has failed to provide evidence in support of their case. *See Fairbank v. Wunderman Cato Johnson*, 212 F.3d 528, 531 (9th Cir. 2000). In determining whether a genuine dispute of material fact exists, "[t]he deciding court must view the evidence, including all reasonable inferences, in favor of the non-moving party." *Reed v. Lieurance*, 863 F.3d 1196, 1204 (9th Cir. 2017). Disputed facts "that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment," but irrelevant or inconsequential disputes will not preclude summary judgment. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986).

B. Plaintiff Lacks Standing

1. Organizational Standing

An organization satisfies constitutional standing to sue on its own behalf if it has suffered injury as an entity and can make the necessary showings of causation and redressability. 33 Fed. Prac. & Proc. Judicial Review § 8345 (2d ed.). The Supreme Court has "held that where the defendants' 'practices have perceptibly impaired [the organizational plaintiff's] ability to provide [the services it was formed to provide] . . . there can be no question that the organization suffered injury in fact.'" *El Rescate Legal Servs., Inc. v. Exec. Off. of Immigr. Rev.*, 959 F.2d 742, 748 (9th Cir. 1991) (quoting *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 379 (1982)). Thus, "an organization may establish 'injury in fact if it can demonstrate: (1) frustration of its organizational mission; and (2) diversion of its resources to combat the particular [conduct] in question.'" *Am. Diabetes Ass'n v. United States Dep't of the Army*, 938 F.3d 1147, 1154 (9th Cir. 2019). Illustrating this standard, the Ninth Circuit held four legal services organizations representing current and future asylum-seekers had organizational standing to challenge a Department of Homeland Security rule announcing a new bar to asylum eligibility, because the new rule perceptibly impaired their ability to perform the services they were formed to provide. *See E. Bay Sanctuary Covenant v. Biden*, 993 F.3d 640, 663 (9th Cir. 2021).

Plaintiff argues, if Union Defendants refuse its mail, "public employees will be required to mail and track the opt out cards themselves[,]" which Plaintiff argues will "directly frustrate [its] mission of assisting dissenting public employees who want to leave their unions and stop their dues deductions." (Dkt. No. 41 at 6.) Plaintiff further argues it is forced to expend resources to combat Union Defendants' rejection. National Outreach Director Matthew Hayward attests it costs Plaintiff an additional $14.00 each time Union Defendants reject its mail and around $83.50 if Plaintiff hires a process server. (Dkt. No. 3-1 at 9.)

On the other hand, Union Defendants argue Plaintiff does not show frustration of mission given "rejecting mail alone would not stop Plaintiff from assisting public employees who want to leave their unions" and "[r]epetitive sending of mail does not require a shift in the organization's activities[.]" (Dkt. No. 47 at 2.)

The Court agrees with Union Defendants. Plaintiff fails to show frustration of its mission because Plaintiff mailing an opt-out card on a public employee's behalf is not crucial to its purpose of educating and assisting union resignation. Public employees have other options to provide written opt-out notices. Indeed, Plaintiff does not identify a single employee who has tried but been unable to resign from Union Defendants. (*See generally* Dkt. No. 41.) And, although Plaintiff argues that it received a rejected envelope from Local 117 on April 21, 2022 (after filing its complaint), which it resent on April 26, 2022 (s*ee id.* at 3, citing Dkt. No. 26 at 2; 43 at 2), Plaintiff does not explain the outcome of this mailing or provide evidence to suggest any individual opt-outs contained in this envelope were not processed through other means, e.g., the employee mailing an opt-out card themselves. (*See generally* Dkt. Nos. 26, 43.)

As for diversion of resources, Plaintiff cites *Smith v. Pac. Props. and Dev. Corp.*, 358 F.3d 1097, 1105-06 (9th Cir. 2004), arguing it has been required to divert its resources "that it would not have engaged in but for [Union] Defendant's conduct." (Dkt. No. 41 at 6-7.) Specifically, Plaintiff asserts additional resources are expended when the Union Defendants reject Plaintiff's "envelopes with a return address identifiable as the" Plaintiff. (*Id.* at 7.) In such instance, Plaintiff's staff are required to invest time in resending the opt-out forms and invest additional funds to re-mail or possibly serve the opt-out cards originally included in the rejected mail. (*Id.*) *Smith* is distinguishable as the plaintiff in that case specifically alleged the diversion of resources was necessary to "monitor [statutory] violations and educate the public regarding" on-going discrimination. 358 F.3d at 1105. Here, the diversion of Plaintiff's resources is not the result of statutory violations because the rejection of Plaintiff's envelopes does not automatically mean the Union Defendants have refused to honor a request to revoke authorization "submitted by an employee." *See* Wash. Rev. Code § 41.56.110(3)(a).

In the end, however, even if the Court were to find Plaintiff must divert resources to combat Union Defendant's mail rejections, because there is no frustration of Plaintiff's core mission, it fails to establish organizational standing.

2. Third Party Standing

For third-party standing, "'litigant[s] must have suffered an 'injury in fact,' thus giving [them] a 'sufficiently concrete' interest in the outcome of the issue in dispute; [litigants] must have a close relation to the third party; and there must exist some hindrance to the third party's ability to protect [their] own interest." *Home Care Ass'n of Am. v. Bonta*, 2022 WL 445522, at *3 (9th Cir. Feb. 14, 2022) (quoting *Powers v. Ohio*, 499 U.S. 400, 411 (1991)).

In denying Plaintiff's motion for a preliminary injunction, the Court found "Plaintiff does not provide, nor is the Court aware of, caselaw supporting Plaintiff's assertion that it can establish standing to sue for constitutional violations committed against a third-party, simply because Plaintiff has a limited agency relationship with that third-party." (Dkt. No. 33 at 6.) In its response, Plaintiff does not provide caselaw in support of their "limited agent" standing theory. (*See generally* Dkt. No. 41.) Contrary to Plaintiff's argument, a non-profit organization providing generalized information to interested public employees, does not mirror other close relationships recognized by Courts, including attorney-client or vendor-client relationships. Plaintiff provides only conclusory arguments that it maintains close relationships with employees it assists.

Union Defendants argue that because Plaintiff does not participate in the act of selling, it "should not be able to characterize itself as a vendor" for purposes of third party standing. (Dkt. No. 47 at 3) (citing Plaintiff's assertion that it does not charge public employees for its services). Union Defendants further argue the cases in which courts have found vendor third-party standing are "totally unlike the circumstances in the present case." (Dkt. No. 47 at 3.) The Court agrees. In *Craig v. Boren*, 429 U.S. 190, 192-93 (1976), the Supreme Court recognized third-party standing of a licensed beer vendor to challenge a statute restricting the sale of 3.2 percent beer to men and women of different ages. In *Maryland Shall Issue, Inc. v. Hogan*, 971 F.3d 199, 207 (4th Cir. 2020), *as amended* (Aug. 31, 2020), the Fourth Circuit held Atlantic Guns, a "federally licensed firearms dealer that operates several commercial gun stores in Maryland" had third-party standing to challenge gun restrictions. Plaintiff is not selling a product or service to employees, nor is it challenging a regulation or law that implicates a public employee's access to that product or service. Accordingly, Plaintiff does not have standing to bring suit.

C. Plaintiff's Claims Fail on the Merits

Even if the Court assumes that Plaintiff has standing, its claims fail on the merits. To bring a § 1983 claim, a plaintiff must show the defendant deprived it of a right secured by the Constitution and acted "under color of state law." *Belgau v. Inslee*, 975 F.3d 940, 946 (9th Cir. 2020). Here, Plaintiff has established neither. Plaintiff does not show Union Defendants are state actors nor does it show Union Defendants deprived it of a Constitutional right.

1. Union Defendants Are Not State Actors

Plaintiff does not sue Washington State. Instead, it sues three private actors. State action analysis begins with "identifying the specific conduct of which the plaintiff complains." *Ochoa v. Pub. Consulting Grp., Inc.*, 48 F.4th 1102, 1108 (9th Cir. 2022), *cert. denied*, 215 L. Ed. 2d 51, 143 S. Ct. 783 (2023) (internal quotation marks omitted). Then, courts in the Ninth Circuit "employ a two-prong inquiry to analyze whether Washington's 'involvement in private action is itself sufficient in character and impact that the government fairly can be viewed as responsible for the harm of which plaintiff complains.'" *Belgau*, 975 F.3d at 946 (quoting *Naoko Ohno v. Yuko Yasuma*, 723 F.3d 984, 994 (9th Cir. 2013)). First, we must analyze "whether the claimed constitutional deprivation resulted from 'the exercise of some right or privilege created by the State or by a rule of conduct imposed by the state or by a person for whom the State is responsible[.]'" *Id.* Second, courts consider "whether the party charged with the deprivation could be described in all fairness as a state actor." *Id.* at 947. The Ninth Circuit uses four tests when analyzing this second prong: (1) the public function test, (2) the joint action test, (3) the state compulsion test, and (4) the governmental nexus test. *Wright v. Serv. Emps. Int'l Union Loc. 503*, 48 F.4th 1112, 1122 (9th Cir. 2022), *cert. denied*, 214 L. Ed. 2d 451, 143 S. Ct. 749 (2023).

Here, the specific conduct of which Plaintiff complains is Union Defendants' refusal to accept Plaintiff's mail. Contrary to Plaintiff's argument, Washington law does not create a "right or privilege" for Union Defendants to reject Plaintiff's mail. Plaintiff argues Union Defendants actions arise from their authority under the Revised Code of Washington §§ 41.56.090, 41.56.080,[2] and 41.56.110. (Dkt. No. 41 at 19.) Yet none of the statutory provisions cited by Plaintiff involve whether Union Defendants accept (or do not accept) mail from organizational third parties like Plaintiff. Plaintiff argues Revised Code of Washington § 41.56.080 strips employees "of their

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[2] Revised Code of Washington § 41.56.080 provides:

> The bargaining representative which has been determined to represent a majority of the employees in a bargaining unit shall be certified by the commission as the exclusive bargaining representative of, and shall be required to represent, all the public employees within the unit without regard to membership in said bargaining representative: PROVIDED, That any public employee at any time may present his or her grievance to the public employer and have such grievance adjusted without the intervention of the exclusive bargaining representative, if the adjustment is not inconsistent with the terms of a collective bargaining agreement then in effect, and if the exclusive bargaining representative has been given reasonable opportunity to be present at any initial meeting called for the resolution of such grievance.

Revised Code of Washington 41.56.090 provides:

> The commission shall promulgate, revise or rescind such rules and regulations as it may deem necessary or appropriate to administer the provisions of this chapter in conformity with the intent and purpose of this chapter and consistent with the best standards of labor-management relations.

freedom to speak on the topics of wages, hours, and working conditions and a myriad of other topics agreed upon between the exclusive bargaining representative and the public employer.” (Dkt. No. 41 at 18.) But this allegation is not relevant to the conduct of which Plaintiff complains.

Plaintiff also argues:

> [Plaintiff] asserts that the Unions wrongfully refused to accept employee requests to resign from their union and revoke any prior dues authorizations when those requests are packaged and mailed to the Unions by [Plaintiff]; and that the Unions took these actions in accord with the language of the statutory system codified by Washington State in RCW Chapter 41.56., specifically RCW 41.56.110. . . . The Unions have not alleged any facts regarding this assertion.

(*Id.* at 19.) But nothing in Revised Code of Washington § 41.56.110 pertains to Plaintiff’s claims against Union Defendants. Plaintiff appears to argue Union Defendants refusal to accept its mail is authorized by these statutory provisions because employees are required to notify their exclusive bargaining representative if they wish to revoke their authorization for the state to deduct dues from their paychecks. This argument fails as the statute clearly does not contemplate Plaintiff’s involvement in this process one way or the other. The conduct at issue, rejecting Plaintiff’s mail, is not a state statute or policy but merely a private dispute between Plaintiff and Union Defendant. Therefore, Plaintiff fails to satisfy the first prong of the Court’s analysis.

Plaintiff also fails to establish Union Defendants are state actors under the second prong. Union Defendants argue they do not qualify under any one of the four tests recognized in the Ninth Circuit. (*See* Dkt. No. 39 at 15-16.) In response, Plaintiff argues:

> [Union Defendants] cite *Belgau* and *Wright* for the proposition that 'unions are not state actors under § 1983 simply because a public employer makes dues deductions based on information provided by the union.' This is a red herring because the actions of a public employer are not at issue here. The actions of the Unions themselves is at issue. Contrary to the [Union Defendants'] assertion, [Plaintiff] does allege that the Unions can fairly be considered a state actor. [(*See* Dkt. No. 1 at 2-3.)] Because the Union incorrectly identified the contested conduct at issue and thus did not squarely answer the Foundation's allegations, the Foundation finds it difficult to put forward facts at this stage of litigation that the Court could use to analyze the Unions conduct. The Foundation believes further discovery on these issues is warranted and requests the Court grant time for further discovery under FRCP 56(d).

(Dkt. No. 41 at 21.) Plaintiff alleges Union Defendants can refuse mail because the State of Washington gives Union Defendants "a privileged platform whereby they directly require the government to withhold dues form employees' salaries" and this withholding ends only if public employees disassociate through the union (i.e., the bargaining representative). (*See* Dkt.

No. 1 at 2-3.) But, Union Defendants could easily reject Plaintiff's mail no matter if the statutory provisions required the employee to provide written notice to their bargaining representative. Plaintiff appears to try to connect the rejection of its mail with the rejection of mail from a public employee—but the two actions are not synonymous. Plaintiff's argument that, by rejecting its mail, Union Defendants are impermissibly using the statute to prevent employees from resigning their union memberships does not hold water given that public employees can personally contact their bargaining representatives to effectuate their withdrawal decision. Plaintiff is mistaken in arguing Union Defendants "did not squarely answer [its] allegations" given Union Defendants argued Plaintiff failed to qualify as a state actor. (*See* Dkt. No. 39 at 15-17.) Further, Plaintiff provides absolutely no reason as to why it would be unable to establish state action at this phase in the litigation given it identifies no missing discoverable information that it requires.[3]

Turning to the second prong, Plaintiff likewise fails to establish Union Defendants are state actors under any of the four tests recognized by the Ninth Circuit. Plaintiff argues again that it "could posit

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[3] Plaintiff asserts that Union Defendants fail to respond to its state action argument in their motion for summary judgment, and "[s]hould the Union's file a reply addressing the Union's conduct at issue in this case, [Plaintiff] requests, in the interest of justice, the Court permit it to file a surreply[.]" (Dkt. No. 41 23.) Under Local Civil Rule 7(g), a surreply must be filed within five days of a reply brief and will be limited to a request to strike extraneous material in the reply. Plaintiff fails to follow the procedure outlined in this rule, so the Court will not consider a surreply.

theories [Union Defendants] may put forward, but those would be pure speculation because the Unions have not articulated a theory supported by sufficient alleged facts for summary judgment under which [Union Defendants] may lawfully refuse opt out cards from public employees when mailed in packages identifiable as sent by [Plaintiff]." (Dkt. No. 41 at 21.) The Court finds no relevance in this argument. Plaintiff next appears to argue Union Defendants qualify as state actors under the joint action or the governmental nexus test, but Plaintiff satisfies neither. (*See id.* at 21-22.)

Joint action between "a state and a private party may be found in two scenarios: the government either (1) 'affirms, authorizes, encourages, or facilitates unconstitutional conduct through its involvement with a private party,' or (2) 'otherwise has so far insinuated itself into a position of interdependence with the non-governmental party,' that it is 'recognized as a joint participant in the challenged activity.'" *Belgau*, 975 F.3d at 947 (quoting *Naoko*, 723 F.3d at 996)). The decision to reject Plaintiff's mail was made by Union Defendants; Plaintiff provides no evidence of affirmation, authorization, encouragement, or assistance from Washington State. Moreover, Washington is not interdependent on Union Defendants. Under the statute, Union Defendants are responsible for informing the State when an employee chooses to opt out of paying dues—this is not a function performed by the state. *See* RCW § 41.56.110(4) ("The employer shall rely on information provided by the exclusive bargaining representative regarding the authorization and revocation of deductions.")

To the extent Plaintiff bases its argument on the state's role in deducting dues from public employee paychecks, the Ninth Circuit holding in *Belgau* clearly precludes this argument. In *Belgau*, state employee plaintiffs signed membership agreements authorizing their employer, Washington state, to deduct union dues from their paychecks and transmit them to their union. The Ninth Circuit Court held there was no state action because "providing a 'machinery' for implementing the private agreement by performing an administrative task does not render Washington and [the union] joint actors . . . Much more is required; the state must have 'so significantly encourage[d] the private activity as to make the State responsible for' the allegedly unconstitutional conduct." 975 F.3d at 948 (quoting *Am. Mfrs. Mut. Ins. Co. v. Sullivan*, 526 U.S. 40, 53-54 (1999)). *See also Wright*, 48 F.4th at 1124 (holding "processing authorizations for dues deductions and remitting the payments to the union" did not qualify as joint action between a union and the state).

Under the governmental nexus test, there must be a "sufficiently close nexus between the State and the challenged action of the private entity so the action of the latter may be fairly treated as that of the state itself." *Ochoa v. Pub. Consulting Grp., Inc.*, 48 F.4th 1102, 1109-10 (9th Cir. 2022), *cert. denied*, 215 L. Ed. 2d 51, 143 S. Ct. 783 (2023) (internal quotations omitted). This occurs if the State has coercive power or provides significant encouragement, but not where the State merely approves or acquiesces the private parties' action. *Id.* Plaintiff argues it establishes a close nexus between Union Defendants' refusal to accept its mail and the state because:

> In RCW 41.56.110, the Washington State legislature delegated the state employer's affirmative obligation to ensure employees' ability to exercise their First Amendment rights to the Unions. It did so by requiring the state employer to rely on the information provided by the union; requiring the state employer to transmit any dues authorizations received from public employees to the union; requiring the state employer to deduct dues from employee paychecks after receiving notice from the union—not the employee. RCW 41.56.110. [Plaintiff] asserts that the statutory system created by the Washington State legislature provides such significant encouragement to the Unions to exercise the power granted to it by statute to acknowledge and transmit receipt of employee union resignations and revocations of dues deductions that the actions of the Unions may be considered to be the actions of the State.

Plaintiff's argument fails to identify the conduct at issue—Union Defendants' refusal to accept its mail—and focuses instead on the statutory provisions of Revised Code of Washington § 41.56.110. Nowhere in its response does Plaintiff identify a statutory or constitutional obligation which it has delegated to the Union Defendants beyond the conclusory argument that it must "ensure employees' abilities to exercise their First Amendment rights." (Dkt. No. 41 at 22.) Plaintiff acknowledges public employees may still submit their resignations personally as envisioned by the statute. (*See id.* at 6.) Union Defendants thus do not share a close nexus with the state such that they qualify as state actors. Given the lack of state action, Plaintiff's claims under § 1983 must be dismissed.

2. Plaintiff Fails to Show Deprivation of Constitutional Rights

Even if the Court assumes arguendo that Plaintiff's claims involve state action, they will fail on the merits as Plaintiff does not allege violations of a Constitutional right. Plaintiff provides no authority, and the Court is unaware of any, to support its contention that Union Defendants are constitutionally required to open mail from Plaintiff. As discussed, receiving mail from a public employee is not synonymous with receiving mail from Plaintiff. Instead, Plaintiff argues that public employees have a First Amendment right to disassociate from their union, and if Union Defendants refuse to receive an employee's communication affirming that disassociation, "then the employee's resignation cannot be processed and effectuated." (Dkt. No. 41 at 13.) But this scenario is not before the Court. Plaintiff alleges Union Defendants refuse to accept *its* mail, not communications from public employees. Even if Plaintiff's mail contains communications from or on behalf of employees, the Court is not persuaded this refusal impinges on public employee rights given they can submit the resignations themselves using the templatized opt-out forms provided by Plaintiff.

D. Court Will Not Permit Additional Discovery

Plaintiff asks the Court to refrain from ruling until Plaintiff has had sufficient time to complete discovery, "so that it can discover and present facts essential to justify its opposition in accord with [Federal Rule of Civil Procedure] 56(d)." (Dkt. No. 41

at 23.) If a nonmovant shows by affidavit or declaration that, for specified reasons, it cannot present facts essential to justify its opposition, the court may allow additional time to take discovery. *See* Fed. R. Civ. P. 56(d)(2). Plaintiff has not identified specific reasons for why it cannot adequately respond to Union Defendants' summary judgment motion. Thus, the Court finds no compelling reason to delay its ruling to allow Plaintiff additional time to collect discovery.

IV. CONCLUSION

Accordingly, and having considered Union Defendants' motion, the briefing of the parties, and the remainder of the record, the Court finds and ORDERS that Union Defendants' motion for summary judgment (Dkt. No. 39) is GRANTED. The parties' joint motion for an extension of time (Dkt. No. 49) is MOOT.

Dated this 15th day of May, 2023.

[handwritten: signature]
David G. Estudillo
United States District Judge

Appendix D

UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF WASHINGTON

No. 22-cv-05273

FREEDOM FOUNDATION, a Washington nonprofit corporation,

Plaintiff,

v.

INTERNATIONAL BROTHERHOOD OF TEAMSTERS LOCAL 117, a nonprofit corporation, et al.,

Defendants.

Filed: Nov. 17, 2023

ORDER ON MOTION FOR SUMMARY JUDGMENT

Before the Court is a motion for summary judgment filed by Defendant Jay Inslee in his official capacity as Governor of the State of Washington. (Dkt. No. 58.) Defendant Inslee argues Plaintiff Freedom Foundation lacks standing on Count II of its complaint, which alleges a "fail[ure] to provide procedural safeguards to ensure adequate protection of public employees' First Amendment rights" (Dkt. No. 1 at 16). (Dkt. No. 58 at 1-2.) In the alternative, Defendant Inslee contends Count II fails as a matter of law. (*Id.* at 8.) Count II is the only cause of action asserted against Defendant Inslee in the complaint.

Importantly, the Court dismissed the same claim as against the Union Defendants in granting the Union Defendants' motion for summary judgment. (Dkt. No. 54 at 1, 3.) Specifically, the Court concluded Plaintiff did not have organizational standing because Plaintiff failed to show frustration of its organizational mission or diversion of resources. (*Id.* at 5-6.) The Court also concluded Plaintiff did not have third party standing because Plaintiff did not have a sufficiently close relationship with third party public employees. (*Id.* at 6-7.)

Plaintiff's response to the instant motion for summary judgment does not remedy these shortcomings, and, accordingly, the Court reaffirms its conclusion that Plaintiff lacks standing. (*Id.* at 4-7.) Indeed, Plaintiff relies almost entirely upon the same factual record in opposing the instant motion as it relied upon in opposing the Union Defendants' motion, but for a second declaration from the Freedom Foundation's National Outreach Director that lists services provided by the Freedom Foundation to public employees, states that the Freedom Foundation does not require public employees to pay for its services, and states that the Freedom Foundation raises funds from donors. (Dkt. No. 59-1 at 2.) These factual assertions do not change the Court's conclusion regarding the absence of organizational and third party standing.

For instance, the new declaration says nothing about Plaintiff's organizational mission (*see generally* Dkt. No. 59-1); on that basis alone, the Court's prior finding that Plaintiff lacks organizational standing

(Dkt. No. 54 at 6) remains unchanged.[1] And, while the declaration contains facts regarding its fundraising (*see* Dkt. No. 59-1 at 2) in an apparent attempt at showing a sufficiently close relationship for third-party standing (Dkt. No. 59 at 15-16), the Court is unpersuaded by Plaintiff's argument that the Foundation's fundraising to support its services to public employees renders Plaintiff's relationship with those public employees analogous to a vendor-client relationship.[2] The Court therefore cannot find Plaintiff has established third party standing.

[1] Plaintiff argues it should be afforded a jury trial on the question of "whether its core mission included facilitating employees' disassociating from the union." (Dkt. No. 59 at 17.) However, "[t]o survive [a] summary judgment motion," it was Plaintiff's burden to "submit affidavits or other evidence" establishing the elements of standing. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 563 (1992); *see also Scott v. Pasadena Unified School Dist.*, 306 F.3d 646, 655 (9th Cir. 2002) (the burden of establishing standing "at all times" remains "with the party invoking federal jurisdiction"). Plaintiff has not met that burden.

[2] The only binding authority to which Plaintiff cites in support of its contention that it has a sufficiently close relationship with public employees is a case that the Court already found involved entirely different circumstances than those presented here. (Dkt. No. 54 at 7.)

As Plaintiff fails to establish standing, Defendant Inslee's motion for summary judgment (Dkt. No. 58) is GRANTED.

Dated this 17th day of November 2023.

[handwritten: signature]
David G. Estudillo
United States District Judge

Appendix E

UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF WASHINGTON

No. 22-cv-05273

FREEDOM FOUNDATION, a Washington nonprofit corporation,

Plaintiff,

v.

INTERNATIONAL BROTHERHOOD OF TEAMSTERS LOCAL 117, a nonprofit corporation, et al.,

Defendants.

Filed: Jan. 3, 2024

JUDGMENT

☐ **Jury Verdict.** This action came before the Court for a trial by jury. The issues have been tried and the jury rendered its verdict.

☒ **Decision by Court**. This action came to consideration before the Court. The issues have been considered and a decision has been rendered.

THE COURT HAS ORDERED THAT Defendant Jay Inslee's motion for summary judgment (Dkt. No. 58) is GRANTED.

Dated January 3, 2024.

Ravi Subramanian
Clerk of Court

s/Michael Williams
Deputy Clerk

Appendix F

RELEVANT STATUTORY PROVISION

Wash. Rev. Code §41.56.110. Employee authorization of membership dues and other payments--Revocation

(1) Upon the authorization of an employee within the bargaining unit and after the certification or recognition of the bargaining unit's exclusive bargaining representative, the employer shall deduct from the payments to the employee the monthly amount of dues as certified by the secretary of the exclusive bargaining representative and shall transmit the same to the treasurer of the exclusive bargaining representative.

(2)(a) An employee's written, electronic, or recorded voice authorization to have the employer deduct membership dues from the employee's salary must be made by the employee to the exclusive bargaining representative. If the employer receives a request for authorization of deductions, the employer shall as soon as practicable forward the request to the exclusive bargaining representative.

(b) Upon receiving notice of the employee's authorization from the exclusive bargaining representative, the employer shall deduct from the employee's salary membership dues and remit the amounts to the exclusive bargaining representative.

(c) The employee's authorization remains in effect until expressly revoked by the employee in accordance with the terms and conditions of the authorization.

(3)(a) An employee's request to revoke authorization for payroll deductions must be in writing and submitted by the employee to the exclusive bargaining representative in accordance with the terms and conditions of the authorization.

(b) After the employer receives confirmation from the exclusive bargaining representative that the employee has revoked authorization for deductions, the employer shall end the deduction no later than the second payroll after receipt of the confirmation.

(4) The employer shall rely on information provided by the exclusive bargaining representative regarding the authorization and revocation of deductions.

(5) If the employer and the exclusive bargaining representative of a bargaining unit enter into a collective bargaining agreement that includes requirements for deductions of other payments, the employer must make such deductions upon authorization of the employee.