No. 23-____

IN THE

Supreme Court of the United States

GLENN LAIRD,

Petitioner,

v.

UNITED TEACHERS LOS ANGELES, *et al.*,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

PETITION FOR WRIT OF CERTIORARI

TIMOTHY R. SNOWBALL
Counsel of Record
REBEKAH SCHULTHEISS
SHELLA ALCABES
FREEDOM FOUNDATION
P.O. Box 552
Olympia, WA 98507
(360) 956-3482
tsnowball@freedomfoundation.com
rschultheiss@freedomfoundation.com
salcabes@freedomfoundation.com

Counsel for Petitioner

April 10, 2024

WILSON-EPES PRINTING CO., INC. – (202) 789-0096 – WASHINGTON, D.C. 20002

QUESTIONS PRESENTED

The First Amendment prohibits public sector labor unions from using state law to divert money from a public employee's lawfully earned wages unless that employee affirmatively consents. *Janus v. Am. Fed'n of State, Cnty., Mun. Emps. Council 31*, 138 S. Ct. 2448, 2486 (2018). The Court did not limit this principle only to those who never joined a union, but applied it to all nonmembers. *Janus* thus requires unions and government employers to possess clear and compelling evidence of a nonmember employee's waiver prior to taking their money for use in political speech, regardless of whether they previously agreed to union deductions and have since opted out.

The questions presented are:

1. Do nonmember public employees who have rescinded their prior consent to union dues deductions enjoy the same right to freedom from compelled speech as employees who never affirmatively consented?
2. When a public sector labor union uses the authority of state law to divert former union members' wages for political speech without their affirmative consent, is the union acting under "color of law"?

PARTIES TO THE PROCEEDINGS AND RULE 29.6 STATEMENT

Petitioner Glenn Laird was the Plaintiff-Appellant in the court below.

Respondents United Teachers Los Angeles; Los Angeles Unified School District; and Rob Bonta, in his official capacity as Attorney General for California, were Defendant-Appellees in the court below.

Because the Petitioner is not a corporation, a corporate disclosure statement is not required under Supreme Court Rule 29.6.

STATEMENT OF RELATED PROCEEDINGS

This petition arises from and is directly related to the following proceedings:

1. *Laird v. United Teachers Los Angeles, et al*., 2023 WL 6970171 (unpublished), U.S. Court of Appeals for the Ninth Circuit. Judgment entered on October 23, 2023.

2. *Laird v. United Teachers Los Angeles, et al*., 615 F. Supp. 3d 1171 (C.D. Cal. 2022). Judgment entered on July 20, 2022.

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED	i
PARTIES TO THE PROCEEDINGS AND RULE 29.6 STATEMENT	ii
STATEMENT OF RELATED PROCEEDINGS	iii
TABLE OF AUTHORITIES	vi
OPINIONS BELOW	1
JURISDICTION	1
CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED	1
STATEMENT OF THE CASE	1
A. Factual Background	1
B. Proceedings Below	4
INTRODUCTION AND REASONS FOR GRANTING THE PETITION	5
I. A SPLIT OF AUTHORITY EXISTS CONCERNING THE FIRST AMENDMENT'S APPLICATION TO PUBLIC EMPLOYEES ALLEGING COMPELLED UNION SPEECH	8
II. A SPLIT OF AUTHORITY EXISTS CONCERNING WHEN A UNION'S USE OF STATE AUTHORITY TO COMPEL SPEECH OCCURS UNDER "COLOR OF LAW"	11
III. THIS CASE PRESENTS AN IMPORTANT FEDERAL QUESTION	15
CONCLUSION	18
APPENDIX	

TABLE OF AUTHORITIES

CASES Page(s)

Abood v. Detroit Bd. of Educ., 431 U.S. 209 (1977) 7, 12, 15-17

Belgau v. Inslee, 975 F.3d 940 (9th Cir. 2020), *cert. denied*, 141 S. Ct. 2795 (2021) 4, 6, 9, 10

Bright v. Leslie, et al., No. 23-00320 (D. Or. Filed Mar. 6, 2023) ... 9

Chandavong v. Freson Deputy Sheriff's Ass'n, 599 F. Supp. 3d 1017 (E.D. Cal. 2022) 9, 15

Chicago Tchrs. Union, Loc. No. 1, AFT, AFL-CIO v. Hudson, 475 U.S. 292 (1986) 12, 16, 17

College Savings Bank v. Florida Prepaid Postsecondary Ed. Expense Bd., 527 U.S. 666 (1999) 17

Davenport v. Washington Educ. Ass'n, 551 U.S. 177 (2007) 16, 18

Ellis v. Bhd. of Ry., Airline & S.S. Clerks, Freight Handlers, Exp. & Station Emps., 466 U.S. 435 (1984) 12

Harris v. Quinn, 573 U.S. 616 (2014) 12, 16

Hernandez v. AFSCME Cal., 424 F. Supp. 3d 912 (E.D. Cal 2019) 15

Hoekman v. Education Minnesota, 41 F.4th 969 (8th Cir. 2022) 7, 13

TABLE OF AUTHORITIES—Continued

Page(s)

Janus v. Am. Fed'n of State, Cnty., Mun. Emps. Council 31,
138 S. Ct. 2448 (2018)............2, 5-11, 15, 15-17

Janus v. Am. Fed'n of State, Cnty. & Mun. Emps., Council 31,
942 F.3d 352 (7th Cir. 2019).................7, 13-15

Knox v. Service Employees International Union, Local 1000,
567 U.S. 298 (2012).........................11, 12, 16-18

Laird v. United Tchrs. Los Angeles,
No. 22-55780, 2023 WL 6970171
(9th Cir. 2023).. 1

Lindke v. Freed,
No. 22–611, slip op. (U.S., Mar. 15,
2024)... 13

Littler v. Ohio Assoc. of Pub. School Employees,
88 F.4th 1176 (6th Cir. 2023).............. 7, 14, 15

Lugar v. Edmondson Oil Co.,
457 U.S. 922 (1982).................................. 14

Lutter v. JNESO,
86 F.4th 111 (3d Cir. 2023)...... 6, 7, 9-11, 14, 15

Screws v. United States,
325 U.S. 91 (1945).................................... 13

Tulsa Pro. Collection Servs., Inc. v. Pope,
485 U.S. 478 (1988).................................. 14

United States v. Classic,
313 U.S. 299 (1941).................................. 13

TABLE OF AUTHORITIES—Continued

Page(s)

Warren v. Fraternal Order of Police,
593 F. Supp. 3d 666 (N.D. Ohio 2022) 15

West Virginia Bd. of Ed. v. Barnette,
319 U.S. 624 (1943).................................. 17

Wright v. Serv. Emps. Int'l Union Loc. 503,
48 F.4th 1112 (9th Cir. 2022), *cert. denied*, 143 S. Ct. 749 (2023).................. 5, 6, 12

CONSTITUTION

U.S. Const. amend. I 1, 4, 5, 7-9, 11, 14, 16

U.S. Const. amend. XIV 15

STATUTES

28 U.S.C. § 1254 1

42 U.S.C. § 1983 ....4-6, 12-13

Cal. Ed. Code § 45060 .... 1, 3-5, 8, 12, 15, 16

RULES

Fed. R. Civ. P. 12(b)(1) 4

Fed. R. Civ. P. 12(b)(6) 4

COURT FILINGS

Klee v. Int'l Union of Operating Eng'rs, Local 501, et al., Or. Re Defs' Mots. to Dismiss (Doc. 45), No. 22-00148 (Aug. 14, 2023)... 9

OPINION BELOW

The Ninth Circuit affirmed the district court's dismissal of Petitioner's complaint in a memorandum opinion, reported as *Laird v. United Tchrs. Los Angeles*, No. 22-55780, 2023 WL 6970171 (9th Cir. 2023), reproduced as Appendix B, Pet.App. 23a.

JURISDICTION

The Ninth Circuit issued its memorandum opinion on October 23, 2023. Pet.App. 23a. This Court has jurisdiction pursuant to 28 U.S.C. § 1254.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The Free Speech clause of the First Amendment to the United States Constitution states, in pertinent part: "Congress shall make no law…abridging the freedom of speech…" The text of the First Amendment is reproduced as Appendix, E, Pet.App 48a.

California Education Code § 45060 is reproduced as Appendix F, Pet.App. 49a.

STATEMENT OF THE CASE

A. Factual Background

Over his forty years as a high school teacher in Los Angeles area schools, Petitioner Glenn Laird witnessed students assaulted, stabbed, and in one case, shot to death on campus. Pet.App. 5a, 6a, 7a. In each case, Laird believes the presence of campus police made the difference between the life and death of students, teachers, and himself. *Id.* at 7a. And until the summer of 2020, he had no reason to think his union, United Teachers Los Angeles (UTLA), disagreed with him. During most of his career, Laird not only supported the efforts of UTLA in collective bargaining, but took an

active role in the union. *Id.* at 5a. Laird served twelve years as UTLA's assigned campus co-representative. *Id*. Laird also participated in union elections, meetings, rallies, and spent time on various picket lines. *Id.*

Over the years, Laird signed the standard membership and dues authorization agreements UTLA provided. *Id.* at 9a. Pursuant to these cards, employees were allowed to disassociate from the union by resigning their memberships and rescinding their dues authorizations at any time.[1] *Id.* at 9a. However, in anticipation of this Court's *Janus* decision, UTLA began to introduce new membership cards containing a so called "opt out window" that restricted an employee's ability to end the deduction of union dues to a short annual window. Pet.App. 9a, 10a. Under these new restrictive cards, even if UTLA released an employee from membership, the union could still demand their employer take full union dues from the employee's wages unless the employee opted out during the window period. *Id.*

When UTLA asked Laird to sign a membership card and dues authorization card containing the restrictive opt out window, he disagreed with this unprecedented restriction. *Id.* at 10a. So, before he signed and returned the card to UTLA, Laird took a Sharpie marker and crossed out the window period language. *Id*. at 52a. UTLA accepted this modified card, and it became the operative agreement between Laird and the union. *Id*. at 10a. Pursuant to this card, all Laird was required to do in order to immediately rescind his dues authorization was to submit a letter to UTLA. *Id.* at 52a.

---

[1] Prior to this Court's *Janus* decision, *Janus v. Am. Fed'n of State, Cnty., Mun. Emps. Council 31*, 138 S. Ct. 2448, 2486 (2018), an employee choosing not to be a union member was still required as a condition of employment to pay agency fees to UTLA.

In the spring of 2020, UTLA launched a campaign to "defund the police" on Los Angeles area school campuses. *Id.* at 7a. As Laird witnessed, UTLA communications during this period included rhetoric accusing police officers of being murderers and a force for evil in society. *Id.* at 8a. For Laird, putting students' and teachers' lives in danger in order to score political points on a contentious national issue crossed the line. *Id*. On June 12, 2020, Laird decided to end his association with UTLA, and submitted the required letter of resignation through the U.S. mail. *Id.* While UTLA responded that Laird was *released from union membership*, *id.* at 21a, the union continued to instruct the Los Angeles Unified School District (the District) to take full dues from Laird's wages and send the money to UTLA, *id.* at 11a, 12a, 13a.

UTLA was empowered to continue the deductions, despite Laird's union card, and over his objections, because California Education Code § 45060 (Section 45060) gives the union exclusive control over dues deductions within the District's payroll system. Pet.App. 49a. Under Section 45060, whether an employee's wages are taken depends not on whether they have affirmatively consented, but upon UTLA. *Id.* Affirmative consent or not, if UTLA instructs the District to seize full union dues from Laird's wages for use in political speech, the government employer is statutorily bound to comply. *Id.* at 11a, 12a, 13a.

Being compelled to support UTLA's campaign to "defund the police" violated Laird's most deeply held political beliefs. *Id.* at 7a, 8a. Specifically, Laird believed "defunding the police" endangered the lives of teachers, students, and himself should no police presence be available when needed. *Id.* With the money still being taken from his lawfully earned

wages, Laird sent an additional letter to UTLA reiterating his withdrawal of authorization and requesting an end to the deductions. 11a. UTLA again refused his request, and continued taking his money. *Id.*

In August 2020, Laird exchanged emails with Marcos F. Hernandez, Chief Labor & Employment Counsel of the District. *Id.* at 12a. Laird asked Hernandez when the District would stop taking his money and sending it to UTLA against his will. *Id.* Hernandez responded that, due to the operation of Section 45060, Laird's only option was to communicate with UTLA. *Id.* Six months later, in February 2021, UTLA finally ended the involuntary deductions after receiving a third opt out letter from Laird during the window Laird struck from his union card before signing it. *Id.*

B. Proceedings Below

Laird filed suit pursuant to 42 U.S.C. § 1983 (Section 1983), seeking compensatory and nominal damages against UTLA for the violation of his First Amendment right to freedom from compelled speech. Pet.App. 1a. The district court granted UTLA's Fed. R. Civ. Proc. 12(b)(1) and (b)(6) motion to dismiss. *Id.* at 27a. The Ninth Circuit affirmed the district court's dismissal of Laird's First Amendment claims in reliance on *Belgau v. Inslee*, 975 F.3d 940, 946-49 (9th Cir. 2020), *cert. denied*, 141 S. Ct. 2795 (2021). *Id.* at 23a. In *Belgau*, the Ninth Circuit held that public employees cannot avoid contractual obligations by bringing a constitutional challenge. In Laird's case, the panel implied that the mere existence of a union membership card, no matter Laird's contractual ability to end the deductions without restriction, and his release from membership, was sufficient to bar Laird from bringing a First Amendment claim for compelled speech. *Id.* at 24a.

The Ninth Circuit also relied on *Wright v. Serv. Emps. Int'l Union Loc. 503*, 48 F.4th 1112, 1121- 25 (9th Cir. 2022), *cert. denied*, 143 S. Ct. 749 (2023), a case that involved forged union membership cards. *Id.* at 24a. In *Wright*, the Ninth Circuit concluded the alleged fraud was a misuse of state authority and was not action under "color of law" for purposes of Section 1983. In Laird's case, the panel concludes that UTLA similarly "misused" Section 45060. *Id*. But there was no statutory misuse. *Id.* at 49a. Instead, the state gave UTLA the authority to control employee wages deductions, and UTLA exercised this authority. *Id.* But for Section 45060, the union would have no authority to take any part of Laird's lawfully earned wages. *Id.* at 52a. Laird's petition for rehearing en banc was subsequently denied. *Id.* at 26a.

INTRODUCTION AND REASONS FOR GRANTING THE PETITION

In affirming the dismissal of Laird's First Amendment claims, the Ninth Circuit departed from the precedents of this Court and three of her sister circuits, creating a conflict of authority. As a result, a public employee's ability to seek relief for compelled speech resulting from involuntary union dues deductions depends on geography. This situation is odious to the Constitution, and warrants an exercise of this Court's supervisory authority.

In *Janus*, 138 S. Ct. at 2486, this Court held that public sector labor unions cannot take a nonmember employee's wages for use in the union's political speech unless the employee has waived his or her First Amendment rights through affirmative consent. In this holding, the Court addressed the First Amendment protections due to nonmembers, because Mark Janus was a nonmember. However, this Court did not

indicate that its holding was limited to employees who had *never* previously been members of a union. In fact, there is no indication in the decision that, had Mark Janus been a union member who resigned membership to pay agency fees, the outcome of the case would have been any different. The Third Circuit has recognized *Janus*'s application to former union members who subsequently objected in *Lutter v. JNESO*, 86 F.4th 111, 127 (3d Cir. 2023) (formerly consenting employee could bring compelled speech claims based on *Janus*).

But the Ninth Circuit's rationale below contradicts these precedents. In essence, the Ninth Circuit asserts, in reliance on the *Belgau* case, Laird formerly agreeing to become a dues paying union member negates his ability to suffer subsequent compelled speech injuries. Pet.App. 24a. This is apparently true even though Laird *was a nonmember* at the time the involuntary deductions were taken by the District at UTLA's behest. *Id.* at 21a. Or in the alternative, pursuant to the *Wright* case, if there is no contractual basis to take dues because the card's terms have been satisfied, then the union was not acting under "color of law." In other words, according to the Ninth Circuit, even though the District took Laird's money at UTLA's direction and gave it to the union to promote a message that betrays Laird's deepest political convictions, Laird suffered no compelled speech. *Id.* at 24a. The conflict between this Court and the Third Circuit, and the Ninth Circuit, calls for an exercise of this Court's supervisory authority.

Additionally, per this Court's precedents, public sector unions that use state authority to compel public employees' to financially support objectionable union speech through wage deductions act under "color of law" for purposes of Section 1983. This legal reality was foundational to this Court's decision in *Janus*, as

well as this Court's decisions for approximately forty years before *Janus*. *See, e.g.*, *Abood v. Detroit Bd. of Educ*., 431 U.S. 209 (1977). The Third Circuit, *Lutter*, 86 F.4th at 127, Sixth Circuit, *Littler v. Ohio Assoc. of Pub. School Employees*, 88 F.4th 1176 (6th Cir. 2023), and Seventh Circuit, *Janus v. Am. Fed'n of State, Cnty. & Mun. Emps., Council 31*, 942 F.3d 352, 361 (7th Cir. 2019) (*Janus II*), have all followed this Court's recognition that such circumstances warrant a finding of state action for unions taking involuntary deductions from employees' wages.

But the Ninth Circuit rejects this commonsense understanding, *id.* at 24a, and the Eighth Circuit has only worsened the circuit split by adopting the Ninth Circuit's rationale, *see Hoekman v. Education Minnesota*, 41 F.4th 969, 978 (8th Cir. 2022). According to the Ninth Circuit, UTLA did not act under "color of law," despite the fact that the union deducted dues from Laird's lawfully earned wages without affirmative consent directly pursuant to the authority of a state statute. Pet.App. 49a. The Ninth Circuit did not even attempt to deny that UTLA used state law to take the money after Laird resigned, even though UTLA never attempted to claim the card authorized deductions beyond Laird's withdrawal. The conflict between this Court, and the Third, Sixth, and Seventh Circuits, and the Ninth and Eighth Circuits, calls for an exercise of this Court's supervisory authority.

Laird's case also presents an important federal question affecting the First Amendment rights of millions of public employees. In *Janus*, the state of Illinois forced public employees to fund union activities that were arguably germane to collective bargaining. Even under this Court's forty year old *Abood* standard, public employees could not be compelled to support the

kind of explicit political speech Laird was compelled to support. Laird did not affirmatively consent, but affirmatively *objected* to any restriction on his ability to terminate continued dues deductions. Nonetheless through Section 45060, UTLA compelled him to support overtly political union speech for six months. This makes Laird's First Amendment injuries even more severe, and deserving of even greater constitutional scrutiny, than the injuries suffered by Mark Janus.

The petition for a writ of certiorari to the Ninth Circuit should be granted.

I. A SPLIT OF AUTHORITY EXISTS CONCERNING THE FIRST AMENDMENT'S APPLICATION TO PUBLIC EMPLOYEES ALLEGING COMPELLED UNION SPEECH

In *Janus*, a nonmember public employee was compelled, via an Illinois statute, to support the political speech of a public sector labor union, even though he strongly objected to the political positions of the union. 138 S. Ct. at 2459-60. This Court concluded that this "arrangement violate[d] the free speech rights of nonmembers by compelling them to subsidize private speech on matters of substantial public concern." *Id.* In order to comply with the First Amendment, the Court held that no payment can be deducted from a nonmember's lawfully earned wages, nor even an attempt be made to collect such a payment, unless certain constitutional requirements are met. *Id.* at 2486. While Mark Janus never joined the union and consented to dues payments, this Court's holding is not restricted to members of that class. *Id.* ("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."). Instead, the Court references *nonmembers* generally, without

drawing an explicit distinction between those who were never members and those who were previously consenting members and then became nonmembers.

The Third Circuit in *Lutter v. JNESO* applied *Janus* in accordance with this broad understanding. In *Lutter*, a public employee who had previously agreed to be a union member attempted to avail herself of the ability to end further deductions from her lawfully earned wages after the *Janus* decision. 86 F.4th at 120. On appeal, the Third Circuit held that Lutter had alleged an cognizable injury to her First Amendment right to freedom from compelled speech, despite the fact that she had previously signed a union card authorizing such deductions. *Id.* at 127 ("Lutter did not wish to financially support JNESO's speech, but as directed by [state statute], union dues were deducted from her paycheck for ten months after she requested that they cease."). In other words, even though Lutter had previously agreed to union deductions, she was not barred from seeking relief for deductions after she opted out.[2]

The Ninth Circuit's decision below conflicts with this Court and the Third Circuit. Specifically, relying on the *Belgau* case, Pet.App. 24a, the Ninth Circuit's rationale below leads to the untenable conclusion that Laird's previous union membership and dues authorization

---

[2] Multiple district courts have also concluded, along with the Third Circuit, that pursuant to this Court's holding in *Janus* former union members can properly bring claims alleging compelled speech stemming from non-consensual union dues deductions. *See Klee v. Int'l Union of Operating Eng'rs, Local 501*, et al., Or. Re Defs' Mots. to Dismiss (Doc. 45), 7-9, No. 22-00148 (Aug. 14, 2023); *Chandavong, et al., v. Fresno Deputy Sheriff's Ass'n*, 599 F. Supp. 3d 1017 (E.D. Cal. 2022); *Bright v. Leslie, et al.*, No. 23-00320, (D. Or. Filed Mar. 6, 2023).

function as a continuing bar on his ability to suffer compelled speech injuries based on involuntary dues deductions. The Ninth Circuit reached this conclusion even though it was undisputed that Laird not only did not affirmatively consent to continued deductions after he opted out, but previously affirmatively objected to any restriction by modifying his union card. Pet.App. 10a, 52a. Even UTLA does not argue that Laird's previous union card justified its continuing demand for his money.

The Ninth Circuit's reasoning below thus creates a catch-22 for public employees. If the union acts consistent with the terms of a union card, the Ninth Circuit's decision in *Belgau* precludes recovery because it is a mere private agreement. *Id.* If the union acts inconsistent with the terms of the union card, the union's actions are, according to the Ninth Circuit, "contrary to the relevant policy" and therefore not the result of a right or privilege created by the state. *Id*. But either way, Laird was forced to subsidize a political campaign to "defund the police" on school campuses, a campaign he strongly condemned because he believes it endangers the lives of students and teachers. *Id.* at 5a, 6a, 7a. According to the Ninth Circuit below, relying on *Belgau*, UTLA can assert the existence of a prior authorization, and, no matter the terms, an employee can be compelled to subsidize the union's speech without the ability to seek relief. *Id.* at 24a.

This conclusion is at odds with this Court's holding in *Janus* requiring that a union obtain affirmative consent for all nonmembers before taking their wages for use in the union's political speech, and the conclusions of the Third Circuit in *Lutter* applying Janus to public employees who had previously been union members. The relevant inquiry under *Janus* is whether a nonmember employee has given affirmative consent

to support the union's speech *before* the union takes the employee's money. Employees who may have once joined a union and affirmatively consented in the past do not forever forego the benefit of the First Amendment protection from compelled speech. Rather, as this Court recognized in *Knox v. Service Employees International Union, Local 1000,* the circumstances that lead an individual to waive a fundamental right may change, as may an individual's beliefs or opinions, and cause the individual to rethink a previous waiver. 567 U.S. 298, 315 (2012) (noting that the choice to support a union's political activities may change "as a result of unexpected developments" in the union's political advocacy). An employee's right not to subsize union speech becomes illusory if a union can simply use state law to take an employee's wages without their affirmative consent and over their objections based on past consent which has since been rescinded.

If a nonmember employee, like Laird, does not affirmatively consent to union deductions for use in political speech, no matter their previous membership or waiver status, a union's continued diversion of lawfully earned wages runs afoul of the First Amendment's prohibition on compelled speech. The Ninth Circuit's rejection of this principle conflicts with this Court's holding in *Janus* and the Third Circuit's decision in *Lutter*. The petition should be granted to settle the conflict.

II. A SPLIT OF AUTHORITY EXISTS CONCERNING WHEN A UNION'S USE OF STATE AUTHORITY TO COMPEL SPEECH OCCURS UNDER "COLOR OF LAW"

This Court has unequivocally stated that "having [union] dues and fees deducted directly from employees' wages" is a "special privilege" granted to unions by

state law. *Janus*, 138 S. Ct. at 2567. This commonsense observation fits comfortably within forty years of this Court's precedents applying the First Amendment to unions in Section 1983 actions concerning alleged compelled speech. *E.g.*, *Harris v. Quinn*, 573 U.S. 616, 645 (2014) (prohibiting a union from charging agency fees to partial-public employees); *Knox*, 567 U.S. at 312 (prohibiting a union from charging a special political assessment to objecting nonmembers and requiring them to opt out of its payment); *Chicago Tchrs. Union, Loc. No. 1, AFT, AFL-CIO v. Hudson*, 475 U.S. 292, 309 (1986) (prohibiting a union from enforcing an inadequate procedure to handle nonmember objections to calculation of agency fee); *Ellis v. Bhd. of Ry., Airline & S.S. Clerks, Freight Handlers, Exp. & Station Emps.*, 466 U.S. 435 (1984) (prohibiting a union from exacting an involuntary loan from nonmembers and charging for nonchargeable expenses); *Abood*, 431 U.S. at 209 (prohibiting a union from requiring nonmembers to pay a full dues-equivalent charge funding political expression).

The Ninth Circuit's opinion in the case below, based on the *Wright* case, conflicts with this Court's precedents concerning state action in the context of involuntary union deductions. Specifically, in the *Wright* case, the Ninth Circuit held that a union did not act under "color of law" when it forged union cards, and deducted dues based on those forged cards, because the union "misused" an Oregon statute. 48 F.4th at 1121- 25. Using *Wright* as its basis, the Ninth Circuit here found that UTLA did not act under "color of law" because the union "misused" Section 45060 by taking Laird's lawfully earned wages without his affirmative consent. But this conclusion largely misses the point.

As this Court recently recognized, conduct falling within the scope of Section 1983 is the "[m]isuse of

power, possessed by virtue of state law." *Lindke v. Freed*, No. 22–611, slip op. at 10 (U.S., Mar. 15, 2024) (citing *United States v. Classic*, 313 U.S. 299, 326 (1941); *Screws v. United States*, 325 U.S. 91, 110 (1945)). In other words, "[e]very §1983 suit alleges a misuse of power, because no state actor has the authority to deprive someone of a federal right." *Lindke*, No. 22–611 at 11. Therefore, so long as a person or entity had the state-imbued authority necessary to violate a constitutional right, and a violation resulted from an exercise of that authority, the person or entity acted under color of law. *Id.* This is true even where the "particular action" may have violated *some other* state or federal law. *Id.*

The Ninth Circuit ignores the fact that UTLA's authority to take involuntary dues deductions is a privilege granted by the State of California, and the union's actions under that authority resulting in Laird's compelled speech injuries occurred directly pursuant to that authority. Pet.App. 49a. Relatedly, the Eighth Circuit has followed the Ninth Circuit's lead in departing from this Court's understanding of state action in the context of involuntary union deductions. In *Hoekman*, 41 F.4th at 969, the Eighth Circuit ruled that claims brought by two of the employee plaintiffs lacked a showing of state action since the plaintiffs previously agreed to be union members. Thus, the employees' injury, being forced to pay dues after they resigned union membership, had its source in the private membership agreements, despite operation of a state statute allowing the union to unilaterally demand dues deductions through their employer. *Id.*

In conflict with this understanding, three other federal circuits have followed this Court's understanding of state action in the context of involuntary union dues

deductions. In *Janus* on remand, the Seventh Circuit recognized that when unions "make use of state procedures with the overt, significant assistance of state officials, state action may be found." *Janus II*, 942 F.3d at 361 (quoting *Tulsa Pro. Collection Servs., Inc. v. Pope*, 485 U.S. 478, 486 (1988)). In *Janus II*, AFSCME was a "joint participant with the state" by certifying to the employer which employees' wages should be seized (and how much) and receiving the money to spend on political speech. *Id.* This reasoning was largely affirmed by the Sixth Circuit in *Littler v. Ohio Assoc. of Pub. School Employees*, 88 F.4th 1176 (6th Cir. 2023), although the court found no state action under the specific circumstances alleged by the plaintiff.[3] However, the Court clarified that "[h]ad Littler challenged the constitutionality of a statute pursuant to which the state withheld dues, the 'specific conduct' challenged would be the state's withholdings, which would be state action taken pursuant to the challenged law." *Id.* (citing *Janus II*, 942 F.3d at 361). The Third Circuit has followed this same line of reasoning. In *Lutter*, an employee did not wish to fund a union's political speech, but as directed by the union through a state statute, union dues were deducted from her paycheck for ten months after she requested they cease. 86 F.4th at 127. Under these circumstances, the court found state action. *Id.* (citing *Lugar v. Edmondson Oil Co.*, 457 U.S. 922, 933 (1982) ("[P]rivate use of the challenged state procedures with the help of state officials

---

[3] In *Littler*, a public employee's First Amendment challenge to a "maintenance of membership" provision failed for lack of state action because she challenged the union's improper instruction to continue to deduct dues, rather than challenging the validity of the collective bargaining agreement itself or the state statute allowing for the involuntary deductions. *Id.* at 1182.

constitutes state action for purposes of the Fourteenth Amendment.")).[4]

For forty years the kind of government-union cooperation present in this case was the basis for this Court finding a union acted under "color of law." *Abood*, 431 U.S. at 209. California grants UTLA the statutory right, through Section 45060, to access and control a government created and operated payroll deduction system, and the union used that authority to compel Laird's speech. Without this statute, UTLA would have no ability to access even a single penny of Laird's lawfully earned wages. The Ninth and Eight Circuit's rejection of this principle conflicts with this Court's holding in *Janus* and forty years of precedent. The Ninth and Eighth Circuit's understanding also conflict with the Seventh Circuit in *Janus II*, the Sixth Circuit in *Littler*, and the Third Circuit in *Lutter*. The petition should be granted to settle the conflict.

III. THIS CASE PRESENTS AN IMPORTANT FEDERAL QUESTION

Glenn Laird was similarly situated to Mark Janus in a key respect: he was a nonmember who did not affirmatively consent to union dues deductions. Janus objected to agency fees, and Laird affirmatively objected

---

[4] Multiple district courts considering the same issue have found unions are state actors. *See Chandavong*, 599 F. Supp. 3d at 1022 (union reliance on the CBA and state statutes to compel speech was state action); *Hernandez v. AFSCME Cal.*, 424 F. Supp. 3d 912, 921 (E.D. Cal 2019) (garnishment of wages involved the application of a state-created rule because the conduct was state action); *Warren v. Fraternal Order of Police*, 593 F. Supp. 3d 666, 672 (N.D. Ohio 2022) ("It is not simply that the FOP and the County had a contract that renders the FOP a state actor here, but that the FOP repeatedly made use of the County's automatic withholding procedures to seize portions of Warren's wages...").

to any limitation on his ability to end full dues deductions from his wages. Pet.App. 10a, 52a. Even under *Abood v. Detroit Bd. of Educ.*, 431 U.S. 209 (1977), expressly objecting to continued payroll deductions to fund express political speech, like full union dues, presented cognizable compelled speech injuries justifying constitutional scrutiny. After *Janus*, this is even more true. Currently, millions of public employees across the Ninth Circuit are subject to statutory regimes, similar to Section 45060. These employees are thus exposed to potentially even more egregious First Amendment injuries than those suffered by Mark Janus, and the employees considered by this Court in its previous agency fee cases.

Even prior to the *Janus* case, this Court held for decades that unions could not compel public employees to subsidize the political speech of unions against their will. Prior to *Janus*, at most, the unions could collect "agency fees" to support collective bargaining activities. *Abood,* 431 U.S. at 209 (agency fee collection permissible, but not funds for political speech); *Hudson*, 475 U.S. at 292 (pre-deprivation safeguards required to prevent compelled non-agency fee political speech); *Davenport v. Washington Educ. Ass'n*, 551 U.S. 177 (2007) (requirement of affirmative consent required for non-agency fees); *Knox*, 567 U.S. at 298 (new *Hudson* notice required for fee change); *Harris*, 573 U.S. at 616 (agency fees impermissible for partial state employees); *Janus*, 138 S. Ct. at 2448 (all deductions from employees' lawfully earned wages require affirmative consent).

This determination makes sense given that "at the heart of the First Amendment is the notion that an individual should be free to believe as he will, and that in a free society one's beliefs should be shaped by his

mind and his conscience rather than coerced by the State." *Abood*, 431 U.S. at 234–35; *West Virginia Bd. of Ed. v. Barnette*, 319 U.S. 624, 642 (1943) ("If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein."). As the Court has noted, it is tyrannical to force an individual to contribute even "three pence" for the "propagation of opinions which he disbelieves." *Hudson*, 475 U.S. at 305. In this case, however, UTLA compelled Laird to support political speech not only through full union dues, but express political speech that would have been unconstitutional even under *Abood* and its progeny.

These involuntary deductions resulted in serious constitutional injuries. Laird was forced to betray his convictions in the worst kind of way. *Janus*, 138 S.Ct. at 2464 ("Forcing free and independent individuals to endorse ideas they find objectionable is always demeaning."). After watching students suffer assault and death, and learning to value a police presence on campus, UTLA forced Laird to contribute his lawfully earned wages to a campaign to "defund the police." This was, in Laird's experience, tantamount to putting students, teachers, and his own life in danger, and was an affront to his dignity as a free and independent citizen. Pet.App. 5a, 6a, 7a

Courts "do not presume acquiescence in the loss of fundamental rights," *Knox*, 567 U.S. at 312 (quoting *College Savings Bank v. Florida Prepaid Postsecondary Ed. Expense Bd*., 527 U.S. 666, 682, (1999), and unions like UTLA have no constitutional entitlement to the lawfully earned wages of nonconsenting employees,

Davenport, 551 U.S. at 184–185 ("I]t is undeniably unusual for a government agency to give a private entity the power, in essence, to tax government employees."). A government facilitated system to the contrary represents a "remarkable boon" for unions. *Knox*, 567 U.S. at 312. Laird's case represents precisely the type of abuse of state authority the Janus case was meant to remedy, and presents an important federal question.

CONCLUSION

The petition for a Writ of Certiorari to the Ninth Circuit should be granted.

Respectfully submitted,

TIMOTHY R. SNOWBALL
Counsel of Record
REBEKAH SCHULTHEISS
SHELLA ALCABES
FREEDOM FOUNDATION
P.O. Box 552
Olympia, WA 98507
(360) 956-3482
tsnowball@freedomfoundation.com
rschultheiss@freedomfoundation.com
salcabes@freedomfoundation.com

Counsel for Petitioner

April 10, 2024

APPENDIX

APPENDIX TABLE OF CONTENTS

	Page
Appendix A: Complaint, United States District Court for the Central District of California, No. 21-02313 (Filed March 16, 2021)	1a
Appendix B: UTLA Membership Release Letter (June 23, 2020)	21a
Appendix C: Memorandum Opinion, United States Court of Appeals for the Ninth Circuit, No. 22-55780 (October 23, 2023).........................	23a
Appendix D: Denial of Petition for Rehearing En Banc, United States Court of Appeals for the Ninth Circuit, No. 22-55780 (December 12, 2023)...	26a
Appendix E: Order Granting Motions to Dismiss, United States District Court for the Central District of California, No. 21-02313 (July 20, 2022)...	27a
Appendix F: United States Constitution, Amendment I	48a
Appendix G: California Education Code § 45060 ...	49a
Appendix H: UTLA Membership and Dues Authorization Card (Glenn Laird, February 11, 2018)...	52a

APPENDIX A

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

———

Case No.:

———

GLENN LAIRD, individual,

Plaintiff,

v.

UNITED TEACHERS LOS ANGELES, a labor organization; LOS ANGELES UNIFIED SCHOOL DISTRICT, a political subdivision of the State of California; and XAVIER BECERRA in his official capacity as Attorney General of California,

Defendants.

———

COMPLAINT FOR DECLARATORY JUDGMENT, INJUNCTIVE RELIEF, AND DAMAGES FOR VIOLATION OF CIVIL RIGHTS. [42 U.S.C. § 1983]

———

Timothy Snowball, Cal Bar No. 317379
tsnowball@freedomfoundation.com
Elena Ives, Cal Bar No. 331159
eives@freedomfoundation.com
Freedom Foundation
PO Box 552
Olympia, WA 98507
Telephone: (360) 956-3482
Facsimile: (360) 352-1874
Attorneys for Plaintiff

INTRODUCTION

Glenn Laird has witnessed students strangled, stabbed, and even shot to death in his thirty-eight years as a public-school teacher. In many cases, the ready presence of campus police officers was the difference between life and death. When his local union, United Teachers of Los Angeles (UTLA), joined a public campaign to "defund the police" and remove officers from campus, Mr. Laird vehemently disagreed. Mr. Laird resigned his membership and sought to end the dues payments UTLA used for political speech Mr. Laird morally opposes.

Mr. Laird had intentionally crossed out a narrow "opt-out window" provision prior to signing and returning his membership application. Instead of releasing him, UTLA continued to insist that the Los Angeles Unified School District (the District) divert Mr. Laird's lawfully earned wages to UTLA pursuant to state law and their collective bargaining agreement (CBA). UTLA told Mr. Laird that pursuant to the terms of his membership application, he was unable to immediately resign his membership, ignoring the deleted agreement to the window. The District and UTLA, empowered and authorized by state statutes and the CBA, continued to confiscate Mr. Laird's money without his affirmative consent until the inapplicable opt-out window period was reached.

This continued state action violated Mr. Laird's First Amendment right not to have his wages forcibly taken and used for political speech with which he vehemently disagrees, absent voluntary, intelligent, and knowing consent to waive that right. *Janus v. AFSCME, Council 31*, 138 S. Ct. 2448, 2486 (2018). Additionally, the continued deductions violated Mr. Laird's right to procedural and substantive due process. For these reasons, Mr. Laird brings this lawsuit under 42 U.S.C.

§ 1983 to recover his unconstitutionally seized wages, and to vindicate his First Amendment rights as recognized by the United States Supreme Court.

JURISDICTION AND VENUE

1. This action arises under the First and Fourteenth Amendments to the United States Constitution, 42 U.S.C. § 1983 (action for deprivation of federal civil rights), and 28 U.S.C. §§ 2201-2202 (action for declaratory relief).

2. The Court has subject-matter jurisdiction under 28 U.S.C. § 1331 (federal question jurisdiction), and 28 U.S.C. § 1343 (jurisdiction for deprivation of federal civil rights).

3. Venue is proper in Court because a substantial portion of the events giving rise to the claims occurred in Los Angeles County within the Central District of California. 28 U.S.C. § 1391(b)(2).

PARTIES

4. Plaintiff Glenn Laird is a high school teacher and, prior to May 2020, was a dues paying UTLA member for thirty-eight years. Mr. Laird resides in Glendale, California. Mr. Laird seeks relief pursuant to the Civil Rights Act, 42. U.S.C., § 1983, for declaratory and injunctive relief, compensatory and nominal damages, and any other remedy this Court deems proper.

5. Defendant United Teachers Los Angeles is the exclusive bargaining representative for Mr. Laird's bargaining unit. Under California state law, Cal. Educ. Code § 45060, and the terms of the applicable collective bargaining agreement,[1] UTLA is empowered to represent

[1] 2019 – 2022 Agreement, Los Angeles Unified School District and United Teachers Los Angeles, (last visited Mar. 11, 2021),

whether employees have affirmatively consented to have union dues withdrawn from their pay. The Union office is located at 3303 Wilshire Blvd., 10th Floor, Los Angeles, CA 90010.

6. Defendant Los Angeles Unified School District is a political subdivision in the State of California. Under California state law, Cal. Educ. Code § 45060, and the terms of the applicable collective bargaining agreement, the District is responsible for deducting dues from public employee's wages and remitting the dues to UTLA. The District's office is located at 333 S Beaudry Ave., Los Angeles, CA 90017.

7. Defendant Xavier Becerra, California's Attorney General, is sued in his official capacity as the representative of the State of California charged with the enforcement of state laws, including the provisions challenged in this case. His address for service of process is 300 South Spring Street, Los Angeles, California, 90013 in Los Angeles County.

FACTUAL ALLEGATIONS

A. Glenn Laird: Dedicated teacher and former UTLA representative.

8. Mr. Laird has been a California teacher since January 1983, for over 38 years.

9. Mr. Laird began teaching at Eagle Rock High School in 1994, after beginning his career at Richard E. Byrd Junior High School and Fairfax High School.

10. For the past 27 years, Mr. Laird has operated Eagle Rock High School's Graphics Lab, which focuses

---

https://www.utla.net/sites/default/files/2019-2022_utla-lausd_collective_bargaining_agreement.pdf

on teaching students graphic design, visual advertising, and digital marketing.

11. For decades Mr. Laird trained and took teams of students to "Skills USA Competitions," which focus on developing students for future careers in skilled technical professions.[2]

12. Over the course of his career, Mr. Laird has taught approximately sixteen to seventeen thousand students.

13. Mr. Laird became a dues-paying member of UTLA when he first began teaching in 1983.

14. For twelve years during this period, Mr. Laird served as UTLA's assigned co-representative at Eagle Rock High School.

15. In this role, Mr. Laird helped members understand and enforce their contractual rights under applicable collective bargaining agreements.

16. Until two years ago, Mr. Laird supported UTLA's efforts to ensure teachers in the District received fair pay increases.

17. He participated in rallies, meetings, and even picket lines on and off campus.

B. Glenn Laird experienced on-campus violence.

18. Mr. Laird personally experienced multiple incidents of violence on campus in which law enforcement officers' presence benefited the health and safety of his students.

---

[2] *About*, SkillsUSA, https://www.skillsusa.org/ (last visited Mar. 11, 2021).

19. In one of his first teaching positions, two of Mr. Laird's students got into a fistfight in his classroom.

20. Eventually, one of the students pulled a boxcutter from the pocket of his pants and slashed the other student across his face and eyes, causing severe bleeding.

21. Within a minute of the altercation beginning, a campus police officer entered the classroom and intervened, eventually arresting the student with the weapon.

22. On September 12, 1986, Tony Thompson, a former student of Mr. Laird, was shot and killed on the campus of Fairfax High School.

23. Tony was visiting campus to meet with one of his former special education teachers that helped him get into college.

24. While Tony was on campus, he asked a current student, Shawn Christopher Boykin, about using a public payphone.

25. This interaction devolved into a confrontation in which Boykin and another then current student, Andre West, chased Tony up the stairs and through the hallways of the school.

26. Eventually, West fired several shots at Tony, one of which struck him in the back and entered his heart, killing him.[3] Campus police responded to the situation immediately.

---

[3] Terry Pristin, 2 Gang Members Plead Guilty to Killing Youth at Fairfax High School, L.A. TIMES (Oct. 8, 1987), https://www.latimes.com/archives/la-xpm-1987-10-08-me-12892-story.html (last visited Mar. 11, 2021).

27. One of the officers attempted to save Tony's life by giving him CPR, while another pursued Boykin and West.

28. To protect his students, Mr. Laird locked his classroom door and sheltered in place with the students for over four hours.

29. Mr. Laird was one of only a handful of teachers from Eagle Rock High School that attended Tony's funeral to pay their respects.

30. It was an extremely significant and tragic moment in Mr. Laird's teaching career, and after the shooting death of Tony Thompson, Mr. Laird fiercely supported keeping a continued police presence on campus to be able to deal with threats to student safety on a moment's notice.

31. As recently as 2020, a student in Mr. Laird's classroom attempted to strangle another student to death. Fortunately, the police arrived, and the victim's life was saved.

32. Campus safety has now deteriorated to the point that Mr. Laird installed a peep hole in the door of his classroom, so that in the event of an emergency, he can see anyone outside his classroom trying to get inside.

C. Glenn Laird opposes UTLA's anti-police advocacy.

33. In early 2020, Mr. Laird saw several communications from UTLA through emails, social media, and other public statements, expressing support for the "Defund the Police" movement.

34. Specifically, these UTLA communications advocated to remove police officers from campus. *E.g.*, Exhibit A.

35. Several of these UTLA communications also contained rhetoric accusing police of being murderers and a force for evil in society.

36. During this period, UTLA officials even appeared on "Zoom" video conference calls while wearing anti-police tee shirts.

37. Given his past experiences with violence occurring on campus, these statements and actions caused Mr. Laird extreme anguish, since Mr. Laird is morally opposed to defunding the police and removing them from campus.

38. Mr. Laird is grateful to have a police presence on campus to keep his students and himself safe when unfortunate, but unavoidable, violence occurs.

39. Based on this opposition to UTLA's speech, Mr. Laird decided to terminate his UTLA membership and ends his dues payments. D. Mr. Laird's contractual relationship with UTLA Changes in 2018.

40. Pursuant to Cal. Ed. Code § 45060, the District will deduct union membership dues from an employee's paycheck, prior to the employee receiving the full amount of the lawfully earned wages.

41. The amount deducted is the "amount which it has been requested in a revocable written authorization by the employee to deduct for the purpose of paying the dues of the employee for membership in any local professional organization or in any statewide professional organization." Cal. Ed. Code § 45060.

42. The employee may terminate their dues deductions "in writing and [the revocation] shall be effective provided the revocation complies with the terms of the written authorization." *Id.*

43. Further, pursuant to the agreement collectively bargained between the District and UTLA, "The District shall deduct UTLA dues from the salary of each employee who has submitted a written authorization. Such an authorization shall continue in effect unless revoked in writing by the employee...A deposit approximating the amount of dues so deducted shall be remitted to UTLA on payday, and the reconciled amount will be supplied to UTLA within 30 days after the deductions are made, together with a list of affected employees."[4]

44. Until early 2018, pursuant to prior dues authorization cards, the District deducted dues monthly from Mr. Laird's paychecks.

45. The language in these earlier dues authorization cards signed by Mr. Laird remained consistent throughout the years Mr. Laird was a member of UTLA, and did not contain explicit language restricting members' ability to resign to opt-out windows.

46. But in early 2018, UTLA made a "big deal" claiming the anticipated *Janus* decision would be "a terrible thing that was going to destroy unions across the country."

47. During faculty meetings attended by union representatives, UTLA decided that it needed to put into place a strategy to thwart the effect of the Supreme Court's likely decision.

48. Part of this process was creating a modified membership and dues authorization agreement that for the first time included a strict opt-out window in which members would be allowed to exercise their

---

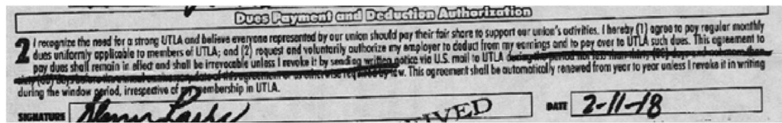
[4] *Supra* n.1 at 14.

First Amendment rights to dissociate from UTLA only during a narrow annual period.

49. On February 2, 2018, UTLA presented Mr. Laird with a dues authorization card that now included a narrow annual opt-out period. Exhibit B.

50. When Mr. Laird reviewed this new authorization, he disagreed with the opt out window language.

51. On February 11, 2018, Mr. Laird took a sharpie marker and struck out the requirement the deduction authorization be irrevocable only at certain times. Exhibit B.


Dues Payment and Deduction Authorization

2 I recognize the need for a strong UTLA and believe everyone represented by our union should pay their fair share to support our union's activities. I hereby (1) agree to pay regular monthly dues uniformly applicable to members of UTLA; and (2) request and voluntarily authorize my employer to deduct from my earnings and to pay over to UTLA such dues. This agreement to pay dues shall remain in effect and shall be irrevocable unless I revoke it by sending written notice via U.S. mail to UTLA [illegible] w. This agreement shall be automatically renewed from year to year unless I revoke it in writing during the window period, irrespective of membership in UTLA.

SIGNATURE [signature] DATE 2-11-18

52. This authorization was accepted by UTLA, and became the operative agreement governing Mr. Laird's UTLA membership.

53. Pursuant to this agreement, UTLA instructed the District to continue to deduct dues from Mr. Laird's paychecks and remit those monies to UTLA, as authorized by Cal. Educ. Code § 45060.

54. The District subsequently took $89.54 a month from Mr. Laird's paychecks and sent it to UTLA to be expended on political speech.

E. UTLA and the District refused to allow Mr. Laird to resign his membership.

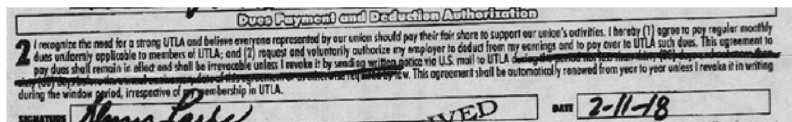
55. On June 12, 2020, Mr. Laird sent a letter to UTLA ending his membership pursuant to the terms of his authorization and instructing UTLA immediately to end his dues authorization with the District.

56. Even though Mr. Laird resigned his membership, UTLA refused to release him from his membership and cease taking his lawfully earned wages.

57. On June 23, 2020, UTLA responded with a letter refusing Mr. Laird's request, stating instead that he was legally bound by the deleted window period provision in his membership agreement. Exhibit C.

58. In support of this contention, UTLA sent Mr. Laird a copy of the agreement he had previously signed.

59. This copy of the agreement showed that Mr. Laird had specifically struck out the window period language. Exhibit B.


Dues Payment and Deduction Authorization

2 I recognize the need for a strong UTLA and believe everyone represented by our union should pay their fair share to support our union's activities. I hereby (1) agree to pay regular monthly dues uniformly applicable to members of UTLA; and (2) request and voluntarily authorize my employer to deduct from my earnings and to pay over to UTLA such dues. This agreement to pay dues shall remain in effect and shall be irrevocable unless I revoke it by sending written notice via U.S. mail to UTLA [struck out] law. This agreement shall be automatically renewed from year to year unless I revoke it in writing during the window period, irrespective of my membership in UTLA.

SIGNATURE [signature] DATE 2-11-18

60. UTLA did not instruct the District to stop seizing unauthorized dues from Mr. Laird's paychecks.

61. UTLA continued to represent his membership and affirmative consent to the District.

62. Pursuant to Cal. Ed. Code 45060, and the terms of the applicable CBA, the District continued to withdraw $89.54 a month from Mr. Laird's pay, and subsequently send it to UTLA without Mr. Laird's affirmative consent.

63. On July 7, 2020, Mr. Laird sent a second letter to UTLA, again ending his membership pursuant to the terms of his agreement and instructing UTLA immediately to end his dues authorization with the District. Exhibit D.

64. UTLA again refused his request. Exhibit E.

65. In August 2020, Mr. Laird exchanged emails with Marcos F. Hernandez, Chief Labor & Employment Counsel of the Los Angeles Unified School District.

66. Mr. Laird asked Hernandez whether the District would stop taking his money and sending it to UTLA against his will. Exhibit F.

67. Mr. Hernandez responded that "[t]he District complies with both the *Janus* decision and Education Code section 45060 governing dues deductions for California public school employers," and suggested Mr. Laird go talk to UTLA.

68. From May 2020 to December 2020, UTLA and the District acted in concert to confiscate $626.78 from Mr. Laird's monthly legally earned wages.

69. The District diverted this money to UTLA for use in political advocacy, and other policy promotion to which Mr. Laird is morally opposed.

F. Glenn Laird finally allowed to resign his UTLA membership.

70. Faced with no choice, on December 14, 2020, Mr. Laird submitted a third letter to UTLA attempted to end his membership and dues deduction. Exhibit G.

71. Because this letter was received during the opt-out period, which nonetheless was inapplicable to Mr. Laird's membership agreement, on December 22, 2020, UTLA allowed Mr. Laird to end his membership and deductions. Exhibit H.

72. This letter informed Mr. Laird that there would still be a dues deduction taken from his check for the month of January, but that the money would be returned to him at some unspecified date. *Id.*

73. Mr. Laird was told that after January all dues deductions would cease. *Id.*

74. To this date, Mr. Laird has not received back the $89.54 withdrawn from his paycheck by the District in January and sent to UTLA for use in political speech to which Mr. Laird morally opposes.

75. The controversy between the Defendants and Mr. Laird is a definite and concrete dispute concerning the legal relations of parties with adverse legal interests.

76. The dispute is real and substantial, as UTLA still retains $716.32 of Mr. Laird's money for use in political advocacy to which Mr. Laird is morally opposed, as authorized by California law and the applicable CBA, and as the Defendants maintain is constitutional.

77. Permanent injunctive relief is appropriate, as Mr. Laird is suffering a continuing irreparable harm and injury inherent in a violation of First and Fourteenth Amendment rights, for which there is no adequate remedy at law.

78. The declaratory relief sought is not based on a hypothetical state of facts, nor would it amount to a mere advisory opinion, as the parties dispute the legality of ongoing retention of approximately $716.32 of Mr. Laird's money without his affirmative consent.

79. As a result of the foregoing, an actual and justiciable controversy exists between Mr. Laird and the Defendants regarding their respective legal rights, and the matter is ripe for judicial review.

COUNT I

42. U.S.C. § 1983 for Violation of the Right to Freedom of Speech

80. Mr. Laird incorporates the allegations contained in paragraphs 1 – 79.

81. Under the First Amendment, the government cannot take money from public employees' wages to pay union dues or fees without the employees' voluntary and informed affirmative waiver of their First Amendment right to be free of compelled funding of objectionable speech, demonstrated by clear and compelling evidence. *Janus v. AFSCME*, 138 S. Ct. 2448.

82. Mr. Laird specifically struck out the portion of his previous membership authorization which UTLA maintains prevented him from resigning his membership and ending his dues deductions at will.

83. Mr. Laird objects to, and has not affirmatively consented to, UTLA's political speech.

84. Cal. Educ. Code § 45060 and the CBA between the District and UTLA violate the First Amendment, on their face and as applied to Mr. Laird.

85. Defendants have compelled Mr. Laird to financially support UTLA's political speech without his affirmative waiver of his First Amendment rights.

86. Defendants have harmed Mr. Laird by diverting his lawfully earned wages to UTLA, which uses those funds to engage in political speech.

87. Defendants acted under color of state law and pursuant to the applicable CBA and Cal. Educ. Code § 45060 to seize Mr. Laird's wages without his affirmative consent.

COUNT II

42 U.S.C. § 1983 for the Deprivation of Liberty and Property Interests Without Due Process of Law

88. Mr. Laird incorporates the allegations contained in paragraphs 1 – 87.

89. The Fourteenth Amendment requires the provision of adequate procedures before an individual is deprived of life, liberty, or property.

90. Mr. Laird has a cognizable liberty interest in his First Amendment rights.

91. Mr. Laird has a cognizable property interest in the wages confiscated by the Defendants without his affirmative consent.

92. Defendants' scheme for the seizure of dues for use in UTLA's objectionable political speech does not include any procedural protections sufficient to meet the requirements of the Due Process Clause.

93. Neither California law nor the applicable CBA establish any procedures to convey notice to Mr. Laird before the District seized his wages without his affirmative consent and remitted those monies to UTLA for use in political speech.

94. Neither California law nor the applicable CBA establish any procedures to provide Mr. Laird with any pre-deprivation or post-deprivation hearing or other opportunity to object to the seizure of his wages for use in UTLA's objectionable political speech without his affirmative consent.

95. Because it lacks the necessary procedural safeguards to protect Mr. Laird's First Amendment and property interests, Defendants' dues deduction scheme,

on its face and as applied, violates Mr. Laird's right to procedural due process.

96. Pursuant to state law, Cal. Educ. Code § 45060, and the applicable CBA, the District jointly acted with UTLA to deny Mr. Laird his procedural due process rights.

COUNT III

42 U.S.C. § 1983 for the Inherently Arbitrary Deprivation of Free Speech Liberty Interests

97. Mr. Laird incorporates the allegations contained in paragraphs 1 – 96.

98. The substantive component of the Due Process Clause prohibits restraints on liberty that are inherently arbitrary. Hence, substantive due process thus bars certain government actions regardless of the fairness of the procedures used to implement them.

99. Infringements of substantive due process rights are subject to strict constitutional scrutiny and must be narrowly tailored to serve a compelling state interest.

100. Mr. Laird has a cognizable liberty interest in his First Amendment rights.

101. The sole means available to Mr. Laird and public employees to terminate their union memberships and end their dues deductions under Cal. Educ. Code § 45060 and the applicable CBA, requires their termination requests be directed to UTLA.

102. UTLA is inherently biased and financially interested party with an incentive for dues deductions continue, whether an employee has given their affirmative consent or not.

103. UTLA has no incentive to release Mr. Laird, or other comparable situated public employees, from their memberships.

104. Rather, UTLA has a direct financial and legal incentive to represent to the District that Mr. Laird had provided the clear and affirmative consent required by *Janus*, even when Mr. Laird has affirmatively terminated his agreement and clearly withdrawn his consent.

105. Under these provisions, the District is allowed neither to independently verify whether Mr. Laird affirmatively consented to the deduction of dues from his pay to be remitted to UTLA, nor request he submit a new verifiable authorization.

106. As a result, Defendants' scheme has the purpose and effect of arbitrarily burdening Mr. Laird's ability to exercise his First Amendment rights.

107. Mr. Laird has a substantive due process right to exercise his First Amendment rights without suffering the conflict of interest imposed by Defendants' scheme.

108. Because it creates an inherent and arbitrary conflict of interest burdening Mr. Laird's ability to exercise his First Amendment rights, Defendants' dues deduction scheme, on its face and as applied, violates Mr. Laird's right to substantive due process.

109. The Defendants had no legitimate, let alone compelling, interest in depriving Mr. Laird of his First Amendment rights.

110. Even if the Defendants' scheme did have a legitimate or compelling purpose, it is not narrowly tailored to support that interest.

111. Pursuant to state law, Cal. Educ. Code § 45060, and the applicable CBA, the District jointly acted with

UTLA to deny Mr. Laird his substantive due process rights.

PRAYER FOR RELIEF

Wherefore, Mr. Laird respectfully requests that this Court:

A. Issue a declaratory judgement:

- That the Defendants' scheme to seize Mr. Laird's wages without his affirmative consent under Cal. Educ. Code § 45060 and the applicable CBA, and all other similarly situated employees, is a violation of the First Amendment;
- That the Defendants' failure to provide Mr. Laird, and similarly situated employees, without prior notice and an opportunity to dispute the seizure of their wages without their affirmative consent, is a violation of the Fourteenth Amendment's guarantee of procedural due process;
- That the Defendants' scheme requiring Mr. Laird, and other similarly situated employees, to direct their membership and dues authorization termination requests to a third-party union with a direct financial incentive to continue dues deductions without the employees' affirmative consent, is inherently arbitrary and a violation of the Fourteenth Amendment's guarantee of substantive due process.

B. Issue a permanent injunction:

- Enjoining the Defendants from seizing the wages of public employees without their voluntary and informed affirmative consent under Cal. Educ. Code § 45060 and the applicable CBA;

- Enjoining the Defendants from agreeing to and enforcing a procedure for deducting money from the pay of public employees that violates the First and Fourteenth Amendments; ordering the Defendants to implement a process providing adequate procedures for confirming public employees' voluntary and informed affirmative consent prior to the deduction of any money from their pay;
- Enjoining the Defendants from agreeing to and enforcing an inherently arbitrary procedure that violates the First and Fourteenth Amendments; ordering the Defendants to implement a process by which the District must directly confirm public employees' voluntary and informed affirmative consent prior to the deduction of any money from their pay.

C. Enter a judgment:

- Awarding Mr. Laird compensatory damages in the amount of $716.32 for the monies unconstitutionally seized from his pay without his affirmative consent from June 2020 to January 2021;
- Award Mr. Laird compensatory damages for the violation of his First Amendment rights against compelled speech, in an amount to be determined at trial.
- Awarding Mr. Laird $1.00 in nominal damages for the deprivation of his First Amendment and Fourteenth Amendment Due Process rights.

D. Other applicable relief:

- Award Mr. Laird his costs and attorneys' fees under 42 U.S.C. § 1983 and § 1988;

- Award Mr. Laird any further relief to which he may be entitled and such other relief as this Court may deem just and proper.

Date: March 16, 2021

Respectfully submitted,

FREEDOM FOUNDATION

Timothy Snowball, Cal Bar No. 317379
Elena Ives, Cal Bar No. 331159
Freedom Foundation
PO Box 552
Olympia, WA 98507
Telephone: (360) 956-3482
tsnowball@freedomfoundation.com
eives@freedomfoundation.com

Attorneys for Plaintiff

APPENDIX B

6/23/2020

Glenn Laird

United Teachers Los Angeles has received your correspondence regarding the termination of your membership. UTLA has received your U.S. Mail post marked 6/12/2020 request, which is outside your open period.

Our records indicate that you signed a UTLA ALL IN Membership Card on 2/11/2018 (see attached copy) where you agreed — irrespective of union membership — to pay monthly dues unless you provide written notice by U.S. mail to UTLA during the open period not less than thirty (30) days and not more than sixty (60) days before the annual anniversary date of the agreement (i.e., of your signature date). Your agreement to maintain dues payments will automatically renew from year to year unless you revoke it in writing during your open period: 12/13/2020-1/12/2021.

If you still choose to terminate your membership UTLA will honor your request to become a Dues Paying Non-Member, however you must officially cancel your Non Member status within the next open period to withdrawal your annual dues paying commitment. Please notify the Membership department of your choice to change your status to Dues Paying Non-Member, so UTLA can make the status adj ustment.

If you have one or more of the following supplemental Insurances through UTLA (Colonial Life, Long Term Care, Met Life, Monumental Life, NTA, Pacific Educators, Standard, Zahorik) please be aware your insurance(s)

will be canceled with your membership and needs to be included in the above request to cancel. Your cancelation letter must state you are forfeiting your insurance coverage. All supplemental insurances are at a special group rate that require UTLA membership.

UTLA will only honor requests to terminate annual dues commitment payments post marked during the open period specified above upon written notice via U.S. Mail to: UTLA, 3303 Wilshire Blvd., 10th Floor, Los Angeles CA 90010, Attn: Membership Dept. With your request please include your name, employee number, original signature, and reason for your request (optional).

We encourage you to take this opportunity to consider the challenges we face as educators in today's environment. The stakes are higher than ever to ensure our collective voice stays strong, to protect our healthcare, our secure retirement, aid our ability to advocate for our students UTLA supports the work of our Bargaining Unit Members, which benefits you.

If you should have any questions, please email: membership@utla.net

APPENDIX C

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 22-55780

D.C. No. 2:21-cv-02313-FLA-AS

GLENN LAIRD, individual,

Plaintiff-Appellant,

v.

UNITED TEACHERS LOS ANGELES, a labor organization; LOS ANGELES UNIFIED SCHOOL DISTRICT, a political subdivision of the State of California; ROB BONTA, in his official capacity as Attorney General of California,

Defendants-Appellees.

MEMORANDUM[*]

Appeal from the United States District Court
for the Central District of California
Fernando L. Aenlle-Rocha, District Judge, Presiding

Submitted October 19, 2023[**]
San Francisco, California

---

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

[**] The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

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

Glenn Laird appeals from the district court's dismissal of his 42 U.S.C. § 1983 action alleging that the unauthorized deduction of union dues from his pay violated his First and Fourteenth Amendment rights under *Janus v. American Fed'n of State, Cnty., and Mun. Employees, Council 31*, 138 S. Ct. 2448 (2018). We have jurisdiction pursuant to 28 U.S.C. § 1291 and review de novo. *Wright v. SEIU Loc. 503*, 48 F.4th 1112, 1118 n.3 (9th Cir. 2022), *cert. denied*, 143 S. Ct. 749 (2023). We may affirm on any ground supported by the record. *Ochoa v. Pub. Consulting Grp., Inc.*, 48 F.4th 1102, 1106 (9th Cir. 2022), *cert. denied*, 143 S. Ct. 783 (2023). We affirm.

1. The district court properly dismissed the section 1983 claims Laird alleged against his former union United Teachers Los Angeles ("UTLA"). UTLA did not engage in state action when it relayed the dues authorization to Laird's former state employer, the Los Angeles Unified School District ("LAUSD").

Actions by a private actor may be subject to section 1983 liability if the plaintiff can show that the conduct was "fairly attributable to the State." *Lugar v. Edmondson Oil Co.*, 457 U.S. 922, 937 (1982). To establish fair attribution, two prongs must be met: (1) "the deprivation must be caused by the exercise of some right or privilege created by the State or by a rule of conduct imposed the [S]tate or by a person for whom the State is responsible," and (2) "the party charged with the deprivation must be a person who may fairly be said to be a state actor." *Id*. Neither prong is met here.

First, assuming that Laird validly revoked his dues deduction authorization in June 2020, UTLA's request

that LAUSD continue making deductions violated state law. *See* Cal. Educ. Code § 45060(a) ("Any revocation . . . shall be effective provided the revocation complies with the terms of the written authorization."). Thus, UTLA's alleged misrepresentation was "antithetical to any 'right or privilege created by the State.'" *Wright*, 48 F.4th at 1123 (quoting *Lugar*, 457 U.S. at 937).

Second, Laird argues that UTLA is a state actor under the "joint action" or "governmental nexus" tests. *See Tsao v. Desert Palace, Inc.*, 698 F.3d 1128, 1140 (9th Cir. 2012). In *Belgau v. Inslee*, we held that the mere fact that a state transmits dues payments to a union does not give rise to a section 1983 claim against the union under the "joint action" test. 975 F.3d 940, 947–49 (9th Cir. 2020), *cert. denied*, 141 S. Ct. 2795 (2021). Nor would a state employer's "ministerial processing of payroll deductions pursuant to [e]mployees' authorizations" create sufficient nexus between a state and a union to subject the union to section 1983 liability. *Id.* at 947–48 & n.2; *see also Wright*, 48 F.4th at 1122 & n.6.

2. The district court properly dismissed Laird's nominal damages claim against the Attorney General because it is barred by Eleventh Amendment sovereign immunity. We have recognized "that, 'absent waiver by the State or valid congressional override,' state sovereign immunity protects state officer defendants sued in federal court in their official capacities from liability in damages, including nominal damages." *Platt v. Moore*, 15 F.4th 895, 910 (9th Cir. 2021) (quoting *Kentucky v. Graham*, 473 U.S. 159, 169 (1985)). Laird has not shown waiver by the State or valid congressional override.

AFFIRMED.

APPENDIX D

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 22-55780

D.C. No. 2:21-cv-02313-FLA-AS
Central District of California, Los Angeles

GLENN LAIRD, individual,

Plaintiff-Appellant,

v.

UNITED TEACHERS LOS ANGELES,
a labor organization; *et al.*,

Defendants-Appellees.

ORDER

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

The panel has voted to deny the petition for rehearing en banc (Dkt. No. 54) and Judge W. Fletcher has so recommended.

The full court has been advised of the petition for rehearing en banc and no judge has requested a vote on whether to rehear the matter en banc. Fed. R. App. P. 35.

The petition for rehearing en banc is denied.

APPENDIX E

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Case No. 2:21-cv-02313-FLA (ASx)

GLENN LAIRD,

Plaintiff,

v.

UNITED TEACHERS LOS ANGELES, *et al.*,

Defendants.

ORDER GRANTING DEFENDANTS' MOTIONS TO DISMISS [DKTS. 27, 28, 31]

RULING

Before the court is Defendant Los Angeles Unified School District's (the "District") Motion to Dismiss (Dkt. 27) ("District Motion"), Defendant United Teachers Los Angeles' ("UTLA") Motion to Dismiss (Dkt. 28) ("UTLA Motion"), and Defendant Attorney General Rob Bonta's ("Attorney General") Motion to Dismiss (Dkt. 31) ("Attorney General Motion") (collectively, the "Motions").[1] On August 5, 2021, the court found this matter appropriate for resolution without oral argument and vacated the hearing set for August 6, 2021. Dkt. 37; *see* Fed. R. Civ. P. 78(b); Local Rule 7-15. For the reasons stated herein, the court GRANTS Defendants' Motions.

---

[1] The court refers to page numbers of docket entries according to the page numbers assigned by the court's CM/ECF header.

BACKGROUND

Plaintiff Glenn Laird ("Plaintiff" or "Laird") is a high school teacher. Dkt. 1 ("Compl.") ¶ 4.[2] When Plaintiff began teaching in 1983, he became a dues paying member of UTLA. *Id.* ¶ 13. Pursuant to Cal. Educ. Code § 45060, the District deducts union membership dues from an employee's paycheck by the amount requested in a revocable written authorization by the employee. *Id.* ¶¶ 40-41. An employee may terminate the deduction of dues from his paycheck "in writing and [the revocation] shall be effective provided the revocation complies with the terms of the written authorization." *Id.* ¶ 42 (quoting Cal. Educ. Code § 45060). In addition, the collective bargaining agreement between the District and UTLA provides "[t]he District shall deduct UTLA dues from the salary of each employee who has submitted a written authorization. Such an authorization shall continue in effect unless revoked in writing by the employee." *Id.* ¶ 43.

On February 11, 2018, Plaintiff completed a new UTLA Membership Authorization ("Membership Authorization") which contained the following language:

> This agreement to pay dues shall remain in effect and shall be irrevocable unless I revoke it by sending written notice via U.S. mail to UTLA during the period not less than thirty (30) days and not more than sixty (60) days before the annual anniversary date of this

[2] For purposes of the subject Motions, the court treats the following factual allegations of the Complaint as true. *See Wilson v. Hewlett–Packard Co.*, 668 F.3d 1136, 1140 (9th Cir. 2012). Legal conclusions, however, "are not entitled to the assumption of truth" and "must be supported by factual allegations." *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009).

> agreement or as otherwise required by law. This agreement shall be automatically renewed from year to year unless I revoke it in writing during the window period, irrespective of my membership in UTLA."

Id. ¶ 51; Dkt. 1-2 (*id.*, Ex. B). Although Plaintiff signed the Membership Authorization, he crossed out the following language: "during the period not less than thirty (30) days and not more than sixty (60) days before the annual anniversary date of this agreement or as otherwise required by law." *Id.*

During his teaching career, Plaintiff experienced multiple incidents of on-campus violence. *Id.* ¶ 18. As a result of these incidents, Plaintiff supported the presence of on-campus police officers. *Id.* ¶ 30. In 2020, Plaintiff saw several communications from UTLA that advocated removing police officers from campus and contained rhetoric accusing police of being murderers and a force for evil in society. *Id.* ¶¶ 34-35. As a result of his experiences with violence and opposition to the removal on-campus police, Plaintiff decided to terminate his UTLA membership and stop paying dues. *Id.* ¶ 39.

On June 12, 2020, Plaintiff sent UTLA a letter terminating his UTLA membership and instructing UTLA to end his dues authorization with the District. *Id.* ¶ 55. On June 23, 2020, UTLA responded with a letter stating it would not honor Plaintiff's request to terminate the dues payments because the request was received outside of the open period. *Id.* at ¶ 57; Dkt 1-3 (*id.*, Ex. C). UTLA did not instruct the District to stop deducting dues as Plaintiff had requested, and the District continued to deduct the membership dues from Plaintiff's paycheck. Compl. ¶ 62.

On July 7, 2020, Plaintiff sent UTLA a second letter, reaffirming that he wanted to end his membership and

instructing UTLA to end his dues authorization with the District immediately. *Id.* ¶ 63; Dkt. 1-4 (*id.*, Ex. D). UTLA again refused to honor Plaintiff's request to terminate dues payments on the grounds that Plaintiff's request was received outside of the open period. Compl. ¶ 64; Dkt. 1-5 (*id.*, Ex. E). In August 2020, Plaintiff contacted the District regarding the issue, but it referred him back to UTLA. Compl. ¶¶ 65-67. On December 14, 2020, during the open period, Plaintiff sent a third letter to UTLA reiterating his request. *Id.* ¶ 70; Dkt. 1-7 (*id.*, Ex. G). Following the receipt of Plaintiff's third letter, UTLA honored Plaintiff's request to end his membership and dues deductions. Compl. ¶¶ 71-72; Dkt. 1-8 (*id.*, Ex. H). UTLA informed Plaintiff that dues would be deducted from his paycheck for the month of January 2021, but that the money would be returned to him at some unspecified date. Compl. ¶ 72. According to Plaintiff, he has not received the $89.54 in dues deducted from his January paycheck. *Id.* ¶¶ 72-74.

On March 16, 2021, Plaintiff filed the Complaint in this action, asserting three causes of action under 42 U.S.C. § 1983 ("Section 1983"), for violations of the First and Fourteenth Amendments, and seeking declaratory judgment, injunctive relief, and damages. *See generally* Compl. Defendants move to dismiss the Complaint pursuant to Fed. R. Civ. P. 12(b)(1) and 12(b)(6) ("Rule 12(b)"). Dkts. 27, 28, 31.

DISCUSSION

I. Legal Standard

A complaint must include "a short and plain statement of the grounds for the court's jurisdiction...." Fed. R. Civ. P. 8(a)(1). "It is to be presumed that a cause lies outside [of federal courts'] limited jurisdiction, and

the burden of establishing the contrary rests upon the party asserting jurisdiction." *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994) (citations omitted). Courts have an independent obligation to determine whether subject-matter jurisdiction exists, even in the absence of a challenge from any party. *Arbaugh v. Y&H Corp.*, 546 U.S. 500, 514 (2006). "If the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action." Fed. R. Civ. P. 12(h)(3).

A challenge to subject-matter jurisdiction "can be either facial, confining the inquiry to allegations in the complaint, or factual, permitting the court to look beyond the complaint." *Savage v. Glendale Union High Sch.*, 343 F.3d 1036, 1039 n. 2 (9th Cir. 2003). Therefore, when considering a motion under Rule 12(b)(1), the court is not restricted to the face of the pleadings, but may review evidence, such as declarations and testimony, to resolve any factual disputes concerning the existence of jurisdiction. *McCarthy v. United States*, 850 F.2d 558, 560 (9th Cir. 1988). The burden of proof on a Rule 12(b)(1) motion is on the party asserting jurisdiction. *Sopcak v. N. Mountain Helicopter Serv.*, 52 F.3d 817, 818 (9th Cir. 1995).

Under Fed. R. Civ. P. 12(b)(6), a party may file a motion to dismiss a complaint for "failure to state a claim upon which relief can be granted." The purpose of Rule 12(b)(6) is to enable defendants to challenge the legal sufficiency of claims asserted in a complaint. *Rutman Wine Co. v. E. & J. Gallo Winery*, 829 F.2d 729, 738 (9th Cir. 1987). A district court properly dismisses a claim under Rule 12(b)(6) if the complaint fails to allege sufficient facts "to support a cognizable legal theory." *Caltex Plastics, Inc. v. Lockheed Martin Corp*, 824 F.3d 1156, 1159 (9th Cir. 2016).

"To survive a motion to dismiss, a complaint must contain sufficient factual matter ... to 'state a claim for relief that is plausible on its face.'" *Iqbal*, 556 U.S. at 678 (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). "While a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations, a plaintiff's obligation to provide the 'grounds' of his 'entitlement to relief' requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Twombly*, 550 U.S. at 555 (internal citations omitted). "Factual allegations must be enough to raise a right to relief above the speculative level." *Id.* (internal citations omitted). "Determining whether a complaint states a plausible claim for relief is 'a context-specific task that requires the reviewing court to draw on its judicial experience and common sense.'" *Ebner v. Fresh, Inc.*, 838 F.3d 958, 963 (9th Cir. 2016) (quoting *Iqbal*, 556 U.S. at 679).

When evaluating a complaint under Rule 12(b)(6), the court "must accept all well-pleaded material facts as true and draw all reasonable inferences in favor of the plaintiff." *Caltex*, 824 F.3d at 1159. Legal conclusions, however, "are not entitled to the assumption of truth" and "must be supported by factual allegations." *Iqbal*, 556 U.S. at 679. A court must normally convert a Rule 12(b)(6) motion into a Rule 56 motion for summary judgment if it considers evidence outside the pleadings. *United States v. Ritchie*, 342 F.3d 903, 907-08 (9th Cir. 2003). "A court may, however, consider certain materials—documents attached to the complaint, documents incorporated by reference in the complaint, or matters of judicial notice—without converting the motion to dismiss into a motion for summary judgment." *Id.*

II. Analysis

A. Standing and Plaintiff's Claims for Prospective Relief

Article III of the Constitution requires courts to adjudicate only actual cases or controversies. U.S. Const. art. III, § 2, cl. 1. "A suit brought by a plaintiff without Article III standing is not a 'case or controversy,' and an Article III federal court therefore lacks subject matter jurisdiction over the suit." *Cetacean Cmty. v. Bush*, 386 F.3d 1169, 1174 (9th Cir. 2004). "Standing is determined by the facts that exist at the time the complaint is filed." *Clark v. City of Lakewood*, 259 F.3d 996, 1006 (9th Cir. 2001). To establish standing, a plaintiff must show he "(1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision." *Spokeo, Inc. v. Robins*, 578 U.S. 330, 338 (2016). A plaintiff must clearly allege facts demonstrating each element at the pleading stage. *Id.*

"For injunctive relief, which is a prospective remedy, the threat of injury must be actual and imminent, not conjectural or hypothetical." *Davidson v. Kimberly-Clark Corp.*, 889 F.3d 956, 967 (9th Cir. 2018) (quotations omitted). "[T]he threatened injury must be *certainly impending* to constitute injury in fact and allegations of *possible* future injury are not sufficient." *Id.* (quotations omitted, emphasis in original). "'[S]ome day' intentions—without any description of concrete plans, or indeed even any specification of *when* the some day will be—do not support a finding of the 'actual or imminent' injury" required to establish standing. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 564 (1992). "'Past exposure to illegal conduct does not in itself show a present case or controversy regarding

injunctive relief ... if unaccompanied by any continuing, present adverse effects.'" *Id.* (quoting *City of Los Angeles v. Lyons*, 461 U.S. 95, 102 (1983)). A plaintiff seeking injunctive relief based on a past injury must show that he is realistically threatened by a repetition of the prior injury to establish standing, regardless of whether the injunction contemplates intrusive structural relief or the cessation of a discrete practice. *Lyons*, 461 U.S. at 109; *Gest v. Bradbury*, 443 F.3d 1177, 1181 (9th Cir. 2006) ("[W]here ... [plaintiffs] seek declaratory and injunctive relief, they must demonstrate that they are 'realistically threatened by a *repetition* of the violation.'" (emphasis in original)).

Defendants argue Plaintiff lacks standing to pursue declaratory or injunctive relief, which are forms of prospective relief, because he has already resigned his union membership and the challenged conduct, the deduction of union dues from his paycheck from June 2020 to January 2021, ended before he filed his Complaint. District Mot. 8; UTLA Mot. 11-13; Attorney General Mot. 10-12 (citing Compl. ¶¶ 70-74). Defendants further note that Plaintiff has not pleaded any other future injury he might suffer, that would merit injunctive or declaratory relief. Defendants, thus, contend Plaintiff is no longer subject to the statutory regime he challenges and lacks standing to seek injunctive or declaratory relief. UTLA Mot. 12-13; Attorney General Mot. 11-12.

Plaintiff counters he has standing because he is eager to rejoin UTLA, "[b]ut for UTLA's continuing position calling to 'defund the police,'" and plans to immediately rejoin the union "when possible." Dkt. 34 ("Opp.") at 35-36. According to Plaintiff, unless he is granted declaratory and injunctive relief by the court, he will be put into a position to suffer an imminent

threat to his First and Fourteenth Amendment rights once he rejoins UTLA. *Id.* at 36; Dkt. 34-1 ("Laird Decl.") ¶ 15. The court agrees with Defendants that Plaintiff fails to identify an injury that is actual and imminent, and not conjectural or hypothetical. *See Lujan*, 504 U.S. at 564.

As an initial matter, the Complaint does not contain any allegations of future injury. *See generally* Compl. As stated, "[s]tanding is determined by the facts that exist at the time the complaint is filed," *Clark*, 259 F.3d at 1006, and a plaintiff must clearly allege sufficient facts to establish standing, *Spokeo*, 578 U.S. at 338. While Plaintiff argues in his Opposition that he intends to rejoin UTLA "when possible," the Complaint does not plead any facts regarding any intent to rejoin the UTLA in the future, let alone any facts to suggest he intends to rejoin if concrete and specific events occur. *See generally* Compl. Plaintiff does not assert he has concrete plans to rejoin UTLA within a specific period of time or based upon a specific set of events, and states only that "he greatly desires to rejoin UTLA" but cannot because of "UTLA's continuing position calling to 'defund the police.'" Opp. 35-36. Plaintiff's stated intent to rejoin UTLA, "when possible," is conditional and entirely speculative, and insufficient to support a finding of actual and imminent future harm.

Further, although Plaintiff argues he is afraid his "First Amendment rights ... will be put in jeopardy" when he rejoins, if injunctive relief is denied, his stated condition predicate to rejoining the UTLA is entirely disconnected from the constitutional violation alleged in this action. *Id.* ¶ 15. Plaintiff's Complaint is premised on the theory that his wages were wrongfully taken from him as a result of UTLA's failure to honor the terms of the Membership Authorization in which

Plaintiff struck certain language pertaining to the open period. *See generally* Compl. Plaintiff does not argue that he would be subject to the same Membership Authorization if he were to rejoin UTLA, or that UTLA would accept a future attempt by Plaintiff to strike provisions regarding the open period, thus he has not alleged a risk that he would be harmed in the same way. Accordingly, Plaintiff's stated conditional intent is too speculative and hypothetical to constitute a realistic threat of future injury. *See Davidson*, 889 F.3d at 967.[3]

Having found the Complaint fails to allege future harm, the court DISMISSES Plaintiff's claims for declaratory and injunctive relief for lack of Article III standing.

---

[3] In *Davidson*, 889 F.3d at 969-70, the Ninth Circuit recognized that a previously deceived plaintiff consumer may be able to establish threat of future harm by plausibly alleging she was prevented from purchasing the defendant's product in the future, although she would like to, because she was unable to rely on the allegedly false or misleading advertising at issue. In such circumstances, a plaintiff's alleged inability to purchase a product would constitute a concrete threat of future harm sufficient to establish standing, since grant of the relief requested (an injunction against engaging in the allegedly false and misleading advertising) would satisfy the plaintiff's stated condition and allow her to purchase the product in the future. *See id.* Here, unlike *Davidson*, a grant of the declaratory and injunctive relief requested by Plaintiff (regarding terminating deduction of union dues) would alone be insufficient to satisfy Plaintiff's stated conditions for him to rejoin UTLA, since he would still be unwilling to rejoin UTLA while it maintained its alleged position regarding the police. Thus, Plaintiff does not face a realistic threat of actual or imminent repeated injury, and his claims only rise to a possible future injury. *See Lyons*, 461 U.S. at 109; *Davidson*, 889 F.3d at 969.

B. The Eleventh Amendment and Sovereign Immunity

The Eleventh Amendment provides, "[t]he Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State." U.S. Const. amend XI. Although its precise terms bar only federal jurisdiction over suits brought against one State by citizens of another State or foreign state, courts have long recognized that the Eleventh Amendment also bars suits brought against a State by its own citizens, under principles of sovereign immunity. *Coll. Sav. Bank v. Fla. Prepaid Postsecondary Educ. Expense Bd.*, 527 U.S. 666, 669-70 (1999). While this immunity from suit is not absolute, the Supreme Court has recognized only two circumstances in which an individual may sue a State:

> First, Congress may authorize such a suit in the exercise of its power to enforce the Fourteenth Amendment – an Amendment enacted after the Eleventh Amendment and specifically designed to alter the federal-state balance. Second, a State may waive its sovereign immunity by consenting to suit.

Id. at 670 (citations omitted).

When a suit is brought against state officials, the question arises as to whether i is actually a suit against the State itself. In general, the Eleventh Amendment bars suit against state officials when the State is the real, substantial party in interest, where the relief sought nominally against the officials would operate against the State. *Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 101 (1984). "[A]s

when the State itself is named as the defendant, a suit against state officials that is in fact a suit against a State is barred regardless of whether the suit seeks damages or injunctive relief." *Id.* at 101-02.

In *Ex parte Young*, 209 U.S. 123 (1908), the Supreme Court recognized an important exception to this general rule: a suit challenging the constitutionality of a state official's action under the United States Constitution does not constitute a suit against the State, and is not barred by the Eleventh Amendment, because "an unconstitutional enactment is 'void' and therefore does not 'impart to [the officer] any immunity from responsibility to the supreme authority of the United States." *Pennhurst*, 465 U.S. at 102 (citing *Young*, 209 U.S. at 160).[4] "[W]hen a plaintiff sues a state official alleging a violation of federal law, the federal court may award an injunction that governs the official's future conduct, but not one that awards retroactive monetary relief." *Id*. at 102-03 (citing *Edelman v. Jordan*, 415 U.S. 651 (1974)).

1. Sovereign Immunity and the District

The District argues that Plaintiff's claims against it are barred by sovereign immunity under the Eleventh Amendment.[5] District Mot. 6-8. The court agrees.

"Under California law, [public] school districts are agents of the state that perform central governmental functions." *Belanger v. Madera Unified Sch. Dist.*, 963

---

[4] In contrast, *Young* is inapplicable to suits against state officials for violations of state law, as "a federal court's grant of relief against state officials on the basis of state law, whether prospective or retroactive, does not vindicate the supreme authority of federal law." *Id.* at 106.

[5] Plaintiff does not address this argument in his Opposition, and thus concedes that his claims against LA Unified are barred.

F.2d 248, 253 (9th Cir. 1992). Thus, suits brought against "[a public school] district in its own name are subject to the same Eleventh Amendment constraints as suits against the state." *Id.* at 254. Although the *Ex Parte Young* doctrine provides an exception for actions against officials for declaratory and prospective injunctive relief, an action against a public school district in its own name, by definition, falls outside the scope of the exception. *See In re Lazar*, 237 F.3d 967, 976 n. 9 (9th Cir. 2001) (finding the *Ex Parte Young* exception to Eleventh Amendment immunity inapposite where an action was brought "against the State Board, and not against the appropriate officers of the State Board").

Here, Plaintiff asserts claims against the District, which is an agent of the State, in its own name; thus, sovereign immunity applies. *See Belanger*, 963 F.2d at 253; *In re Lazar*, 237 F.3d at 976 n. 9. Plaintiff contends he is entitled to maintain his suit against the District to seek nominal damages, "[b]ecause sovereign immunity only applies to actual monetary payment sought from the state to provide actual compensation for measurable injuries." Opp. 34. The court disagrees.

In *Johnson v. Rancho Santiago Cmty. Coll. Dist.*, 623 F.3d 1011, 1022 (9th Cir. 2010), the Ninth Circuit recognized that, absent a waiver, sovereign immunity bars suits seeking nominal damages against a public school district. While the Opposition cites legal authority that discusses nominal damages, Plaintiff does not actually cite any authority that supports his contention regarding sovereign immunity. *See* Opp. 34. Plaintiff's argument, thus, fails.[6]

---

[6] This point is discussed further below, as it applies to the *Young* exception to sovereign immunity, in the court's discussion of the Attorney General's Motion.

Accordingly, the court DISMISSES Plaintiff's claims against the District, without leave to amend.

2. Sovereign Immunity and the Attorney General

In his Complaint, Plaintiff seeks compensatory and nominal damages in addition to seeking injunctive and declaratory relief. *See* Compl. at Prayer. Because Plaintiff lacks standing to seek injunctive and declaratory relief, as discussed above, only Plaintiff's claims for damages remain.

The Attorney General argues Plaintiff's remaining claims for damages, including any nominal damages, are barred by the Eleventh Amendment. Attorney General Mot. 12-13. Plaintiff acknowledges he cannot recover compensatory damages from the Attorney General, but argues he can seek nominal damages because such damages do not provide actual compensation. Opp. 34. The court disagrees. As Plaintiff acknowledges, nominal damages are a form of retrospective relief. *See id.* at 33 ("A request for nominal damages to redress a past constitutional injury has deep roots in the common law.") (collecting authority).

The *Ex parte Young* exception does not permit suits for retrospective relief. *Pennhurst*, 465 U.S. at 105; *Porter v. Jones*, 319 F.3d 483, 491 (9th Cir. 2003). As the Supreme Court explained:

> [T]he need to promote the supremacy of federal law must be accommodated to the constitutional immunity of the States. This is the significance of *Edelman v. Jordan*, *supra*. We recognized that the prospective relief authorized by *Young* "has permitted the Civil War Amendments to the Constitution to serve as a sword, rather than merely a shield, for those

> whom they were designed to protect." 415 U.S., at 664. But we declined to extend the fiction of *Young* to encompass retroactive relief, for to do so would effectively eliminate the constitutional immunity of the States. Accordingly, we concluded that although the difference between permissible and impermissible relief "will not in many instances be that between day and night," 415 U.S., at 667, an award of retroactive relief necessarily "'[falls] afoul of the Eleventh Amendment if that basic constitutional provision is to be conceived of as having any present force.'" *Id*., at 665 (quoting *Rothstein v. Wyman*, 467 F.2d 226, 237 (CA2 1972) (McGowan, J., sitting by designation), cert. denied, 411 U.S. 921 (1973)). In sum, *Edelman's* distinction between prospective and retroactive relief fulfills the underlying purpose of *Ex parte Young* while at the same time preserving to an important degree the constitutional immunity of the States.

Pennhurst, 465 U.S. at 105-06.

Accordingly, the court DISMISSES Plaintiff's claims for damages against the Attorney General. As Plaintiff lacks standing to bring claims for prospective relief, as stated above, the court DISMISSES Plaintiff's claims against the Attorney General in their entirety.

C. State Action and the Sufficiency of Plaintiff's Claims Against UTLA

"To establish § 1983 liability, a plaintiff must show both (1) deprivation of a right secured by the Constitution and laws of the United States, and (2) that the deprivation was committed by a person acting under color of state law." *Tsao v. Desert Palace, Inc.*, 698

F.3d 1128, 1138 (9th Cir. 2012) (internal quotation marks and citation omitted). "Although § 1983 makes liable only those who act under color of state law, even a private entity can, in certain circumstances, be subject to liability under section 1983." *Id.* at 1139 (internal quotation marks and citation omitted). "Specifically, a plaintiff must show that 'the conduct allegedly causing the deprivation of a federal right [was] fairly attributable to the State.'" *Id.* (quoting *Lugar v. Edmondson Oil Co*., 457 U.S. 922, 937 (1982)).

Courts apply a "two-prong framework for analyzing when governmental 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 the plaintiff complains." *Ohno v. Yasuma*, 723 F.3d 984, 994 (9th Cir. 2013) (citing *Lugar*, 457 U.S. at 937-42). First, the court "asks 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, the court "determines whether the party charged with the deprivation could be described in all fairness as a state actor." *Id.*

As to the first prong, Plaintiff argues the state action stems from "UTLA's seizure and use of Mr. Laird's lawfully earned wages without his affirmative consent," which Plaintiff contends was government seizure of money pursuant to a state-created "system whereby state officials will attach property on the *ex parte* application of one party." Opp. 19 (citing *Lugar*, 457 U.S. at 942). According to Plaintiff, the "source of the alleged constitutional harm" was "UTLA's statutory authority to represent that Mr. Laird had waived his First Amendment rights based upon non-existent

contractual provisions," which Plaintiff contends is a "right or privilege created by the state." *Id.* at 19-20 (citing Compl. ¶ 5).

UTLA responds that the conduct alleged does not constitute state action because "Plaintiff ignores the conditions placed by California upon the alleged 'right or privilege' at issue here: California law permitted UTLA to request deductions from Plaintiff's pay only if he had affirmatively authorized the deductions via a signed authorization that had not been revoked in a manner that 'complie[d] with the terms of the written authorization.'" Dkt. 35 ("UTLA Reply") at 8-9. According to UTLA, "Plaintiff's claims are premised on his contention that UTLA acted in a manner *contrary* to this state law—i.e., that UTLA continued to request deductions from Plaintiff's pay even after he 'effectively *ended* his membership and *revoked* his dues deduction authorization pursuant to the terms of his agreement with UTLA.'" *Id.* at 9 (emphasis in original). UTLA cites *Lugar*, 457 U.S. at 940, to argue that "private-party conduct contrary to state policy cannot be deemed conduct undertaken pursuant to a state-created right or privilege for the purposes of Section 1983." *Id.* The court agrees with UTLA.

In *Lugar*, 457 U.S. at 941, the Supreme Court recognized that the "'private misuse of a state statute does not describe conduct that can be attributed to the State.'" *See also id.* at 940 (holding plaintiff's claim for deprivation of property resulting from defendants' "malicious, wanton, willful, oppressive [sic], [and] unlawful acts," cannot be attributed to a state rule or state action, as "the conduct of which [plaintiff] complained could not be ascribed to any governmental decision; rather, [defendants] were acting contrary to the relevant policy articulated by the State."); *Zielinski*

v. Serv. Emps. Int'l Union Loc. 503, 499 F. Supp. 3d 804, 809 (D. Or. 2020) (finding no state action where the plaintiff's "claimed constitutional harm stem[med] from [the union] forging Plaintiff's signature on the agreements and authorizing dues deductions without his consent"); *Mendez v. Cal. Tchrs. Ass'n*, 419 F. Supp. 3d 1182, 1187 (N.D. Cal. 2020) ("To the extent plaintiffs allege that the Union defendants misinformed them about their legal obligations to join the union or pay membership dues, their claims would be against the Union defendants under state law."), *aff'd*, 854 F. App'x 920 (9th Cir. 2021), *cert. denied sub nom. Anderson v. Serv. Emps. Int'l Union Loc. 503*, 142 S. Ct. 764 (2022).

Cal. Educ. Code § 45060(a) provides for the deduction of union dues only upon written authorization by the employee. Subdivision (c) states: "[t]he revocable written authorization shall remain in effect until expressly revoked in writing by the employee, pursuant to the terms of the written authorization." Here, Plaintiff alleges UTLA failed to instruct the District to stop deducting union dues from his pay after he made a valid request to revoke his membership and authorization pursuant to the terms of his Membership Authorization. Compl. ¶¶ 55, 62. Thus, in alleging that UTLA refused to honor his valid written revocation of authorization, Compl. ¶¶ 40-41, Plaintiff alleges that UTLA was "acting contrary to the relevant policy articulated by the State," which only permits the deduction of union dues pursuant to a valid authorization. *See Collins v. Womancare*, 878 F.2d 1145, 1153 (9th Cir. 1989). Accordingly, Plaintiff fails to allege that the deduction of union dues resulted from the exercise of a right or privilege created by the state or a rule imposed by the state.

As for the second prong, "[t]he Supreme Court has articulated four tests for determining whether a private party's actions amount to state action: (1) the public function test; (2) the joint action test; (3) the state compulsion test; and (4) the governmental nexus test." *Tsao*, 698 F.3d at 1140 (brackets and citation omitted). Here, Plaintiff argues that UTLA acted "'in concert'" with the state "'in effecting a particular deprivation of constitutional right,'" and thus the joint action test applies. *See* Opp. 20 (quoting *Tsao*, 698 F.3d at 1140). "Joint action exists where the government affirms, authorizes, encourages, or facilitates unconstitutional conduct through its involvement with a private party, or otherwise has so far insinuated itself into a position of interdependence with the non-governmental party that it must be recognized as a joint participant in the challenged activity." *Ohno*, 723 F.3d at 996 (internal citations, quotations, and brackets omitted).

The Ninth Circuit squarely addressed this question in *Belgau v. Inslee*, 975 F.3d 940, 946-49 (9th Cir. 2020), *cert. denied,* 141 S. Ct. 2795 (2021), finding that "private dues agreements do not trigger state action and independent constitutional scrutiny." *See also id.* at 949 (quoting *Roberts v. AT&T Mobility LLC*, 877 F.3d 833, 949 (9th Cir. 2017) ("there is no state action simply because the state enforces [a] private agreement")). In *Belgau*, *id.* at 945, employees signed union membership cards which authorized union dues to be deducted from their pay. These employees later notified the union that they wished to end their membership and stop paying union dues. *Id.* at 946. However, based on the terms of their membership agreements, which authorized dues deductions through the end of irrevocable one-year terms, the state continued to deduct union dues from their pay. *Id.*

Plaintiff argues that *Belgau* is inapposite because unlike the plaintiffs there, he was not subject to a binding agreement once he requested to end his union membership. Opp. 23-24. But like Plaintiff here, the plaintiffs in *Belgau* were also challenging the validity of their union membership agreements. *See id.* at 950; *see also Belgau v. Inslee*, 359 F. Supp. 3d 1000, 1012 (W.D. Wash. 2019), *aff'd,* 975 F.3d 940 (9th Cir. 2020) (Plaintiffs "dispute[d] whether the agreements they signed [were] valid."). As in *Belgau*, 975 F.3d at 947, "[t]he state's role here was to permit the private choice of the parties, a role that is neither significant nor coercive." The deduction of union dues from Plaintiff's pay based on UTLA's representations that Plaintiff authorized such deductions, does not amount to state action. *See Am. Mfrs. Mut. Ins. Co. v. Sullivan*, 526 U.S. 40, 52 (1999) ("Action taken by private entities with the mere approval or acquiescence of the State is not state action.") (finding no state action where the State merely enforced decision to withhold payment for disputed medical treatment made by private insurer); *see also Bain v. Cal. Tchrs. Ass'n*, Case No. 2:15-cv-02465-SVW (AJW), 2016 WL 6804921, at *8 (C.D. Cal. May 2, 2016) ("Automatic payroll deductions are the sort of ministerial act that do not convert the Union Defendants' membership dues and expenditures decisions into state action."); *Roberts*, 877 F.3d at 844 (9th Cir. 2017). Accordingly, the court DISMISSES Plaintiff's claims against UTLA without leave to amend.

CONCLUSION

For the foregoing reasons, the court GRANTS Defendants' Motions to Dismiss, (Dkts. 27, 28, 31) without leave to amend, as amendment would be futile.[7]

IT IS SO ORDERED.

Dated: July 20, 2022

/s/ Fernando L. Aenlle-Rocha
FERNANDO L. AENLLE-ROCHA
United States District Judge

---

[7] Having already dismissed all of Plaintiff's claims, the court does not address whether Plaintiff has stated a claim for violations of the First and Fourteenth Amendments.

APPENDIX F

United States Constitution Amendment I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceable to assemble, and to petition the Government for a redress of grievances.

APPENDIX G

California Code, Education Code

EDC § 45060

(a) Except as provided in Section 45061, the governing board of each public school employer, when drawing an order for the salary payment due to a certificated employee of the employer, shall reduce the order by the amount which it has been requested in a revocable written authorization by the employee to deduct for the purpose of paying the dues of the employee for membership in any local professional organization or in any statewide professional organization, or in any other professional organization affiliated or otherwise connected with a statewide professional organization which authorizes the statewide organization to receive membership dues on its behalf, or to deduct for the purpose of paying dues in, or for any other service, program, or committee provided or sponsored by, any certified or recognized employee organization, of which the employee is a bargaining unit member, whose membership consists, in whole or in part, of employees of the public school employer, and which has as one of its objectives improvements in the terms or conditions of employment for the advancement of the welfare of the employees. Any revocation of a written authorization shall be in writing and shall be effective provided the revocation complies with the terms of the written authorization.

(b) Unless otherwise provided in an agreement negotiated pursuant to Chapter 10.7 (commencing with Section 3540) of Division 4 of Title 1 of Government Code, the governing board shall, no later than the 10th day of each pay period for certificated employees, draw its order upon the funds of the employer in favor of

the organization designated by the employee for an amount equal to the total of the dues or other deductions made with respect to that organization for the previous pay period and shall transmit the total amount to that organization no later than the 15th day of each pay period for certificated employees. When timely transmittal of dues or other payments by a county is necessary for a public school employer to comply with the provisions of this section, the county shall act in a timely manner. The governing board may deduct from the amount transmitted to the organization on whose account the dues or other payments were deducted the actual reasonable costs of making the deduction.

(c) The revocable written authorization shall remain in effect until expressly revoked in writing by the employee, pursuant to the terms of the written authorization. Whenever there is a change in the amount required for the payment to the organization, the employee organization shall provide the employee with adequate and necessary data on the change at a time sufficiently prior to the effective date of the change to allow the employee an opportunity to revoke the written authorization, if desired and if permitted by the terms of the written authorization. The employee organization shall provide the public school employer with notification of the change at a time sufficiently prior to the effective date of the change to allow the employer an opportunity to make the necessary adjustments and with a copy of the notification of the change which has been sent to all concerned employees.

(d) The governing board shall not require the completion of a new deduction authorization when a dues or other change has been effected or at any other

time without the express approval of the concerned employee organization.

(e) The governing board shall honor the terms of the employee's written authorization for payroll deductions. Employee requests to cancel or change authorizations for payroll deductions for employee organizations shall be directed to the employee organization rather than to the governing board. The employee organization shall be responsible for processing these requests. The governing board shall rely on information provided by the employee organization regarding whether deductions for an employee organization were properly canceled or changed, and the employee organization shall indemnify the public school employer for any claims made by the employee for deductions made in reliance on that information.

(f) A certified or recognized employee organization that certifies that it has and will maintain individual employee authorizations shall not be required to submit to the governing board of a public school employer a copy of the employee's written authorization in order for the payroll deductions described in this section to be effective, unless a dispute arises about the existence or terms of the written authorization. The employee organization shall indemnify the public school employer for any claims made by the employee for deductions made in reliance on its notification.

Case 2:21-cv-02313-FLA-AS Document 1-2 Filed 03/16/21 Page 1 of 1 Page ID #:22

UTLA ALL IN 1-2-3

Building POWER *for the Schools LA Students Deserve.*

The Schools LA Students Deserve

We can make our schools great places to educate, work, and learn by:

- Achieving fair pay and protecting healthcare
- Improving class sizes and social/emotional supports for students
- Advancing Community Schools and other successful school models
- Improving working conditions & learning conditions
- Enhancing and defending professional rights
- Organizing against privatization
- Working for social justice

ENT'D FEB 2 0 2018

United Teachers Los Angeles (UTLA) Membership Authorization

1 Yes, I want to join with my fellow employees and become a member of UTLA. I hereby request and voluntarily accept membership in UTLA and I agree to abide by its Constitution and Bylaws. I authorize UTLA to act as my exclusive representative in collective bargaining over wages, benefits, and other terms and condition of employment with my employer. By joining UTLA, I am also joining our state and national affiliates, CFT, NEA, AFT, and NEA.

SIGNATURE [signature] DATE 2-11-18

Dues Payment and Deduction Authorization

2 I recognize the need for a strong UTLA and believe everyone represented by our union should pay their fair share to support our union's activities. I hereby (1) agree to pay regular monthly dues uniformly applicable to members of UTLA; and (2) request and voluntarily authorize my employer to deduct from my earnings and to pay over to UTLA such dues. This agreement to pay dues shall remain in effect and shall be irrevocable unless I revoke it by sending written notice via U.S. mail to UTLA ~~during the period not less than thirty (30) days and not more than sixty (60) days before the annual anniversary date of this agreement or as otherwise required by~~ law. This agreement shall be automatically renewed from year to year unless I revoke it in writing during the window period, irrespective of my membership in UTLA.

SIGNATURE [signature] DATE 2-11-18

RECEIVED
FEB 16 2018
BY: A.D

Employee #

Social Security (last 4)

GLENN

Middle Initial
M

Last Name
LAIRD

Home Address

City

Zip

Personal email

Cell Phone

Home Phone

School: ☒ LAUSD ☐ Independent Charter School Name/Itinerant Chapter Eagle Rock High

Employment types: ☒ Full-time ☐ Part-Time, Substitute, Hourly ☒ Early Education Center

By providing my phone number, I understand that UTLA and its locals and affiliates may use automated calling technologies and/or text message me on my cellular phone on a periodic basis. UTLA will never charge for text message alerts. Carrier message and data rates may apply to such alerts. To stop receiving text messages, text the word STOP back to the incoming number.

Hold Politicians Accountable - PACE Deduction Authorization

3 UTLA Political Action Council of Educators ("PACE") collects contributions that are used for legislative advocacy and to help elect friends of education to local, state and federal office. The National Education Association Political Action Committee ("NEA-PAC") and the American Federation of Teachers Council of Political Education ("AFT-COPE") each perform similar functions. Contributions to any of these PACs are strictly voluntary and are not tax deductible, nor are they a condition of membership in UTLA, NEA, the AFT or any affiliated organization. A member may contribute more or less than the amount suggested on this form, or may decide to not make any contribution, and this will not affect his/her status, rights or benefits in UTLA or any of its affiliates. *At least eighty-five percent of a member's contribution will be retained by UTLA-PACE and no more than fifteen percent goes to your national PAC.* This authorization shall remain in force until canceled by written notice from UTLA or by the member who signed this authorization. I hereby authorize my employer to deduct from my salary and forward to PACE:

☐ Bronze $8.33 a month ☐ Silver $16.67 a month ☐ Gold $25 a month ☐ Platinum $35 a month ☐ Diamond $45 a month

SIGNATURE [struck through] DATE