No. 23-1111

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

RESPONDENT LOS ANGELES UNIFIED SCHOOL DISTRICT'S BRIEF IN OPPOSITION

AMELIA A. MCDERMOTT
LITTLER MENDELSON, P.C.
501 W. Broadway
Suite 900
San Diego, CA 92101
Telephone: 619.232.0441
amcdermott@littler.com

CONNIE L. MICHAELS
Counsel of Record
LITTLER MENDELSON, P.C.
2049 Century Park East, 5th Floor
Los Angeles, CA 90067
Telephone: 310.553.0308
cmichaels@littler.com

Counsel for Respondent
Los Angeles Unified School District

July 22, 2024

QUESTION PRESENTED

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 Do nonmember public employees who have rescinded their prior consent to union dues deductions enjoy the same right to freedom from compelled speech as employees who never affirmatively consented?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"?

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Other Authorities

INTRODUCTION

The gravamen of Petitioner Glenn Laird's ("Laird") Petition for Writ of Certiorari ("Petition") is that his union, Respondent United Teachers Los Angeles ("UTLA"), violated his constitutional right to be free from compelled speech while acting "under color of law." In the District Court, Laird did not oppose Respondent Los Angeles Unified School District's ("LAUSD") argument that it is barred from liability by sovereign immunity under the Eleventh Amendment. ER-116 fn. 5. As a result, the District Court properly found Laird "thus concedes that his claims against LA Unified [LAUSD] are barred." ER-116 fn. 5. Through both his instant Petition and his brief on appeal to the Ninth Circuit, Laird does not raise as an issue this ground upon which judgment was entered in favor of LAUSD.

As a result, Laird has waived his right to seek any reversal of the judgment entered in favor of LAUSD, which should be upheld and affirmed regardless of whether review is granted. Nevertheless, as explained below, Laird's claim against the LAUSD is barred because school districts are arms of the state for purposes of Eleventh Amendment immunity.

STATEMENT OF THE CASE

I. FACTUAL AND PROCEDURAL BACKGROUND

A. Laird Concedes LAUSD Is A Political Subdivision Of The State Of California In His Complaint.

On March 16, 2021, Laird filed his Complaint for Declaratory Judgment, Injunctive Relief, and Damages for Violation of Civil Rights (42 U.S.C. § 1983) against Respondents UTLA, LAUSD, and Xavier Becerra in his official capacity as Attorney General of California. ER-03-31. As alleged in his Complaint, Laird filed suit against LAUSD because it 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, [LAUSD] is responsible for deducting dues from public employee's wages and remitting the dues to UTLA.

ER-06 ¶6.

Thus, through his Complaint, Laird conceded that LAUSD is an arm of the state for purposes of Eleventh Amendment immunity.

B. Review Should Not Be Granted Because UTLA Only Deducts Wages From Workers Who Voluntarily Authorize Deductions.

Membership in UTLA is voluntary. DistrictSER-032 ¶5. Educators such as Laird become members by signing written membership agreements that authorize dues to be deducted from the paychecks on an ongoing basis. DistrictSER-032 ¶5. UTLA provides a list to LAUSD identifying those bargaining unit workers who have joined UTLA and authorized dues deductions. DistrictSER-032 ¶6. UTLA has implemented systems to ensure that the list includes only workers who have voluntarily authorized deductions from their paychecks, as California law requires. DistrictSER-032 ¶6. UTLA also has a protocol for removing workers from the list if they revoke their authorizations in accordance with their membership agreement. DistrictSER-032 ¶6.

UTLA's records show that Laird signed a membership agreement dated February 11, 2018, through which he voluntarily authorized dues deductions. DistrictSER-032 ¶7. In June 2020, Laird sent UTLA a letter resigning from his membership in UTLA. DistrictSER-032 ¶8. Laird's letter was postmarked June 12, 2020, and was delivered to UTLA on or about June 24, 2020. DistrictSER-032 ¶8. UTLA responded with a standard form letter dated June 23, 2020, which notified Laird that his membership would be terminated, but his deductions would continue because he was outside of the window

period to revoke dues authorization as set forth in the membership agreement, which ran from December 13, 2020 to January 12, 2021. DistrictSER-032 ¶9.

After back and forth between Laird and UTLA, in a letter dated December 22, 2020, UTLA sent a letter to Laird informing him that his request to stop dues deductions was being processed and that the final deduction of membership dues from his pay would be noted on his January 5, 2021 paycheck. DistrictSER-032 ¶13. As stated in UTLA's December 22, 2020 letter, UTLA removed Laird from the list of employees who had authorized dues deductions, Laird's dues deductions ended after the January 5, 2021 paycheck, and no payments to UTLA have been deducted from his pay since that time. DistrictSER-032 ¶14.

C. Review Should Not Be Granted Because Laird's Claims Are Moot.

Laird did not notify UTLA that he believed that his deductions should end before the window period set forth in the membership agreement because he had struck through some language in the membership agreement when he signed it in February 2018. DistrictSER-032 ¶15. UTLA did not learn of Larid's contention, which is the foundation of this Petition, until he filed suit. DistrictSER-032 ¶15.

After learning of Laird's contention that his authorization for post-resignation dues deductions was invalid based on his striking out of certain

language in the membership agreement, on April 1, 2021, UTLA, through its counsel of record, sent Laird an unconditional refund of $800.00, an amount sufficient to cover all post-resignation deductions (which equaled at most $716.32) with interest and nominal damages. DistrictSER-032 ¶17.

D. The District Court Correctly Granted LAUSD's Motion to Dismiss.

On July 20, 2022, the District Court correctly granted LAUSD's motion to dismiss. ER-107-123. Specifically, the District Court found that Laird did not address LAUSD's argument that it is barred by sovereign immunity under the Eleventh Amendment in his opposition to LAUSD's motion to dismiss in the District Court. ER-116 fn. 5. As a result, the District Court properly found Laird "thus concedes that his claims against LA Unified [LAUSD] are barred." ER-116 fn. 5.

As the District Court correctly reasoned:

> Here, [Laird] asserts claims against the [LAUSD], 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. [Laird] contends he is entitled to maintain his suit against the [LAUSD] 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, [Laird] does not actually cite any authority that supports his contention regarding sovereign immunity. *See* Opp. 34. [Laird's] argument, thus, fails.

ER-117, footnote omitted.

As a result, the District Court correctly dismissed Laird's claims against LAUSD without leave to amend. ER-117.

E. Laird Waived Any Appeal As To The Judgment In Favor Of LAUSD In The Ninth Circuit And Through His Petition.

On December 15, 2022, Laird filed his Appellant's Opening Brief in the Ninth Circuit through which he articulated four issues presented. Brief 3-5. Absent from Laird's issues on appeal was review of the District Court's grant of judgment in favor of LAUSD because it is barred by sovereign

immunity under the Eleventh Amendment. *See absence from* Brief.

Similarly, Laird's Petition to this Court omits the question of LAUSD's sovereign immunity under the Eleventh Amendment. In fact, it is devoid of any question involving sovereign immunity or the Eleventh Amendment in any capacity. If granted, review is generally confined to specific questions as framed in the petition for writ of certiorari. *Lewis v. Clarke,* 581 U.S. 155, 164 (2017) (petitioner invoked only tribal sovereign immunity in lower courts so Court refused to consider petitioner's official immunity argument, but Court agreed to consider statute-based sovereign immunity argument not raised below because it was fairly included in request to review tribal sovereign immunity issue).

II. LEGAL BACKGROUND

A. Review Should Be Denied Because Laird Lacks Article III Standing.

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).

"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).)

As the District Court correctly reasoned, "the Complaint does not contain any allegations of future injury." ER-113. As a result, Laird does not have Article III standing as follows:

> 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 [Laird] 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. [Laird's] stated intend to rejoin UTLA, 'when possible,' is conditional and entirely speculative, and insufficient to support a finding of actual and imminent future harm.

ER-114.

In this regard, "when 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).

B. Review Should Be Denied Because Under the Eleventh Amendment LAUSD Is Entitled to 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. This Court has held 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, this 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).

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), this Court recognized an important exemption 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 States, and is not barred by the Eleventh Amendment, because "an unconstitutional enactment is 'void' and therefore does not 'impact to [the officer] any immunity from responsibility to the supreme authority of the Untied States." *Pennhurst,* 465 U.S. at 102 citing *Young,* 209 U.S. at 160. 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.

"Under California law, [public] school districts are agents of the state that perform central

governmental functions." *Belanger v. Madera Unified Sch. Dist.,* 963 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 Schulman v. California (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 offices of the State Board").

REASONS FOR DENYING THE PETITION

I. LAIRD RAISES NO CIRCUIT SPLIT OR IMPORTANT CONSTITUTIONAL QUESTION AGAINST THE FINDING THAT HIS CLAIMS AGAINST LAUSD ARE BARRED BY ELEVENTH AMENDMENT IMMUNITY.

The Eleventh Amendment bars suits against the state or arms of the state (including California school districts) absent a valid waiver or abrogation of its sovereign immunity. *Belanger,* 963 F.2d 248 (9th Cir. 1992); see also *Dollonne v. Ventura Unified Sch. Dist.*, 440 Fed. App'x 533, 534 (9th Cir. 2011) (holding

the Central District of California did not err in granting a school district's motion to dismiss based on its Eleventh Amendment immunity). There is no such waiver or abrogation here, the federal claims are improperly brought, and Laird's Complaint was properly dismissed.

State sovereign immunity typically prevents federal courts from exercising subject matter jurisdiction over suits against a state, its agencies, or its officials unless either the state has waived its immunity or Congress has abrogated it. See *Seminole Tribe of Florida v. Florida*, 517 U.S. 44 (1996); *Will v. Michigan Dept. of State Police*, 491 U.S. 58, 66 (1989); *Bryant v. Tex. Dep't of Aging & Disability Servs.*, 781 F.3d 764, 769 (5th Cir. 2015). As this Court affirmed in *Regents of the University of California v. Doe*:

> The Eleventh Amendment prohibits federal courts from hearing 'any suit in law or equity, commenced or prosecuted against one of the United States....' The prohibition 'encompasses not only actions in which a State is actually named as the defendant, but also certain actions against state agents and state instrumentalities.

Kirchmann v. Lake Elsinore Unified Sch. Dist., 83 Cal. App. 4th 1098, 1101 (2000), as modified on denial of reh'g (Oct. 11, 2000); see *Regents of the University of California v. Doe*, 519 U.S. 425, 429 (1997).

The Ninth Circuit has determined that public school districts are to be considered arms of the State for purposes of immunity analysis. See *Belanger*, 963 F.2d at 254. The immunity applies as to school districts regardless of whether the district is sued for damages or injunctive relief. *Alabama v. Pugh*, 438 U.S. 781, 782 (1978). While the *Ex Parte Young* doctrine allows for an exception to the Eleventh Amendment for actions for declaratory and prospective injunctive relief, such claims must be asserted against the officials, and not the public agency. See, *e.g.*, *Alabama v. Pugh*, 438 U.S. 781 (1978) (finding the suit against the State and its Board of Corrections was barred by the State's Eleventh Amendment immunity); *Schulman,* 237 F.3d at 976 n. 9 ("Because the Trustee filed the Mandamus Adversary only against the State Board, and not against the appropriate officers of the State Board, the *Ex Parte Young* exception to Eleventh Amendment immunity is, despite the Trustee's contentions to the contrary, inapposite").

Here, it is undisputed that LAUSD is an arm of the State of California. As such, it cannot be subject to suit in federal court unless otherwise authorized by waiver language in, or interpretation of, a particular statute, neither of which exist here. Accordingly, all of Laird's claims against the LAUSD were barred and were properly dismissed for lack of subject matter jurisdiction. This determination by the District Court was not challenged on appeal to the Ninth Circuit and it is not presented as a question for review to this Court. As a result, if this Court grants review, it should be limited to the question of whether UTLA vi-

olated Laird's constitutional right to be free from compelled speech while acting "under color of law" and should not include Eleventh Amendment sovereign immunity.

CONCLUSION

For the foregoing reasons, the petition for writ of certiorari should be denied.

Respectfully submitted,

AMELIA A. MCDERMOTT
LITTLER MENDELSON, P.C.
501 W. Broadway
Suite 900
San Diego, CA 92101
Telephone: 619.232.0441
Facsimile: 619.232.4302
amcdermott@littler.com

CONNIE L. MICHAELS
Counsel of Record
LITTLER MENDELSON, P.C.
2049 Century Park East, 5th Floor
Los Angeles, CA 90067
Telephone: 310.553.0308
Facsimile: 310.553.5583
cmichaels@littler.com

Counsel for Respondent
Los Angeles Unified School District

July 22, 2024