No. 19-56271

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Cara O'Callaghan and Jeneė Misraje,

Plaintiffs-Appellants,

v.

Janet Napolitano, in her official capacity as President of the University of California; Teamsters Local 2010; and Xavier Becerra, in his official capacity as Attorney General of California,

Defendants-Appellees.

On Appeal from the United States District Court
for the Central District of California
No. 2:19-CV-02289
Honorable James V. Selna

SUPPLEMENTAL BRIEF OF APPELLEE TEAMSTERS LOCAL 2010

Andrew H. Baker, SBN 104197
BEESON, TAYER & BODINE
492 Ninth Street, Suite 350
Oakland, CA 94607-4051
Telephone: (510) 625-9700
Facsimile: (510) 625-8275
Email: abaker@beesontayer.com

Attorneys for Defendant-Appellee Teamsters Local 2010

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INTRODUCTION

Defendant-Appellee Teamsters Local 2010 (hereinafter "Local 2010") submits this supplemental brief in response to the November 3, 2020, supplemental brief of Plaintiffs-Appellants Cara O'Callaghan and Jenee Misraje addressing this Court's decision in *Belgau v. Inslee*, 975 F.3d 940 (9th Cir. 2020), *cert. denied*, 2021 U.S. LEXIS 3373 (June 21, 2021) (hereinafter "*Belgau*").

Local 2010 currently has pending before this Court a motion to dismiss the complaint in this matter as moot, or, in the alternative, to remand the case to the court below to address the mootness issue. Thus, the Court need consider the merits of the case, and the impact *Belgau* has on this matter, only if the Court rejects altogether Local 2010's motion regarding mootness.

Belgau is controlling on the merits of this case. The facts underlying *Belgau* are nearly identical to the facts in this matter, save one detail: the contracts the *Belgau* plaintiffs entered into with their union for the deduction of dues were for a series of one-year terms, while the contract O'Callaghan entered into with Local 2010 was for a term of about four years (the duration of the applicable collective bargaining agreement). (The contract Misraje entered into with Local 2010 was identical in duration to that addressed in *Belgau*.) Appellants have seized on the longer term of the O'Callaghan contract to argue that *Belgau* does not apply here.

We show below that the longer term of O'Callaghan's contract with Local 2010 is a difference without legal significance.

ARGUMENT

In *Belgau*, the Court concluded that the plaintiff employees were unable to establish the state action necessary to bring a claim for violation of the First Amendment. *Belgau* held that a public employer's role in processing payroll deductions authorized by a private agreement between a labor union and an employee does not constitute state action. 975 F.3d at 946-948. That same holding applies here where O'Callaghan and Misraje entered into private contracts with Local 2010 authorizing the University of California to deducts dues from their paychecks and to forward those dues to Local 2010. Under *Belgau*, there is no state action and thus no viable constitutional claim in the present case.

Appellants seek to distinguish *Belgau* in the case of O'Callaghan's agreement with Local 2010 with a fallacious contention that the *Belgau* decision found a lack of state action only where the private agreement has a term of one year or less. Appellants seize on the following *dicta* from *Belgau* in support of this improbable argument:

> We note that there is an easy remedy for Washington public employees who do not want to be part of the union: they can decide not to join the union in the first place, or they can resign their union membership after joining. *Employees demonstrated the freedom do so, subject to a limited payment commitment period*.

975 F.3d at 952 (emphasis added). But the reference here to a "limited payment commitment period" provides no basis whatsoever to distinguish *Belgau* from the case at hand.

First, even assuming *arguendo* that this reference to a limited payment commitment period somehow limits the application of the *Belgau* conclusion that no state action is entailed in a public employer's deductions of dues pursuant to a private agreement between a labor union and an employee, the fact of the matter is that O'Callaghan's contract with Local 2010, just like the contracts of the *Belgau* plaintiffs, is indeed for a "limited" term. That the limited term is four years instead of one year in no way changes the outcome; O'Callaghan, as did the *Belgau* plaintiffs, freely entered into a contract with her union that was for a set, limited duration.

In any event, it is clear from the analysis in *Belgau* that the specific duration of the private contract between the employee and his or her union is irrelevant to the conclusion that no state action is involved in the public employer's deduction of dues pursuant to that private contract. In concluding that no state action was involved, the Court engaged in the following analysis.

- The Court found that "the 'source of the alleged constitutional harm" is not a state statute or policy but the particular private agreement

between the union and Employees." 975 F.3d at 947. The duration of the private agreement is irrelevant to this conclusion.

- The Court concluded that there was no joint action between the state and a private party. Id. The duration of the private agreement is irrelevant to this conclusion.
- The Court found that the "state's role here was to permit the private choice of the parties, a role that is neither significant nor coercive," and noted, "Although Washington was required to enforce the membership agreement by state law, it had no say in shaping the terms of that agreement." Id. The duration of the private agreement is irrelevant to this conclusion.
- The Court found that the state's role in the processing of payroll deductions was merely ministerial. 975 F.3d at 948. The duration of the private agreement is irrelevant to this conclusion.
- Finally, the Court concluded that there was no "symbiotic relationship" between the state and the private labor union. Id. The duration of the private agreement is irrelevant to this conclusion.

Thus, each and every element of the Court's analysis by which it concluded there was no state action was arrived at without reference to the length of the term of the private agreement that underlay the state's deduction of union dues.

Accordingly, Appellants' attempt to distinguish *Belgau* on the duration of the O'Callaghan contract with Local 2010 must be rejected. The following conclusion in *Belgau* applies equally to Appellants' claim that their Constitutional rights were violated by the enforcement of their contracts with Local 2010:

> Because the private dues agreements do not trigger state action and independent constitutional scrutiny, the district court properly dismissed the claims against [the union].

975 F.3d at 949.

CONCLUSION

Again, Local 2010 contends that the dispute in this matter is now moot and should for that reason be dismissed. In the alternative, for the foregoing reasons, as well as the reasons set forth in Local 2010's previous briefing on the merits, Local 2010 respectfully requests that this Court affirm the final judgment of the trial court in this matter.

Respectfully submitted,

Dated: August 6, 2021

By: /s/ Andrew H. Baker
ANDREW H. BAKER
Beeson, Tayer & Bodine

Attorneys for Defendant-Appellee
Teamsters Local 2010

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

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CERTIFICATE OF SERVICE

I hereby certify that on August 6, 2021, I electronically filed the forgoing Supplemental Brief of Appellant Teamsters Local 2010 with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

Dated: August 6, 2021

/s/ Andrew H. Baker
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