

1 Mark W. Bucher
2 mark@calpolicycenter.org
3 CA S.B.N. # 210474
4 Law Office of Mark W. Bucher
5 18002 Irvine Blvd., Suite 108
6 Tustin, CA 92780-3321
7 Phone: 714-313-3706
8 Fax: 714-573-2297

7 Brian Kelsey (*Pro Hac Vice To Be Filed*)
8 bkelsey@libertyjusticecenter.org
9 Jeffrey M. Schwab (*Pro Hac Vice To Be Filed*)
10 jschwab@libertyjusticecenter.org
11 Senior Attorneys
12 Liberty Justice Center
13 190 South LaSalle Street
14 Suite 1500
15 Chicago, Illinois 60603
16 Phone: 312-263-7668
17 Fax: 312-263-7702

18 *Attorneys for Plaintiff*

19 **UNITED STATES DISTRICT COURT**
20 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

21 Thomas Few,

22 Plaintiff

23 v.

24 United Teachers of Los Angeles; Los
25 Angeles Unified School District; Xavier
26 Becerra, in his official capacity as Attorney
27 General of California,

28 Defendants.

Case No.

**COMPLAINT SEEKING
DECLARATORY RELIEF,
INJUNCTIVE RELIEF, AND
DAMAGES FOR DEPRIVATION OF
FIRST AMENDMENT RIGHTS**

1 **INTRODUCTION**

2 1. Government employees have a First Amendment right not to be compelled by
3 their employer to join a union or to pay any fees to that union unless an employee
4 “affirmatively consents” to waive that right. *Janus v. AFSCME*, 138 S. Ct. 2448, 2486
5 (2018). Such a waiver must be “freely given and shown by ‘clear and compelling’
6 evidence.” *Id.*

7 2. Union dues deduction agreements signed in jurisdictions that required agency
8 fees to be paid by non-union members before the Supreme Court’s decision in *Janus* are no
9 longer enforceable because employees who signed such agreements could not have waived
10 their right to not join or pay a union freely because the Supreme Court had not yet
11 recognized that right. Such employees must be freely given the choice either to join the
12 union or not to join the union without paying agency fees to subsidize union advocacy.

13 3. Plaintiff, Thomas Few, is a special education teacher employed by Defendant
14 Los Angeles Unified School District (“LAUSD”). Prior to the Supreme Court’s decision in
15 *Janus* on June 27, 2018, Mr. Few was a union member of Defendant United Teachers of
16 Los Angeles (“UTLA”).

17 4. UTLA is violating Mr. Few’s First Amendment rights to free speech and
18 freedom of association by refusing to allow him to withdraw his membership and by
19 continuing to charge him union dues based solely on a union card Mr. Few signed before
20 the *Janus* decision, which is now unenforceable.

21 5. LAUSD is violating Mr. Few’s First Amendment rights to free speech and
22 freedom of association by continuing to withhold union dues from his paycheck, and, on
23 information and belief, is transmitting those funds to Defendant UTLA, despite not having
24 received freely given affirmative consent from Mr. Few to do so.

25 6. The State of California is violating Mr. Few’s First Amendment rights to free
26 speech and freedom of association through its laws that authorize public schools to require
27 employees to associate with labor unions and to require that those unions be the “exclusive
28 representative” of all employees. Cal. Gov’t Code §§ 3543, 3543.1.

1 Francisco Sepulveda Middle School in LAUSD in September 2016, where he currently
2 works.

3 16. When Mr. Few began his employment with LAUSD in August 2016, he joined
4 UTLA. LAUSD allowed the union meeting to be held in a public school classroom with
5 several new teachers present and watching, all of whom were informed by multiple UTLA
6 representatives to join the union. When he joined UTLA, neither UTLA nor LAUSD
7 informed him that he had the right not to join the union.

8 17. On February 13, 2018, Mr. Few was again offered and signed a union
9 membership card. Once again, he was not informed by UTLA or LAUSD of his right not
10 to join the union.

11 18. Later in 2018, Mr. Few learned that he had a legal right not to be a union
12 member and to pay agency fees instead of full union dues. On or about June 2, 2018, Mr.
13 Few sent a letter to the union asking to resign his membership and to become an agency fee
14 payer.

15 19. On June 27, 2018, the Supreme Court issued its decision in the *Janus* case.

16 20. On July 13, 2018, UTLA responded to Mr. Few's resignation letter by rejecting
17 it. UTLA stated that Mr. Few could not resign from the union until his resignation window,
18 which was "not less than thirty (30) days and not more than sixty (60) days before" the
19 anniversary of his union membership on February 13.

20 21. After the Supreme Court issued its decision in *Janus*, Mr. Few learned that he
21 had the right both not to be a member of the union and not to pay any money to the union.
22 Mr. Few submitted a second resignation letter to UTLA on August 3, 2018, but UTLA did
23 not bother to respond to Mr. Few's second letter.

24 22. Mr. Few also sent a copy of the August 3, 2018 letter to LAUSD, but he did
25 not receive a response from LAUSD either.

26 23. On or about October 10, 2018, Mr. Few submitted a third letter to UTLA,
27 explaining that the union agreement he had signed in February 2018 was invalid after the
28 Supreme Court's decision in *Janus*. Mr. Few requested, once again, to resign from the union

1 and stop having its dues deducted from his paycheck. He pleaded that he may have to resort
2 to legal action to uphold his constitutional rights, but his third letter was also denied because
3 it was not received within the resignation window.

4 24. LAUSD has deducted dues of approximately eighty-six dollars (\$86) per
5 month from Mr. Few's paychecks since he began employment in August 2016 and has
6 remitted those dues to UTLA. LAUSD continues to deduct those dues, despite Mr. Few's
7 repeated requests that it be stopped.

8 25. Under California law, unions that wish to represent public school employees
9 need only submit a request for recognition based on union membership cards signed by a
10 simple majority of the relevant bargaining unit. Employers may not question whether the
11 union legitimately represents the will of the employees. Cal. Gov't Code § 3544.1.

12 26. Under California law, a secret ballot election is required only when multiple
13 unions claim to represent the bargaining unit. Cal. Gov't Code § 3544.7. To qualify for the
14 ballot, a union must have union cards signed by 30 percent of the bargaining unit. Cal. Gov't
15 Code 3544.1(b).

16 27. Once the exclusive representative is certified, only that union "may represent
17 that unit in their employment relations with the public school employer." Cal. Gov't Code
18 § 3543.1(a). An employee of the school district "shall not meet and negotiate with the public
19 school employer." Cal. Gov't Code § 3543. The union then has the exclusive right to
20 represent the employees as to "wages, hours of employment, and other terms and conditions
21 of employment." Cal. Gov't Code § 3543.2(a)(1).

22 28. The union's exclusive right to represent employees is not limited only to
23 matters of employment but also expressly includes the right "to consult on the definition of
24 educational objectives, the determination of the content of courses and curriculum, and the
25 selection of textbooks." Cal. Gov't Code § 3543.2(3).

26 29. Certified unions even have the right to access the workplace and use the
27 employer's internal communications facilities to speak directly with employees. Cal. Gov't
28 Code § 3543.1(b).

1 35. 42 U.S.C. 1983 provides a cause of action for both damages and injunctive
2 relief against any person who, under color of law of any state, subjects any person within
3 the jurisdiction of the United States to a deprivation of any rights, privileges, or immunities
4 secured by the Constitution.

5 36. Mr. Few does not affirmatively consent to remaining a member of UTLA or
6 to his union dues being withheld by LAUSD.

7 37. LAUSD is a state entity that is deducting dues from Mr. Few's paycheck under
8 color of state law.

9 38. UTLA is acting in concert with LAUSD to collect union dues from Mr. Few's
10 paycheck without his consent and refuses to withdraw his union membership. In doing so,
11 UTLA is acting under color of state law. UTLA is acting pursuant to an exclusive collective
12 bargaining agreement negotiated with a state entity, is following the laws of the State of
13 California in doing so, and is utilizing the state payroll system to exact its dues.

14 39. UTLA and LAUSD have limited withdrawal from the union to an arbitrary 30-
15 day period per year and insist that Mr. Few can only exercise his First Amendment rights
16 at that time.

17 40. The actions of UTLA and LAUSD constitute a violation of Mr. Few's First
18 Amendment rights to free speech and freedom of association not to join or financially
19 support a union without his affirmative consent.

20 41. From August 2016 to February 13, 2018, because he was not given the option
21 of paying nothing to the union as a non-member of the union, Mr. Few could not have
22 provided affirmative consent to UTLA or LAUSD to have union dues deducted from his
23 paycheck.

24 42. From February 13, 2018 until he requested to be removed from the union on
25 June 2, 2018, Mr. Few's consent to dues collection was not "freely given" because it was
26 given based on an unconstitutional choice between union membership or the payment of
27 union agency fees without the benefit of membership. *Janus*, 138 S. Ct. at 2486.

1 43. If Mr. Few's choice had been between paying eighty-six dollars a month in
2 union dues or paying nothing, he would have chosen to pay nothing. Instead, Mr. Few was
3 given the choice to pay eighty-six dollars a month in union dues or pay three quarters of
4 that amount in union agency fees without receiving the benefits of the union. *Janus* made
5 clear that this false dichotomy is unconstitutional. *Id.* Therefore, Mr. Few's consent, which
6 was compelled by the false information given to him, was not given freely.

7 44. From June 2, 2018, when Mr. Few expressly requested removal from the
8 union, until now, Mr. Few clearly has not affirmatively consented to being a member of
9 UTLA.

10 45. Cal. Gov't Code § 3543.1 and Cal. Educ. Code §§ 45060 and 45168 give the
11 union the authority to set the terms by which employees may join or withdraw from union
12 membership. They permit union presentations at new employee orientations, implying that
13 union membership is sanctioned by the school district. Under the color of this state law,
14 UTLA has imposed an unconstitutional requirement that Mr. Few continue to pay
15 membership dues unless he withdraws during a 30-day window set by the union.

16 46. The deduction of dues and the setting of the opt-out schedule by the union
17 under Cal. Educ. Code §§ 45060 and 45168 are, therefore, an unconstitutional abridgement
18 of Mr. Few's right under the First Amendment not to be compelled to associate with
19 speakers and organizations without his consent.

20 47. Under 42 U.S.C. § 1983, Mr. Few is entitled to have Cal. Gov't Code § 3543.1
21 and Cal. Educ. Code §§ 45060 and 45168 declared unconstitutional for violating his First
22 Amendment rights to free speech and freedom of association

23 48. Mr. Few is entitled to an injunction under 42 U.S.C. § 1983 ordering UTLA
24 immediately to withdraw his union membership.

25 49. Mr. Few is entitled to an injunction under 42 U.S.C. § 1983 ordering LAUSD
26 and UTLA immediately to stop deducting union dues from his paycheck.

1 50. Mr. Few is entitled under 42 U.S.C. § 1983 to damages in the amount of all
2 dues deducted and remitted to UTLA since the commencement of his employment in
3 August 2016.

4 51. In the alternative, Mr. Few is entitled under 42 U.S.C. § 1983 to damages in
5 the amount of all dues deducted and remitted to UTLA since he sent a letter to the union
6 asking to resign his membership and to become an agency fee payer on June 2, 2018.

7 52. In the alternative, Mr. Few is entitled under 42 U.S.C. § 1983 to damages in
8 the amount of all dues deducted and remitted to UTLA since the ruling in *Janus* on June
9 27, 2018.

10 **COUNT II**

11 **The state law forcing Mr. Few to continue to associate with UTLA**
12 **without his affirmative consent violates Mr. Few’s First Amendment rights**
13 **to free speech and freedom of association and 42 U.S.C. § 1983.**

14 53. The allegations contained in all preceding paragraphs are incorporated herein
15 by reference.

16 54. “Compelling individuals to mouth support for views they find objectionable
17 violates that cardinal constitutional command, and in most contexts, any such effort would
18 be universally condemned.” *Janus*, 138 S. Ct. at 2463.

19 55. For this reason, the Supreme Court has repeatedly affirmed that “[f]orcing free
20 and independent individuals to endorse ideas they find objectionable is always demeaning
21 . . . a law commanding “involuntary affirmation” of objected-to beliefs would require “even
22 more immediate and urgent grounds” than a law demanding silence.” *Janus*, 138 S. Ct. at
23 2464 (2018) (quoting *West Virginia Bd. of Ed. v. Barnette*, 319 U. S. 624, 633 (1943)).

24 56. Therefore, courts should scrutinize compelled associations strictly, because
25 “mandatory associations are permissible only when they serve a compelling state interest
26 that cannot be achieved through means significantly less restrictive of associational
27 freedoms.” *Knox v. SEIU*, 567 U.S. 298, 310 (quoting *Roberts v. United States Jaycees*, 468
28 U.S. 609, 623 (1984)) (internal quotation marks omitted).

1 57. In the context of public sector unions, the Supreme Court has likewise
2 recognized that “[d]esignating a union as the employees’ exclusive representative
3 substantially restricts the rights of individual employees. Among other things, this
4 designation means that individual employees may not be represented by any agent other
5 than the designated union; nor may individual employees negotiate directly with their
6 employer.” *Janus*, 138 S. Ct. at 2460

7 58. California law expressly grants the union the right to speak on Mr. Few’s
8 behalf on matters of serious public concern, including the salaries and benefits received by
9 school teachers, how school districts should deal with financial challenges, whether or not
10 merit-based pay would improve educational outcomes for California’s children, and even
11 what curriculum those children should be taught. Cal. Gov’t Code § 3543.2. These topics
12 are inherently political questions in the context of public sector unions. *Janus*, 138 S. Ct.
13 2473.

14 59. The State of California, through Cal. Gov’t Code §§ 3543 and 3543.1, has
15 authorized LAUSD to designate UTLA as Mr. Few’s exclusive representative in negotiating
16 the terms and conditions of his employment.

17 60. Under color of state law, UTLA has acted as Mr. Few’s exclusive
18 representative in negotiating the terms and conditions of his employment.

19 61. Under color of state law, LAUSD has negotiated the terms and conditions of
20 Mr. Few’s employment with UTLA.

21 62. This designation compels Mr. Few to associate with the union and, through its
22 representation of him, it compels him to petition the government with a certain viewpoint,
23 despite that viewpoint being in opposition to Mr. Few’s own goals and priorities for the
24 State of California.

25 63. The exclusive representative provisions of Cal. Gov’t Code §§ 3543 and
26 3543.1; the requirement that Mr. Few join a union or support it with an agency fee under
27 Cal. Gov’t Code § 3546; the right of a union to control all negotiations regarding not only
28 employment but curricula and other matters of policy under Cal. Gov’t Code § 3543.2; the

1 prohibition against Mr. Few speaking for himself as an employee to his employer under
2 Cal. Gov't Code § 3543.1(a); and all related provisions are, therefore, an unconstitutional
3 abridgement of Mr. Few's right under the First Amendment not to be compelled to associate
4 with speakers and organizations without his consent.

5 64. Under 42 U.S.C. § 1983, Mr. Few is entitled to have Cal. Gov't Code §§ 3543,
6 3543.1, 3543.2, and 3546 declared unconstitutional for violating his First Amendment
7 rights to free speech and freedom of association.

8 **PRAYER FOR RELIEF**

9 Mr. Few respectfully requests that the Court:

10 a. Declare that limiting the ability of Mr. Few to resign his union
11 membership to a window of time is unconstitutional because he did not provide
12 affirmative consent;

13 b. Declare that Mr. Few's signing of the union card cannot provide a basis
14 for his affirmative consent to waive his First Amendment rights upheld in *Janus*
15 because such authorization was based on the unconstitutional choice between paying
16 the union as a member or paying the union as a non-member;

17 c. Declare that the practice by the Los Angeles Unified School District of
18 withholding union dues from Mr. Few's paycheck was unconstitutional because Mr.
19 Few did not provide affirmative consent for the school district to do so;

20 d. Enjoin the Los Angeles Unified School District from deducting dues
21 from Mr. Few's paycheck, unless he first provides freely given affirmative consent
22 to such deductions;

23 e. Enjoin United Teachers of Los Angeles from collecting dues from Mr.
24 Few, unless he first provides freely given affirmative consent;

25 f. Award damages against UTLA for all union dues collected from Mr.
26 Few since the commencement of his employment;

27 g. In the alternative, award damages against UTLA for all union dues
28 collected from Mr. Few since June 2, 2018;

1 h. In the alternative, award damages against UTLA for all union dues
2 collected from Mr. Few after June 27, 2018;

3 i. Declare that Mr. Few has a constitutional right not to be represented by
4 a union as his exclusive representative without his affirmative consent;

5 j. Enjoin the Attorney General from enforcing Cal. Gov't Code §§ 3543,
6 3543.1 3543.2, and 3546; Cal. Educ. Code §§ 45060 and 45168; and all other
7 provisions of California law that provide for exclusive representation of and
8 deduction of dues from employees who do not affirmatively consent to union
9 membership;

10 k. Enjoin UTLA from acting as the exclusive representative of Mr. Few;
11 and

12 l. Award any further relief to which Mr. Few may be entitled.

13 Dated: November 9, 2018

14 Respectfully submitted,

15 /s/ Mark W. Bucher

16 Mark W. Bucher
17 mark@calpolicycenter.org
18 CA S.B.N. # 210474
19 Law Office of Mark W. Bucher
20 18002 Irvine Blvd., Suite 108
21 Tustin, CA 92780-3321
22 Phone: 714-313-3706
23 Fax: 714-573-2297

24 /s/ Brian Kelsey

25 Brian Kelsey (Pro Hac Vice To Be Filed)
26 bkelsey@libertyjusticecenter.org
27 Jeffrey M. Schwab (Pro Hac Vice To Be Filed)
28 jschwab@libertyjusticecenter.org
Senior Attorneys
Liberty Justice Center
190 South LaSalle Street
Suite 1500
Chicago, Illinois 60603

1 Phone: 312-263-7668

2 Fax: 312-263-7702

3 *Attorneys for Plaintiff*

4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28