

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

BRETT HENDRICKSON,

Plaintiff,

v.

No. 18-CV-1119 RB-LF

**AFSCME COUNCIL 18 and
MICHELLE LUJAN GRISHAM, in her
official capacity as Governor of
New Mexico; and HECTOR BALDERAS,
in his official capacity as Attorney
General of new Mexico,**

Defendants.

**DEFENDANT AFSCME COUNCIL 18's
ANSWER TO FIRST AMENDED COMPLAINT**

1. Paragraph 1 states legal conclusions to which no response is required. To the extent that a response is required, AFSCME Council 18 denies the allegations of Paragraph 1.

2. Paragraph 2 states legal conclusions to which no response is required. To the extent that a response is required, AFSCME Council 18 denies the allegations of Paragraph 2.

3. AFSCME Council 18 admits that according to its records, Plaintiff Brett Hendrickson is an employee of the New Mexico Human Services Department. AFSCME Council 18 denies all other allegations of Paragraph 3.

4. AFSCME Council 18 denies all allegations of Paragraph 4.

5. AFSCME Council 18 admits that according to its records, union dues were deducted from Plaintiff's pay and transmitted to the Union. AFSCME Council 18 denies all other allegations of Paragraph 5.

6. AFSCME Council 18 denies all allegations of Paragraph 6.

7. AFSCME Council 18 denies all allegations of Paragraph 7.

8. AFSCME Council 18 denies all allegations of Paragraph 8.

9. AFSCME Council 18 admits that Plaintiff purports to bring this case under 42 U.S.C. §1983 and 28 U.S.C. §2201(a). AFSCME Council 18 denies all liability to Plaintiff and denies that Plaintiff is entitled to any relief sought in this action, and on that basis denies all other allegations of Paragraph 9.

10. AFSCME Council 18 admits that, according to its records, Plaintiff is a resident of Albuquerque and an employee of the Human Services Department. AFSCME Council 18 denies all other allegations of Paragraph 10.

11. AFSCME Council 18 admits the allegations of Paragraph 11.

12. AFSCME Council 18 admits that Michelle Lujan Grisham is the governor of New Mexico. AFSCME Council 18 lacks information and belief, and on that basis denies, all other allegations of Paragraph 12.

13. AFSCME Council 18 admits that Hector Balderas is the attorney general of New Mexico. AFSCME Council 18 lacks information and belief, and on that basis denies, all other allegations of Paragraph 13.

14. AFSCME Council 18 admits that Plaintiff purports to bring this case under 42 U.S.C. §1983 and the First and Fourteenth Amendments of the U.S. Constitution. AFSCME Council 18 admits that this Court has subject-matter jurisdiction. AFSCME Council 18 denies all liability to Plaintiff and denies that Plaintiff is entitled to any relief sought in this action, and on that basis denies all other allegations of Paragraph 14.

15. AFSCME Council 18 admits the allegations of Paragraph 15.

16. AFSCME Council 18 admits that according to its records, Plaintiff was first employed by the State of New Mexico in 2001. AFSCME Council 18 admits that Article 10, Section 1 of the collective bargaining agreement between AFSCME Council 18 and the State

effective February 24, 2004 through December 31, 2005 provided in pertinent part as follows: “Employees who have completed their probationary period and who are not members of the Union, shall as a condition of continuing employment, pay to the Union each pay period a fair share payment in an amount certified by the Union.” AFSCME Council 18 denies, all other allegations of Paragraph 16.

17. AFSCME Council 18 lacks information and belief, and on that basis denies, the allegations of Paragraph 17.

18. AFSCME Council 18 admits that, according to its records, Union dues were not deducted from Plaintiff’s pay from approximately July 14, 2006 through March 9, 2007. AFSCME Council 18 lacks information and belief, and on that basis denies, all other allegations of Paragraph 18.

19. AFSCME Council 18 lacks information and belief, and on that basis denies, all other allegations of Paragraph 19.

20. AFSCME Council 18 admits that according to its records, Plaintiff signed a union membership card on or about March 8, 2007. AFSCME Council 18 denies all other allegations of Paragraph 20.

21. AFSCME Council 18 admits that, according to its records, Plaintiff was a Union member and that union dues were deducted from his pay and transmitted to AFSCME Council 18 on a monthly basis from 2008 through December 2018. AFSME Council 18 admits that Plaintiff’s monthly dues payment in 2008 was approximately \$26, and that the monthly dues increased by nominal amounts annually. AFSCME Council 18 denies all other allegations of Paragraph 21.

22. AFSCME Council 18 admits that from 2008 to 2018, the fair share fee amount owed by fair share fee payers was approximately 85 percent of union membership dues. AFSCME Council 18 denies all other allegations of Paragraph 22.

23. Paragraph 23 states legal conclusions to which no response is required. To the extent a response is required, AFSCME Council 18 denies all allegations of Paragraph 23.

24. Paragraph 24 states legal conclusions to which no response is required. To the extent a response is required, AFSCME Council 18 denies all allegations of Paragraph 24.

25. AFSCME Council 18 lacks information and belief, and on that basis denies, the allegations of Paragraph 25.

26. AFSCME Council 18 lacks information and belief, and on that basis denies, the allegations of Paragraph 26.

27. Paragraph 27 states legal conclusions to which no response is required. To the extent a response is required, AFSCME Council 18 denies the allegations of Paragraph 27.

28. Paragraph 28 states legal conclusions to which no response is required. To the extent a response is required, AFSCME Council 18 denies the allegations of Paragraph 28.

29. Paragraph 29 states legal conclusions to which no response is required. To the extent a response is required, AFSCME Council 18 denies the allegations of Paragraph 29.

30. Paragraph 30 states legal conclusions to which no response is required. To the extent a response is required, AFSCME Council 18 denies the allegations of Paragraph 30.

31. Paragraph 31 states legal conclusions to which no response is required. To the extent a response is required, AFSCME Council 18 denies the allegations of Paragraph 31.

32. AFSCME Council 18 denies the allegations of Paragraph 32.

33. AFSCME Council 18 admits that according to the Court's docket, Plaintiff filed the original complaint in this action on November 30, 2018 against AFSCME Council 18 and the New Mexico Human Services Department.

34. AFSCME Council 18 admits that on or about December 6, 2018, it sent Plaintiff a letter that stated, "It has come to our attention through the filing of a lawsuit that you wish to resign your union membership and cancel your authorization for the deduction of membership

dues. We have no prior record that you made any such request to the union. Nevertheless, we have processed your resignation from membership. Additionally, your dues authorization provides that it is revocable during the first two weeks of December of each year. Accordingly, we are notifying your employer to stop further membership dues deductions.” AFSCME Council 18 denies all other allegations of Paragraph 34.

35. AFSCME Council 18 admits that, according to its records, Union dues were deducted from Plaintiff’s pay on or about December 14, 2018 and on or about December 28, 2018. AFSCME Council 18 lacks information and belief, and on that basis denies, all other allegations of Paragraph 35.

36. AFSCME Council 18 admits that on or about January 10, 2019 and on or about January 16, 2019, AFSCME Council 18 requested the SPO to cease deducting union dues from Plaintiff’s pay. AFSCME Council 18 denies all other allegations of Paragraph 36.

37. AFSCME Council 18 lacks information and belief, and on that basis denies, the allegations of Paragraph 37.

38. AFSCME Council 18 lacks information and belief, and on that basis denies, the allegations of Paragraph 38.

39. AFSCME Council 18 lacks information and belief, and on that basis denies, the allegations of Paragraph 39.

40. AFSCME Council 18 admits that, according to its records, Union dues were deducted from Plaintiff’s pay on or about January 11, 2019. AFSCME Council 18 lacks information and belief, and on that basis denies, the allegations of Paragraph 40.

41. AFSCME Council 18 admits that it sent a letter to Plaintiff on or about January 29, 2019 stating as follows: “AFSCME Council 18 received your request to drop your dues deduction. We notified the State Personnel Office to discontinue the deduction. Your deduction terminated with the last pay period of December 2018. If the dues deduction continued after that

pay period, AFSCME Council 18 will refund that amount.” AFSCME Council 18 denies all other allegations of Paragraph 41.

42. On information and belief, AFSCME Council 18 admits that the State has terminated dues deductions from Plaintiff, and has refunded to Plaintiff all dues that were deducted following the date of his resignation from union membership. AFSCME Council 18 lacks information and belief, and on that basis denies, all other allegations of Paragraph 42.

43. On information and belief, AFSCME Council 18 admits that the State has terminated dues deductions from Plaintiff, and has refunded to Plaintiff all dues that were deducted following the date of his resignation from union membership. AFSCME Council 18 lacks information and belief, and on that basis denies, all other allegations of Paragraph 43.

44. On information and belief, AFSCME Council 18 admits that the State has terminated dues deductions from Plaintiff, and has refunded to Plaintiff \$33.96 in dues deducted from his pay on or about December 28, 2018 and January 11, 2019. AFSCME Council 18 lacks information and belief, and on that basis denies, all other allegations of Paragraph 44.

45. AFSCME Council 18 incorporates its responses to the preceding paragraphs by reference.

46. Paragraph 46 consists of legal conclusions to which no response is required. To the extent a response is required, AFSCME Council 18 denies the allegations of Paragraph 46.

47. Paragraph 47 consists of legal conclusions to which no response is required. To the extent a response is required, AFSCME Council 18 denies the allegations of Paragraph 47.

48. Paragraph 48 consists of legal conclusions to which no response is required. To the extent a response is required, AFSCME Council 18 denies the allegations of Paragraph 48.

49. Paragraph 49 consists of legal conclusions to which no response is required. To the extent a response is required, AFSCME Council 18 denies the allegations of Paragraph 49.

50. AFSCME Council 18 denies the allegations of Paragraph 50.

51. AFSCME Council 18 admits that Michelle Lujan Grisham is a state actor. AFSCME Council 18 denies all other allegations of Paragraph 51.

52. AFSCME Council 18 admits that Hector Balderas is a state actor. AFSCME Council 18 denies all other allegations of Paragraph 52.

53. AFSCME Council 18 admits that the collective bargaining agreement currently in effect between AFSCME Council 18 and the State of New Mexico authorizes the deduction of union dues. AFSCME Council 18 admits that, according to its records, Plaintiff was a member of AFSCME Council 18, and union dues were deducted from his pay and transmitted to AFSCME Council 18 accordingly. AFSCME Council 18 denies all other allegations of Paragraph 53.

54. AFSCME Council 18 denies the allegations of Paragraph 54.

55. AFSCME Council 18 denies the allegations of Paragraph 55.

56. AFSCME Council 18 denies the allegations of Paragraph 56.

57. AFSCME Council 18 admits that it requested that the State terminate Plaintiff's union dues deductions after Plaintiff filed this action, and that according to AFSCME Council 18's records, all dues deductions from Plaintiff's pay have terminated and Plaintiff has been refunded all dues deducted from his pay on or after December 28, 2018. AFSCME Council 18 denies all other allegations of Paragraph 57.

58. AFSCME Council 18 denies the allegations of Paragraph 58.

59. AFSCME Council 18 denies the allegations of Paragraph 59.

60. AFSCME Council 18 denies the allegations of Paragraph 60.

61. AFSCME Council 18 denies the allegations of Paragraph 61.

62. AFSCME Council 18 denies the allegations of Paragraph 62.

63. AFSCME Council 18 incorporates its responses to the preceding paragraphs by reference.

64. Paragraph 64 consists of legal conclusions to which no response is required. To the extent a response is required, AFSCME Council 18 denies the allegations of Paragraph 64.

65. Paragraph 65 consists of legal conclusions to which no response is required. To the extent a response is required, AFSCME Council 18 denies the allegations of Paragraph 65.

66. Paragraph 66 consists of legal conclusions to which no response is required. To the extent a response is required, AFSCME Council 18 denies the allegations of Paragraph 66.

67. Paragraph 67 consists of legal conclusions to which no response is required. To the extent a response is required, AFSCME Council 18 denies the allegations of Paragraph 67.

68. Paragraph 68 consists of legal conclusions to which no response is required. To the extent a response is required, AFSCME Council 18 denies the allegations of Paragraph 68.

69. AFSCME Council 18 admits that it is the exclusive representative of certain bargaining units of employees of the State of New Mexico pursuant to NMSA § 10-7E-15(A). The remainder of Paragraph 69 consists of legal conclusions to which no response is required. To the extent a response is required, AFSCME Council 18 denies the remaining allegations of Paragraph 69.

70. Paragraph 70 consists of legal conclusions to which no response is required. To the extent a response is required, AFSCME Council 18 denies the allegations of Paragraph 70.

71. AFSCME Council 18 denies the allegations of Paragraph 71.

72. Paragraph 72 consists of legal conclusions to which no response is required. To the extent a response is required, AFSCME Council 18 denies the allegations of Paragraph 72.

73. AFSCME Council 18 denies the allegations of Paragraph 73.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

(Failure to State a Claim)

Plaintiff fails to state a claim on which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

(Statute of Limitations)

Plaintiff's claim is barred, in whole or in part, by the statute of limitations.

THIRD AFFIRMATIVE DEFENSE

(Good Faith)

Plaintiff's claim is barred, in whole or in part, because AFSCME Council 18 acted in good faith based on the law in effect at the time.

FOURTH AFFIRMATIVE DEFENSE

(Equitable Defenses)

Plaintiff's claim is barred, in whole or in part, by the doctrines of estoppel, waiver, consent, and/or unjust enrichment.

FIFTH AFFIRMATIVE DEFENSE

(Contract)

Plaintiff's claim is barred, in whole or in part, by a valid and enforceable contract. Any finding of liability would result in unjust enrichment to Plaintiff.

SIXTH AFFIRMATIVE DEFENSE

(Mootness – Injunctive Relief)

Plaintiff's demand for prospective relief is moot because the State has already terminated dues deduction from Plaintiff and unconditionally refunded to him all union dues deducted from his pay on or about December 28, 2018 and January 11, 2019.

SEVENTH AFFIRMATIVE DEFENSE

(Mootness – Declaratory Relief)

Plaintiff's demand for a declaration that limiting the ability of Plaintiff to revoke the authorization to withhold union dues from his paycheck to a window of time is unconstitutional is moot because the State has already terminated dues deduction from Plaintiff and

unconditionally refunded to him all union dues deducted from his pay on or about December 28, 2018 and January 11, 2019.

EIGHTH AFFIRMATIVE DEFENSE

(Non-Retroactivity)

Plaintiff's claim for monetary relief is barred because the Supreme Court's decision in *Janus v. AFSCME* does not apply retroactively.

NINTH AFFIRMATIVE DEFENSE

(No State Action)

Plaintiff's claim against AFSCME Council 18 is barred, in whole or in part, because there is no state action.

TENTH AFFIRMATIVE DEFENSE

(Lack of Standing)

Plaintiff's claim is barred, in whole or in part, for lack of standing.

ELEVENTH AFFIRMATIVE DEFENSE

(Lack of Standing; Injunctive Relief for Other Employees)

Plaintiff's demand for injunctive relief on behalf of other State employees is barred because Plaintiff has brought this action solely on his own behalf, and not as a class action.

TWELFTH AFFIRMATIVE DEFENSE

(Lack of Case or Controversy)

Plaintiff's claim is barred, in whole or in part, because there is no live case or controversy.

THIRTEENTH AFFIRMATIVE DEFENSE

(Accord and Satisfaction)

Plaintiff's claim is barred, in whole or in part, by the doctrine of accord and satisfaction.

FOURTEENTH AFFIRMATIVE DEFENSE

(Failure to Exhaust Administrative Remedies)

Plaintiff's claim is barred, in whole or in part, by failure to exhaust administrative remedies, including but not limited to remedies available through the New Mexico Public Employee Labor Relations Board.

FIFTEENTH AFFIRMATIVE DEFENSE

(Dues Deducted in Compliance with State Law)

Plaintiff's claim is barred, in whole or in part, because union dues were deducted from his pay in compliance with state law, including NMSA § 10-7E-17(C).

ADDITIONAL AFFIRMATIVE DEFENSES

AFSCME Council 18 reserves the right to amend their answer to assert additional affirmative defenses based on further investigation and discovery.

WHEREFORE, AFSCME Council 18 prays that the Court:

1. Deny Plaintiff any relief and enter judgment in favor of AFSCME Council 18.
2. Award AFSCME Council 18 its costs and attorneys' fees.
3. Award AFSCME Council 18 such other and further relief as is just and proper.

Dated: March 29, 2019

Respectfully submitted,

/s/ Eileen B. Goldsmith

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing pleading was electronically filed and served through the CM/ECF system this 29th day of March, 2019, on all registered parties.

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