UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

SUSAN HALLORAN, Plaintiff, v. AFSCME COUNCIL 5 and ERIC DAVIS, in his official capacity as vice chancellor for human resources of the Minnesota State Colleges and Universities, Defendants.	Case No. 19-cv-2529 (NEB/LIB) **PLAINTIFF'S MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION**

The First Amendment protects the right of public employees to make a free and informed choice about whether or not to join a union. In this case, AFSCME and the Minnesota State Colleges & Universities System (where Mr. Davis is vice chancellor for human resources) did not provide Ms. Halloran with basic information about her rights or the dues she would pay before she was pressured into signing a union membership form. And when she did figure out the facts and tried to cancel her membership the very next day, the union denied her the right to promptly revoke her consent. This violation of the First Amendment demands prompt rectification by a preliminary injunction stopping the money coming out of her paycheck. Given her likelihood of success on the merits, this Court should issue a preliminary injunction protecting Ms. Halloran's First Amendment rights.

FACTS

Plaintiff Susan Halloran began working at Inver Hills Community College ("College") in April 2018, initially due to a grant. Decl. of Susan Halloran, ¶ 1. The College is one constituent part of the overall Minnesota State Colleges & Universities ("the System"), a public higher education system serving the State of Minnesota. She does not recall any discussion of unions or her rights at new employee orientation, nor did she receive any printed information about her rights to take home. *Id*. at ¶ 2. Her bargaining unit was represented by the Minnesota Association of Professional Employees (MAPE). *Id.* at ¶ 3.

Beginning October 31, 2018, she changed jobs at the college and moved into the business office. *Id*. at ¶ 4. Defendant AFSCME Council 5 ("AFSCME" or the "Union") is the exclusive representative for employees in that bargaining unit. When she switched jobs into a new bargaining unit, she again received no verbal or printed information about her rights to join or not join the Union. *Id.* at ¶ 5.

An AFSCME field representative visited her several months into her new job, saying it was just to introduce himself. *Id.* at ¶ 6.

On April 15, 2019, Ms. Halloran was busy in a training session for her new position. She was pulled out of the training midway through it because a Matthew Schirber wanted to see her. It was the same AFSCME field representative from several months before. He said that he had returned because he had failed to get

her to sign her union authorization during their last meeting. Because it was busy with students outside, they walked into Ms. Halloran's office. Mr. Schirber had a tablet computer with Ms. Halloran's dues authorization pulled up. He said that all she needed to do was sign it. As she signed, she asked how much her dues would be. He replied that it would be a percentage of her income but he didn't know precisely. She felt rushed and pressured and wanted to get him out of her office because the training instructor was waiting for her to return. The entire interaction was only a few minutes. Mr. Schirber did not provide Ms. Halloran with any information about her *Janus* rights at any point in their conversation, nor did he provide her with her own physical or electronic copy of the dues authorization before, during, or after the visit, nor did he answer her question about how much her dues deduction would be. *Id.* at ¶ 7-14.

The very next day, Ms. Halloran emailed Mr. Schirber to say that she had she figured out the cost of the dues and looked at her income and expenses given her medical bills for cancer treatment, and she stated that she wanted to retract her registration. She stated that his visit was "unexpected and I was pressured trying to get back to the training with my co-worker I was doing for my job." He replied that she was bound to pay dues until her revocation period in one year. *Id.* at ¶ 15-16 & Ex. 1 (Email exchange).

Ms. Halloran then tried multiple different tacks to withdraw her

membership. She talked to another leader in the Union local and got no help. She emailed the field representative again and the main Council 5 office. She approached Human Resources at the College, and her counsel sent a letter to the College's administration. Every time she either received no response or was told that she could not revoke her membership or stop dues deductions until her revocation period in one year. *Id.* at ¶ 17-20 & Ex. 2-5.

The System has deducted union dues from Ms. Halloran's paychecks since April 2019 and has, on information and belief, remitted those dues to AFSCME Council 5. *Id.* at ¶ 21. As vice chancellor for human resources of the System, Mr. Davis oversees compensation, classification, and collective bargaining.

STANDARD OF REVIEW

The Eighth Circuit has set forth four factors for the issuance of a preliminary injunction:

> Whether a preliminary injunction should issue involves consideration of (1) the threat of irreparable harm to the movant; (2) the state of the balance between this harm and the injury that granting the injunction will inflict on other parties litigant; (3) the probability that movant will succeed on the merits; and (4) the public interest.

Kroupa v. Nielsen, 731 F.3d 813, 818 (8th Cir. 2013) (quoting *Dataphase Sys. Inc. v. CL Sys.*, 640 F.2d 109, 113 (8th Cir. 1981)) (the "*Dataphase* test"). Considering these four factors, this Court should conclude that the Plaintiff has made the requisite showings and issue a preliminary injunction stopping the Union's and

Eric Davis's unconstitutional behavior.

ARGUMENT

The Court should issue a preliminary injunction enjoining AFSCME and Mr. Davis from continuing to treat the Plaintiff as a member of the union and from taking dues from her payroll.

I. Plaintiff is likely to succeed on the merits of her claims.

A. The Plaintiff is likely to succeed on her claim that she did not provide informed consent to join the union.

The closing of the Court's opinion in *Janus* provides the foundation for future consideration of public-sector labor-law questions:

> Neither an agency fee nor any other payment to the union may be deducted from a nonmember's wages, nor may any other attempt be made to collect such a payment, unless the employee affirmatively consents to pay. By agreeing to pay, nonmembers are waiving their First Amendment rights, and such a waiver cannot be presumed. *Johnson v. Zerbst*, 304 U. S. 458, 464, 58 S. Ct. 1019, 82 L. Ed. 1461 (1938); *see also Knox*, 567 U. S., at 312-313, 132 S. Ct. 2277, 183 L. Ed. 2d 281. Rather, to be effective, the waiver must be freely given and shown by "clear and compelling" evidence. *Curtis Publishing Co. v. Butts*, 388 U. S. 130, 145, 87 S. Ct. 1975, 18 L. Ed. 2d 1094 (1967) (plurality opinion); *see also College Savings Bank v. Florida Prepaid Postsecondary Ed. Expense Bd.*, 527 U. S. 666, 680-682, 119 S. Ct. 2219, 144 L. Ed. 2d 605 (1999). Unless employees clearly and affirmatively consent before any money is taken from them, this standard cannot be met.

Janus v. AFSCME, Council 31, 138 S. Ct. 2448, 2486 (2018).

This section of the Court's opinion unquestionably sets the baseline for

standards of treatment of public-sector workers who are non-members of a union, presumes that they are non-members unless they knowingly and voluntarily choose otherwise, and characterizes the decision to join a union as a waiver of First Amendment rights, citing *Johnson v. Zerbst*.

By locating an employee's *Janus* rights in the context of *Johnson* and the waiver of constitutional rights, the Court places it within an established doctrine with multiple strands and facets. One strand of the *Johnson* doctrine is the expectation of notification—a waiver is only valid if it is made on an informed, intelligent basis, which requires notice. One can only validly waive a constitutional right after receiving information about that right in order to make an informed, intelligent choice about whether to waive it. The Union and Mr. Davis did not afford Ms. Halloran that right.

Johnson itself is the first major case setting a standard for waiver of a constitutional right: "A waiver is ordinarily an intentional relinquishment or abandonment of a known right or privilege." *Johnson v. Zerbst*, 304 U.S. 458, 464 (1938). Waiver cannot occur if the defendant is ignorant of his rights: "The purpose of the constitutional guaranty of a right to counsel is to protect an accused from conviction resulting from his own ignorance of his legal and constitutional rights, and the guaranty would be nullified by a determination that an accused's ignorant failure to claim his rights removes the protection of the Constitution." *Id*.

Thus, the court imposed upon the trial judge "the serious and weighty responsibility . . . of determining whether there is an intelligent and competent waiver by the accused." The trial court is required to inform the defendant of his right to counsel, determine if he is competent to waive that right, and then determine if he wishes to waive that right, all of which must be done on the record. *Id*. at 465.

Johnson, then, is the foundational case that requires an "intelligent waiver" of a "known right," which in that instance meant the judge had to inform a defendant of his right to counsel—because a defendant ignorant of his rights cannot make an intelligent waiver of them.

Johnson spawned an entire doctrine of waiver and the concomitant obligation of warning before waiver. Throughout the criminal law, "there are basic rights that . . . cannot [be] waive[d] without the fully informed . . . consent of the [defendant]." *Taylor v. Illinois*, 484 U.S. 400, 417-418 (1988). A number of cases hold that before a criminal defendant can waive a basic constitutional right, he must be fully informed by the court of his rights. *See, e.g., Brookhart v. Janis*, 384 U.S. 1, 7-8 (1966) and *Iowa v. Tovar*, 541 U.S. 77, 81 (2004) (setting standards for trial courts to inform defendants of rights before waiver of the right to a jury trial by a guilty plea); *United States v. Ruiz*, 536 U.S. 622, 629 (2002) ("[T]he law ordinarily considers a waiver knowing, intelligent, and sufficiently aware if the

defendant fully understands the nature of the right and how it would likely apply in general in the circumstances."); *Brewer v. Williams*, 430 U.S. 387, 404 (1977) (waiver requires defendant be informed of, understand, and comprehend his right, and then he must intentionally relinquish it); *United States v. Kon Yu-Leung*, 910 F.2d 33, 38 (2d Cir. 1990) (in general, in criminal cases, a waiver is not effective until the defendant "has been sufficiently appraised of the nature of his [constitutional] rights, and of the consequences of abandoning those rights."); *United States v. Martin*, 704 F.2d 267, 273 (6th Cir. 1983) ("a defendant ignorant of the nature of the jury trial right cannot intelligently weigh the value of the safeguard. A defendant, therefore, should have both the mental ability and some knowledge of the jury trial right before he is allowed to waive it.").

Of course, most well-known in this context is *Miranda*, wherein the Court held that a person arrested must receive a "full and effective warning of his rights" before he can knowingly consent to waive them. *Miranda v. Arizona*, 384 U.S. 436, 445 (1966). The warning must be made in "clear and unequivocal terms"—"For those unaware of the privilege [the right to remain silent], the warning is needed simply to make them aware of it—the threshold requirement for an intelligent decision as to its exercise." *Id*. at 467-68.

Notice is also important for knowing waiver of constitutional rights in civil contexts. *Ohio Bell Tel. Co. v. Pub. Utils. Com.*, 301 U.S. 292, 306-07 (1937).

See Morris v. New York City Emples. Ret. Sys., 129 F. Supp. 2d 599, 609 (S.D.N.Y. 2001) ("In the civil context, a party waiving constitutionally protected rights—even when doing so through the execution of a contract—must also be made aware of the significance of the waiver."). Courts expect the same standard for waiver of a constitutional right—voluntary, knowing and intelligent—in civil cases as in criminal ones. *Bauer v. City of Rossford*, No. 17-3498, 2018 U.S. App. LEXIS 34857, at *9 (6th Cir. Dec. 11, 2018).

In class action cases, for instance, a "fully descriptive notice" is required to satisfy due process before a class-action case can extinguish a separate right-to-sue. *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 812 (1985). In contract cases, signatories must be "actually aware or made aware" that they are waiving constitutional rights for the waiver to be effective. *Fuentes v. Shevin*, 407 U.S. 67, 95 (1972). In administrative law cases, citizens must receive "sufficient notice" of their right to object and appear before their failure to act can waive their due process rights. *Memphis Light, Gas & Water Div. v. Craft*, 436 U.S. 1, 13-15 (1978). Notice of the due-process right to a pre-termination hearing is necessary before an involuntary retirement of a public employee. *Walls v. Cent. Contra Costa Transit Auth.*, 653 F.3d 963, 969 (9th Cir. 2011); *Field v. Boyle*, 503 F.2d 774, 778 (7th Cir. 1974). Similarly, in immigration cases, the immigrant must receive notice of his constitutional rights before waiving them. *United States v. Mendoza-Lopez*,

481 U.S. 828, 840 (1987); *Gete v. INS*, 121 F.3d 1285, 1294 (9th Cir. 1997) ("because we conclude that the rights were not waived knowingly, it is unnecessary to engage in a separate inquiry as to the 'voluntary' and 'intelligent' prongs. Nothing in the record on appeal and nothing in the statutory and regulatory scheme suggests that, in choosing the administrative option instead of posting bond and invoking judicial forfeiture, the plaintiffs received any notice whatsoever that they were waiving their right to challenge the lawfulness of the process itself…"). *See* 8 C.F.R. § 242.1(c) and § 242.16(a) (immigrant must receive written notice of appeal rights and immigration judge must verbally confirm he received this notice).

Ms. Halloran's particular factual situation—pulled out of a meeting and placed under time pressure to sign and move on—also illustrates the need for a standardized notification to allow for a thoughtful consideration of the decision whether to waive one's *Janus* rights. *Miranda* standardized the need for warning before waiver because every citizen experiences the power imbalance of a police interrogation. "[S]uch a warning is an absolute prerequisite in overcoming the inherent pressures of the interrogation atmosphere." *Id*. at 468. "[W]hatever the background of the person interrogated, a warning at the time of the interrogation is indispensable to overcome its pressures and to insure that the individual knows he is free to exercise the privilege at that point in time." *Id*. at 469. *See also Estelle v.*

Smith, 451 U.S. 454, 467 (1981) (finding that a pretrial psychiatric examination also required a *Miranda* warning) ("The purpose of these admonitions is to combat what the Court saw as inherently compelling pressures at work on the person and to provide him with an awareness of the Fifth Amendment privilege and the consequences of forgoing it, which is the prerequisite for an intelligent decision as to its exercise.") (internal quotations omitted).

A similar fact-based approach applies in the case of waiver between signatories to a contract. Where the parties have fairly equal bargaining power, courts more easily ascribe knowledge to both parties, but where one party has a power advantage, like with contracts of adhesion, courts are much more likely to find that the weaker party did not have knowledge absent specific warnings. To illustrate, in *Overmyer Co*., the Court found that two corporations and their lawyers both were "aware of the significance" of the waiver and that it was "not a case of unequal bargaining power or overreaching." *D. H. Overmyer Co. v. Frick Co*., 405 U.S. 174, 186 (1972). By contrast, in *Fuentes* the parties were "far from equal in bargaining power" – one party was presented with an adhesion contract filled with fine print to sign without negotiation or the possibility of amendment. *Fuentes*, 407 U.S. at 95. The situation in a union dues authorization is very similar to that of *Fuentes*, but the pressure is even more pronounced. A union dues authorization is essentially an adhesion contract—one is given the directive to sign or not; there is

no room for negotiation over the fine print. And the power imbalance is likely more acute when the approach is made by an exclusive representative union in the workplace rather than a customer in a big-box electronics store agreeing to an arbitration clause. This power imbalance underlines the "weaker party's" need for notice.

The Attorney General of Alaska recently issued a formal opinion to the Governor enunciating these same principles. In it, the Attorney General wrote, "before a public employer may lawfully deduct union dues or fees from any employee's paycheck, the employee must waive his or her First Amendment rights against compelled speech. And because a waiver of First Amendment rights will not be presumed, the employer must have 'clear and compelling evidence' that waiver of this right was 'freely given' by the employee." Ak. Atty. Gen. Clarkson to Gov. Dunleavy (Aug. 27, 2019), at 5 (quoting *Janus*) (*available at* http://law.alaska.gov/pdf/opinions/opinions_2019/19-002_JANUS.pdf). The Attorney General analyzes the same set of waiver cases discussed above to reach this conclusion:

> An individual's waiver is knowing and intelligent when the individual has a full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon it. In the context of a payroll deduction for union dues and fees, a knowing and intelligent waiver requires the employee be aware of the nature of the right—to elect to retain one's First Amendment rights, or to financially support a union and thereby affiliate with and promote a union's speech and

> platform. In other words, the employee must be aware that there is a choice presented, and that consenting to having the employee's wages reduced to pay union dues is not a condition of state employment. The employee would also have to be aware of the consequences of waiving that right—i.e. that the union could use his money to fund union speech on a broad swath of politically significant issues, from state fiscal issues to civil rights and environmental issues, including speech with which the employee disagrees. It is not enough that some individuals might be generally aware of the scope of their First Amendment rights and the kinds of speech a union might undertake with the use of their wages. The U.S. Supreme Court has declined to find a waiver of First Amendment rights based on extra-record information about the "special legal knowledge" of particular individuals. Because the First Amendment is the matrix, the indispensable condition, of nearly every other form of freedom, a purported waiver of that right is not effective in circumstances which fall short of being clear and compelling. And without actual evidence that a waiver of First Amendment rights was knowing and voluntary, a purported waiver cannot be credited.

Id. at 7-8 (internal citations and quotations omitted). Ms. Halloran finds herself in exactly the circumstance that the Alaska Attorney General concluded would be unacceptable. She did not have full awareness of the choice before her or the consequences of her decision when she was pressured into signing her dues authorization. Instead, she was rushed to sign without full information as to the ramifications of her decision or the potential uses of her money. Thus, just as the Attorney General concludes, Ms. Halloran's waiver is not valid.

Finally, it is worth recalling that the law required notice for potential union members before *Janus*. When unions can negotiate a "union shop" clause, an

employee is entitled to notice from the union of his First Amendment right to be a fair-share or agency fee-payer. *Marquez v. Screen Actors Guild*, 525 U.S. 33, 43 (1998) ("If a union negotiates a union security clause, it must notify workers that they may satisfy the membership requirement by paying fees to support the union's representational activities, and it must enforce the clause in conformity with this notification."). If a union acting as the exclusive bargaining agent was required to provide notice of the employee's right to be a fair-share payer before *Janus*, then it must also be obligated to provide notice of the employee's right not to pay dues at all. In both cases, the employee must receive notice of his constitutional right not to join in order to make an intelligent decision as to the exercise of that right one way or the other. *See Abrams v. Communications Workers*, 59 F.3d 1373, 1378 (D.C. Cir. 1995). This obligation includes a responsibility to provide notice to new employees of their rights before enrolling them in the union. *Id*. at 1380-81.

Taken together, these opinions from civil and criminal law all establish the general principle that a person must be informed of his constitutional rights before he can make an intelligent decision to waive those rights. In this instance, that means that every public employee who is approached for union membership by an exclusive-representative union must first be explicitly informed of his or her rights under *Janus.* That did not happen for Ms. Halloran.

Public employees must also be informed of the specific amount of dues to be

charged. In order for a waiver to be valid, the person making the decision must know the consequences of each option. *Brady v. United States*, 397 U.S. 742, 748 (1970). *See Padilla v. Kentucky*, 559 U.S. 356, 385-86 (2010) (Alito, J., concurring) (it constitutes ineffective assistance of counsel for a lawyer to fail to inform his client that a guilty plea would likely lead to deportation. To make a "voluntary and intelligent decision to forsake constitutional rights," the defendant must first be informed of those rights and the consequences of the options).

The dues to be charged are the type of basic information that is integral to informed waiver, yet Ms. Halloran was not even given that. She is highly likely to succeed on her first count because Mr. Davis and the Union failed to provide her with basic information as to her rights and the amount of dues. Prior notice of this information is absolutely essential to her ability to make an informed, knowing waiver of her rights.

B. In the alternative, Plaintiff is likely to succeed on her claim that she timely exercised her right to revoke her waiver.

As demonstrated above, whether in the civil, criminal, or administrative context, the *Johnson* doctrine on waiver is a well-developed, well-established body of case law on when and how people may waive their constitutional rights. Just as the doctrine includes a strand on notification, it also includes a line of cases on the right to timely revoke waiver—a right that Ms. Halloran exercised in this instance.

Waiver of a constitutional right "should not, once uttered, be deemed forever

binding." *United States v. Mortensen*, 860 F.2d 948, 950 (9th Cir. 1988). This principle has been recognized in multiple decisions. *See, e.g., United States v. Groth*, 682 F.2d 578, 580 (6th Cir. 1982); *United States v. Lee*, 539 F.2d 606, 610 (6th Cir. 1976); *Zemunski v. Kenney*, 984 F.2d 953, 954 (8th Cir. 1993); *People v. Crayton*, 48 P.3d 1136, 1146 (Cal. 2002) (collecting authorities); *Wilson v. Horsley*, 974 P.2d 316, 322 (Wash. 1999).

Some waivers may be withdrawn at any moment, and that withdrawal must be respected. Thus, *Davis v. United States*, 512 U.S. 452, 458 (1994) holds that an accused may waive his right to counsel and cooperate with police interrogation, but he may also assert his right to counsel after the interrogation has begun, in which case the police must stop and wait for counsel to arrive. Similarly, a person may waive his Fourth Amendment rights to consent to a search, but may withdraw that waiver at any time before the conclusion of the search, in which case the search must stop. *United States v. McWeeney*, 454 F.3d 1030, 1034 (9th Cir. 2006), *citing Florida v. Jimeno*, 500 U.S. 248, 252 (1991).

For more involved, as opposed to spontaneous proceedings, however, courts generally recognize three requirements for withdrawal of a waiver: timeliness, good faith, and no cost or inconvenience to the courts and other parties. *United States v. Neville*, 985 F.2d 992, 999 (9th Cir. 1993); *Carter v. Sea Land Services*, 816 F.2d 1018, 1021 (5th Cir. 1987); *Marquez v. State*, 921 S.W.2d 217, 221 (Tex.

Crim. App. 1996) (collecting authorities).

Ms. Halloran's decision to revoke her waiver of her rights should fit under the second category of more involved proceedings. The *Davis* and *Jimeno* cases deal with ongoing actions—i.e., an interrogation or a search—which can be stopped in an instant. Withdrawal from a union is not a circumstance like that; it is a transaction, with paperwork and forms transferred among the employee, the employer, and the union. Thus, though not as involved as a judicial proceeding, it is more involved than an in-the-moment police encounter.

Ms. Halloran can establish all three elements of an appropriate exercise of the right to revoke waiver of a constitutional right. She exercised it in a timely manner, the very next day, before Mr. Davis even processed the first paycheck with dues deducted. She exercised it in good faith. She did not mean to punish the Union or start a court case. She was given incomplete information at the time (no specification of the amount of dues). She signed while pressured for time, went home, researched the matter when she had more time to do so, realized what it would mean for her finances, and promptly emailed to revoke her authorization. And her withdrawal would not have created cost or substantial inconvenience to the Union or her employer, as the paperwork was only a day old. No money had been collected or changed hands.

Ms. Halloran's case is admittedly different from the context in which most

of these matters arise, such as withdrawal of a waiver for a magistrate judge in place of an Article III judge. But the same principles apply because they all stem from the same foundation: *Johnson* and its doctrine of waiver, which is where *Janus* located Ms. Halloran's rights vis-à-vis the Union. She is likely to succeed on this claim as well.

II. The other three factors also weigh in favor of the Plaintiff.

Because the Plaintiff brings claims based on the First Amendment, her likelihood of success on the merits deems other factors satisfied: "When a plaintiff has shown a likely violation of his or her First Amendment rights, the other requirements for obtaining a preliminary injunction are generally deemed to have been satisfied." *Minn. Citizens Concerned for Life, Inc. v. Swanson*, 692 F.3d 864, 870 (8th Cir. 2012) (en banc) (quoting *Phelps-Roper v. Troutman*, 662 F.3d 485, 488 (8th Cir. 2011) (per curiam)). Ms. Halloran's claim, thus, meets the other three factors necessary for a preliminary injunction.

First, the "loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury" for purposes of the issuance of a preliminary injunction. *Johnson v. Minneapolis Park & Rec. Bd.*, 729 F.3d 1094, 1102 (8th Cir. 2013) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)). As demonstrated above in the discussion of likelihood of success on the merits, these are fundamental First Amendment freedoms, the loss of which is just such an

irreparable injury.

Second, the balance of harms also favors the Plaintiff. Mr. Davis will suffer minimal administrative inconvenience ending her payroll deduction, and the Union will lose an amount of money that is substantial to her but trivial in the context of its operations. The harm to the Plaintiff by loss of her rights is great, by contrast. *See Phelps-Roper v. Nixon*, 545 F.3d 685, 690 (8th Cir. 2008), overruled on other grounds by *Phelps-Roper v. City of Manchester*, 697 F.3d 678, (8th Cir. 2012) (en banc).

Third, it is always in the public interest to vindicate the First Amendment rights of our society's citizens. *Phelps-Roper*, 545 F.3d at 690 ("it is always in the public interest to protect constitutional rights.").

Because Ms. Halloran's constitutional rights are at stake the Eighth Circuit's other three factors all also weigh in favor of a preliminary injunction.

CONCLUSION

When Plaintiff signed her union membership and dues authorization on an iPad, she did so with all the time and consideration one extends to a UPS delivery man seeking a signature at the doorstep. But there are no constitutional protections for acceptances of packages. Joining a public-employee union is a far weightier matter, and *Janus* provides specific protections. *Janus* presumes that public employees are non-members in a union and characterizes the decision to join as a

waiver of First Amendment rights, citing *Johnson v. Zerbst*.

Because *Janus* located public employees' waiver rights within the scope of *Johnson* and its progeny, public employees' waiver of their First Amendment rights must be knowing and intelligent. Thus, officials have the responsibility to provide notice of rights before asking someone to decide whether to waive those rights. Ms. Halloran received no such notice of her *Janus* rights here. She was never told that she had a constitutional right to pay nothing to the Union.

The *Janus-Johnson* doctrine also provides the opportunity to revoke consent if done timely, in good faith, and without harm to other parties. Ms. Halloran revoked her consent promptly and in good faith, and honoring that revocation would have brought no harm to the other parties. A preliminary injunction is necessary to protect Ms. Halloran's rights.

Dated: September 17, 2019

Respectfully submitted,

SUSAN HALLORAN

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UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

SUSAN HALLORAN, Plaintiff, v. AFSCME COUNCIL 5 and ERIC DAVIS, in his official capacity as vice chancellor for human resources of the Minnesota State Colleges & Universities, Defendants.	Case No. 19-cv-2529 (NEB/LIB) **L.R. 7.1 WORD COUNT COMPLIANCE CERTIFICATE FOR PLAINTIFF'S MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION**

I, James V. F. Dickey, certify that Plaintiff's Memorandum of Law in Support of Motion for Preliminary Injunction complies with District of Minnesota Local Rules 7.1(f) and (h). I further certify that, in preparation of this brief, I used Microsoft Office Word 2007 in 14-point Times New Roman font, and this word-processing program has been applied specifically to include all text, including headings, footnotes, and quotations in the word count.

I further certify that Plaintiff's Memorandum of Law in Support of Motion for Preliminary Injunction contains 4,941 words, excluding the caption designation required by LR 5.2, the signature-block text, and this certificate.

Dated: September 17, 2019

Respectfully submitted,

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