

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF PUERTO RICO**

**VANESSA E. CARBONELL;  
ROBERTO A. WHATTS OSORIO;  
ELBA Y. COLÓN NERY;  
BILLY NIEVES HERNÁNDEZ;  
NÉLIDA ÁLVAREZ FEBUS;  
LINDA DUMONT GUZMÁN;  
SANDRA QUIÑONES PINTO;  
YOMARYS ORTIZ GONZÁLEZ;  
CARMEN BERLINGERI PABÓN;  
MERAB ORTIZ RIVERA;  
JANET CRUZ BERRIOS,**  
individually and as representatives of the  
requested class,

**Plaintiffs,**

**v.**

**ANTONIO LÓPEZ FIGUEROA,** in his  
official capacity as Commissioner of the  
Puerto Rico Police Bureau;  
**MICHELLE MOURE,** in her official  
capacity as Human Resources Director of the  
Puerto Rico Police Bureau;  
**UNION OF ORGANIZED CIVILIAN  
EMPLOYEES,**

**Defendants.**

**CIVIL NO. 22-1236 (WGY)**

**Constitutional Violation Action (42 U.S.C.  
§ 1983), Declaratory Judgment, Injunctive  
Relief, Compensatory, Nominal, and  
Punitive Damages. Jury Trial Demanded.**

**MEMORANDUM IN SUPPORT OF  
MOTION FOR SUMMARY JUDGMENT**

Come now, Plaintiffs Vanessa E. Carbonell (“Carbonell”), Roberto A. Whatts Osorio (“Whatts”), Elba Y. Colón Nery (“Colón”), Billy Nieves Hernández (“Nieves Hernández”), Nélida Álvarez Febus (“Álvarez”), Linda Dumont Guzmán (“Dumont”), Sandra Quiñones Pinto (“Quiñones”), Yomarys Ortiz González (“Ortiz González”), Carmen Berlingeri Pabón (“Berlingeri”), Merab Ortiz Rivera (“Ortiz Rivera”), and Janet Cruz Berrios (“Cruz”) (collectively,

“Plaintiffs”), on their own behalf and that of the class they seek to represent<sup>1</sup>, through the undersigned counsel, and under Rule 56 of the Federal Rules of Civil Procedure and Civil Local Rule 56(a), respectfully submit the instant Memorandum in Support of their Motion for Summary Judgment:

## **I. Introduction**

Plaintiffs and class members filed their Amended Complaint on August 18, 2022 under 42 U.S.C. § 1983, invoking the First and Fourteenth Amendment protections of the United States Constitution against Defendants Antonio López Figueroa (“López”) in his official capacity as Commissioner of the Puerto Rico Police Bureau (“PRPB”), Michelle Moure (“Moure”)<sup>2</sup> in her official capacity as PRPB Human Resources Manager<sup>3</sup>, and the Union of Organized Civilian Employees (“the Union”), a bona fide public sector labor union within the meaning of 3 *P.R. Laws Ann.* § 702(a).<sup>4</sup>

Under Puerto Rico’s Public Health Benefits Act, the “[g]overnment employer contribution for health benefits for employees . . . shall be fixed in the General Budget of Expenses and shall not be less than five dollars (\$5) monthly in the case of the municipalities *nor one hundred dollars (\$100) monthly for the employees of the rest of the Government dependencies . . .*” 3 *P.R. Laws Ann.* § 729(h) (emphasis added). That same statute allows government employees to receive an *additional* contribution to the \$100 per month, so long as the agency pays for the additional

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<sup>1</sup> Plaintiffs filed a Motion to Certify Class on December 18, 2023. *See* Dkt. 104.

<sup>2</sup> Michelle Moure substituted Joanie Mulero Andino (“Mulero”) as a named party by automatic operation of Fed. R. Civ. P. 25(d).

<sup>3</sup> While the case caption identifies Michelle Moure as PRPB Human Resources Director, the official title of her position is “Human Resources Manager.”

<sup>4</sup> While the Amended Complaint originally included claims against López and Moure in their individual capacities, the Court found López and Moure entitled to qualified immunity. *See Order*, Dkt 87.

amount. *See* 3 *P.R. Laws Ann.* § 729(h) (“... those employees covered by clauses with an employer contribution greater than one hundred dollars (\$100) monthly may receive the difference, if the agency contributes the additional costs thus entailed.”) PRPB<sup>5</sup>, a government agency acting under color of 3 *P.R. Laws Ann.* § 702(a) and § 729(h), has deprived Plaintiffs and class members of their rights, privileges, and immunities guaranteed by the First and Fourteenth Amendments to the United States Constitution by unconstitutionally discriminating against them for not supporting and subsidizing the Union. As discussed below, a scheme of discrimination manifests itself through a policy of awarding a greater employer contribution for health benefits to those civilian employees that are dues-paying members of the Union while awarding a reduced amount to employees that decline to be associated with the Union.

## II. Summary Judgment Standard

Summary judgment should be granted “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Fed. R. Civ. P. 56(a), (c); *See also Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). (“[T]he substantive law will identify which facts are material.”); *Lockridge v. Univ. of Maine Sys.*, 597 F.3d 464, 469 n.3 (1st Cir. 2010) (“Material facts are those that might affect the outcome of the suit.” (quoting *Anderson*, 477 U.S. at 248)). A party seeking summary judgment bears the initial responsibility of informing the court of the basis for its motion, and identifying those portions of the pleadings, depositions, answers to interrogatories, and admissions on file and any accompanying affidavits that it believes show the lack of a genuine issue of material fact. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986).

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<sup>5</sup> While “PRPB” stands for Puerto Rico Police Bureau, for purposes of this brief it also refers to López and Moure acting in their official capacities.

### **III. Factual Background**

#### **A. An unconstitutional scheme of compulsion to support the Union.**

PRPB employs Plaintiffs and class members as civilian employees belonging to a bargaining unit the Union exclusively represents. Statement of Uncontested Material Fact (“SUMF”) 62. PRPB, as provided by state law, provides its civilian employees with a monthly contribution of a minimum of \$100 to spend on a health insurance plan of their choosing. The collective bargaining agreement (“CBA”) between the Union and PRPB provides for an additional \$25 monthly contribution amount for procuring health insurance to be awarded to civilian employees subject to the Union’s exclusive representation or within the bargaining unit the Union represents. SUMF 65. PRPB has long awarded its employees under the Union’s exclusive representation the additional \$25 additional employer contribution pursuant to the CBA.

But that practice stopped after the U.S. Supreme Court’s ruling in *Janus v. AFSCME Council 31*, 138 S. Ct. 2448 (2018) for Plaintiffs and class members, who ended their Union membership and revoked their authorization for payroll deductions for Union dues. When PRPB processed Plaintiffs’ and class members’ requests for an end to Union payroll deductions, it simultaneously terminated their \$25 monthly additional employer contribution—solely because those employees exercised their First Amendment right not to be part of the Union or financially support it as allowed by the U.S. Supreme Court’s holding in *Janus*. SUMFs 157, 162, 168, 172, 176, 180, 184, 187, 190, 196, 202. Civilian employees who remain affiliated with the Union and allow payroll deductions for Union dues, on the other hand, still receive the additional employer contribution of \$25 per month. SUMF 152. PRPB’s practice of only awarding the additional employer contribution to union members amounts to nothing less than unlawful coercion to join the Union and penalization of anyone for exercising their First Amendment right not to be

associated with the Union. The coercion Plaintiffs and class members have endured to become dues-paying Union members in exchange for better employment benefits violates their First Amendment right of non-association and of being free from subsidizing the Union. *See Janus*, 138 S. Ct. at 2486.

**B. Plaintiffs are subject to PRPB's discriminatory treatment of Union nonmembers.**

*1. The state of affairs before disaffiliating from the Union.*

Carbonell has been employed as a civilian employee with PRPB since 1992 and currently holds the position of Office Worker II. SUMFs 17, 18. Whatts has been employed as a civilian employee with PRPB since 1985 and currently holds the position of Office Worker II. SUMFs 20, 21. Colón has been employed as a civilian employee with PRPB since 1991 and currently holds the position of Office Worker II. SUMFs 23, 24. Nieves Hernández has been employed as a civilian employee with PRPB since 1994 and currently holds the position of Office Worker II. SUMFs 26, 27. Álvarez has been employed as a civilian employee with PRPB since 1994 and currently holds the position of Information Equipment Operator II. SUMFS 29, 30. Dumont has been employed as a civilian employee with PRPB and currently holds the position of Licensing Officer. SUMFs 32, 33. Quiñones has been employed as a civilian employee with PRPB since 1991 and currently holds the position of Payroll Officer I. SUMFs 35, 36. Ortiz González has been employed as a civilian employee with PRPB and currently holds the position of Office Systems Assistant II. SUMFs 38, 39. Berlinger has been employed as a civilian employee with PRPB since 1992 and currently holds the position of Office Systems Assistant II. SUMFs 41, 42. Ortiz Rivera has been employed as a civilian employee with PRPB since 1996 and currently holds the position of Office Systems Assistant II. SUMFs 44, 45. Cruz has been employed as a civilian employee since 1995 and currently holds the position of Office Systems Assistant II. SUMFs 47, 48.

Carbonell, Whatts, Colón, Álvarez, Dumont, Quiñones, Ortiz Gonzalez, Berlingeri, Ortiz Rivera, and Cruz were affiliated with the Union as dues-paying members when the U.S. Supreme Court issued its *Janus* ruling on June 27, 2018. SUMFs 83, 90, 95, 108, 113, 124, 130, 136, 141, 146. Nieves Hernández, meanwhile, was not affiliated with the Union when the U.S. Supreme Court decided *Janus* but still had nonmember forced fees extracted from his wages and remitted to the Union. SUMFs 100, 102. Prior to *Janus* Plaintiffs' payroll deductions in favor of the Union came with the additional employer contribution of \$25 per month for procuring health insurance, as all of them received this extra benefit prior to withdrawing their Union membership. SUMFs 84, 91, 96, 103, 109, 114, 125, 131, 137, 147, 258.

## 2. *Plaintiffs' experience after disaffiliating from the Union.*

After learning of the U.S. Supreme Court's ruling in *Janus*, each plaintiff completed a Union disaffiliation form and submitted it to PRPB's Human Resources Office, renouncing any affiliation with the Union and requesting the cessation of Union payroll deductions.<sup>6</sup> SUMFs 85, 92, 97, 104, 110, 115, 126, 132, 142, 148, 259.<sup>7</sup> As soon as PRPB processed Plaintiffs' Union disaffiliation forms, PRPB reduced Plaintiffs' employer health insurance contribution by \$25, leaving them with a contribution of only \$100 per month, instead of the \$125 monthly union members continue to receive. SUMFs 86, 93, 98, 106, 111, 117, 128, 134, 139, 144, 150. The reduction in the employer contribution amount is clear when juxtaposing Plaintiffs' bi-weekly

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<sup>6</sup> After *Janus*, PRPB made Union disaffiliation forms available to its employees. SUMFs 263, 264.

<sup>7</sup> Not all disaffiliation forms were submitted on the same date. Carbonell and Whatts submitted their disaffiliation forms on July 18, 2018. SUMFs 85, 92. Colón submitted her disaffiliation form in November or December 2020. SUMF 97. Álvarez submitted her disaffiliation form on December 14, 2020. SUMF 110. Nieves Hernández submitted his disaffiliation form sometime after June 27, 2018. SUMF 104. Dumont submitted her disaffiliation form sometime in July 2018. SUMF 115. Quiñones submitted her disaffiliation form sometime in July 2019. SUMF 126. Ortiz González submitted her disaffiliation form on July 26, 2018. SUMF 132. Berlingeri and Ortiz Rivera submitted their disaffiliation forms on October 6, 2021. SUMFs 142, 259. Cruz submitted her disaffiliation form on September 30, 2021. SUMF 148.

paystubs before submitting their Union disaffiliation forms with their paystubs *after* disaffiliating. For example, the paystubs belonging to Cruz, Ortiz Rivera, Ortiz Gonzalez, Whatts, Carbonell, Berlingeri, and Quiñones show employer contributions of \$62.50 per paycheck before submitting their Union disaffiliation forms, totaling \$125 per month. SUMFs 159, 165, 169, 173, 177, 181, 185, 260. Colón's paystubs before submitting her Union disaffiliation features a separate section summarizing employer benefits, among which is a \$125 monthly health insurance contribution. SUMF 188. Once these plaintiffs submitted Union disaffiliation forms, their paystubs suddenly showed a reduced employer contribution of \$50 per paycheck totaling just \$100 per month. SUMFs 161, 167, 171, 175, 179, 183, 186. Colón's and Quiñones's paystubs after disaffiliating show a separate section listing employer benefits, including only a \$100 monthly health insurance contribution. SUMFs 189, 261. PRPB civilian employees that pay no union dues only receive a \$100 monthly employer contribution for health insurance. SUMF 153. PRPB civilian employees with Union payroll deductions, on the other hand, receive the full \$125 monthly employer health insurance contribution. SUMF 152.

3. *Plaintiffs' reduction in employer contribution occurred solely because they exercised their First Amendment right not to associate with the Union and not to pay dues to the Union.*

The reduction in the employer contribution took place because of Plaintiffs' decision to withdraw from any association with the Union and cease payroll deductions for the Union. SUMFs 154, 162, 168, 172, 176, 180, 184, 187, 190. Once payroll personnel entered Plaintiffs' disaffiliation forms into the payroll system, the \$25 monthly additional employer contribution was eliminated for the disaffiliating employee. SUMF 196. This remains PRPB's protocol for disaffiliating employees to this day. SUMF 196. As discussed below, at no point since the start of this litigation has PRPB reprogrammed its payroll systems, retrained its payroll employees, or

otherwise changed its protocol for handling disaffiliating employees, to remove the elimination of the \$25 monthly additional employer contribution for non-Union employees. The record also shows government personnel *manually* eliminating the \$25 monthly additional employer contribution from employees that submit Union disaffiliation forms. Payroll Officer Nancy Torres (“Torres”)—in charge of adjusting employer contributions—adjusted the contribution amounts for Colón and another employee named Madeline Calderón Colón from \$125 to \$100 per month only because of their decision to disaffiliate from the Union. SUMFs 53, 54, 154.

Many PRPB officials—like Defendant Moure herself—consider the \$25 additional employer contribution to be an exclusive benefit reserved for Union members. SUMF 157. Moure even acknowledged PRPB slashed Plaintiffs’ employer contribution amount only because of their decision to submit Union disaffiliation forms. SUMFs 162, 168, 172, 176, 180, 184, 187, 190.<sup>8</sup> Moure went further to characterize the reduction in employer contribution as worse treatment than that given to Union members. SUMF 164. Moure even considers denying employer benefits to employees based on their decision to disaffiliate from the Union to be acts of reprisal. SUMF 163. Other PRPB officials agreed, pinpointing PRPB employees’ free choice to disaffiliate from the union as the sole cause of the resulting cutback in employer contribution. Torres herself acknowledged that employees eligible for the extra \$25 monthly employer contribution are those who are Union members. SUMF 202.

Throughout discovery, no government official even *offered* an alternative theory or reason why Plaintiffs and class members had their employer contribution for health insurance reduced. Not only is it widely understood within PRPB that the sole reason for denying the additional \$25

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<sup>8</sup> In her deposition, Moure singled out Cruz, Ortiz Rivera, Carbonell, Whatts, Ortiz González, Berlingeri, Colón, and Nieves Hernández as examples of PRPB civilian employees who endured a reduction in their employer contributions solely because of disaffiliating from the Union. SUMFs 162, 168, 172, 176, 180, 184, 187, 190.



monthly employer contribution to civilian employees is their disaffiliation from the Union—the Union understands it too. Union President Jorge Méndez Cotto (“Méndez”) has the habit of meeting with employees and discussing the total employer contribution of \$125 per month as a perk of Union membership. SUMF 207. This is because Méndez realizes that the way to obtain the additional \$25 monthly employer contribution is by joining the Union. SUMFs 208, 209. Méndez, in turn, understands that employees unaffiliated with the Union only receive a monthly employer contribution of \$100. SUMF 210. The Union is doing its part in enforcing and honoring the policy of awarding the additional \$25 monthly employer contribution exclusively to employees that are dues-paying Union affiliates. SUMF 216.

*4. PRPB’s discrimination against Plaintiffs and class members for declining Union membership continues unabated.*

Far from working to remedy the discriminatory and coercive practice, PRPB is recalcitrant in its unequal treatment of its civilian employees that do not want to be part of the Union. Moure, for instance, is unaware of any steps taken to fix the unequal treatment toward civilian employees based on Union membership status. SUMF 245. Jojanie Mulero Andino (“Mulero”), current PRPB Associate Commissioner of General Services, is similarly unaware of any plans to end the reduction in employer contribution for disaffiliating civilian employees. SUMFs 5, 197. Like his PRPB subordinates, Commissioner López is also unaware of any investigations of unequal treatment against employees that have submitted Union disaffiliation forms. SUMF 252. PRPB’s lack of remedial action comes despite many complaints from civilian employees and the instant Amended Complaint. Torres, for example, testified that about ten civilian employees, including Carbonell and Whatts, approached her complaining about the reduced employer contribution. SUMFs 198, 199, 201, 203, 204. Torres, however, incorrectly concluded the employees’ grievances were meritless because they were in fact receiving the correct amount of employer

contribution. SUMF 200. Plaintiffs, despite Torres's rejections, made other attempts to seek redress. On March 31, 2022, for example, Carbonell emailed Mulero<sup>9</sup> to request that the additional \$25 employer contribution be restored as a benefit of her employment with PRPB. SUMF 87. But Carbonell's message went unanswered. SUMF 88.

The Office of the PRPB Commissioner is ultimately responsible for formulating policies affecting the treatment of PRPB employees, as López himself acknowledged. SUMF 247. As the record shows, however, López does not plan to take any measures, including making a recommendation to his superiors in government, to safeguard the rights of civilian employees that disaffiliate from the Union to receive the same treatment as Union members.<sup>10</sup> Plaintiffs' grievances were brought to Commissioner López's attention when Mulero raised the subject of civilian employees receiving a reduced employer contribution during an in-person meeting with López, which allegedly made López concerned. SUMFs 248, 249. Even though López told Mulero "to look at everything having to do with the situation" of Union unaffiliated civilian employees receiving a reduced amount of employer contribution and "to look and see if there are alternatives", López has not followed up with Mulero nor has he had any further conversations with her about the topic. SUMFs 250, 251.

Mulero, nevertheless, assumes López lacks authority to take any action remedying the reduced employer contribution for Union unaffiliated employees because López "does not manage

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<sup>9</sup> At the time, Mulero directed PRPB's Human Resources office. SUMF 6.

<sup>10</sup> PRPB policy purports to protect its employees from any reprisal for deciding not to be part of the Union. Indeed, the Union disaffiliation form Plaintiffs filled out states that "[n]o acts of retaliation shall be taken against the person that chooses to disaffiliate from the union representative. Any act of retaliation shall be promptly investigated pursuant to law." SUMF 262. Moure, however, has taken no steps to ensure there are no reprisals against employees deciding to drop their membership in the Union. SUMF 246. Neither Torres nor Zoraida Sánchez, former PRPB Human Resources Manager from May 2018 until March 2020, are aware of any investigations into alleged reprisals for union disaffiliation. SUMFs 242, 243.

the budget.” SUMF 253. Despite López’s alleged inability to correct this unequal treatment, López can recommend remedial action to the Secretary of the Department of Public Safety.<sup>11</sup> SUMF 254. Mulero, however, declined to advise López to recommend any such remedial action to the Secretary of the Department of Public Safety. SUMF 255. This leaves Plaintiffs and class members in a perpetual state of discrimination and coercion at the hands of their employer, simply for having the audacity of declining association with the Union and exercising their First Amendment rights.

*5. Other instances of unlawful discrimination.*

PRPB’s unequal treatment of Union non-affiliates has also manifested itself in other ways apart from the discrimination in employer contribution awards. The CBA, for example, establishes that bargaining unit members shall be relieved from work, without the need to exhaust leave time, after four hours of electricity, water, or air conditioning outages. SUMFs 75, 76. But the reality is much different, as only Union affiliates have been granted this privilege. SUMF 223. Like with the extra \$25 monthly contribution union members receive, Union President Méndez also confirmed leaving work after a power or air conditioning outage of four hours is an exclusive benefit of Union membership. SUMF 230. During the most recent incident on August 11, 2023, Brenda Castro, Leave Division Supervisor, ordered Plaintiff Dumont to work from home after an electricity outage while releasing Union affiliates from their duties for the day without the need to telework. SUMFs 235, 236, 237. As with the reduced employer contributions, the sole reason Castro declined to release Dumont for the rest of the working day was due to her status as a non-affiliate of the Union. SUMF 241.

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<sup>11</sup> The Puerto Rico Department of Public Safety Act, 25 *P.R. Laws Ann.* § 3501 created the Puerto Rico Department of Public Safety to integrate seven government bureaus under one umbrella: PRPB, the Firefighter Corps, the Forensic Services Bureau, the Emergency Management and Disaster Administration Bureau, the Emergency Medical Services Corps, the 9-1-1 Emergency Systems Bureau, and the Special Investigations Bureau.

#### IV. Argument

##### A. The Constitution protects employees' right to abstain from union membership and dues payments without penalty.

1. *The First Amendment protects Plaintiffs' and class members' decision to decline association with the Union.*

The First Amendment guarantees public-sector employees the right not to support or associate with labor unions. *Janus*, 138 S. Ct. at 2463 (“The right to eschew association for expressive purposes is likewise protected.”); *Harris v. Quinn*, 573 U.S. 616 (2014); *Knox v. SEIU Local 1000*, 567 U.S. 298, 309 (2012) (“[T]he ability of like-minded individuals to associate for the purpose of expressing commonly-held views may not be curtailed.”); *Roberts v. United States Jaycees*, 468 U.S. 609, 623 (1984) (“Freedom of association ... plainly presupposes a freedom not to associate.”); *Abood v. Detroit Bd. of Educ.*, 431 U.S. 209, 233 (1977), *overruled on other grounds by Janus v. AFSCME Council 31*, 138 S. Ct. 2448 (2018);<sup>12</sup> *Pacific Gas & Elec. Co. v. Public Util. Comm’n of Cal.*, 475 U.S. 1, 12 (1986) (“[F]orced associations that burden protected speech are impermissible.”) *See also* *Wooley v. Maynard*, 430 U.S. 705, 714 (1977) (“[F]reedom of thought . . . includes both the right to speak freely and the right to refrain from speaking at all.”).

While a public employee’s right to free association is often discussed in the context of political associations, the right also involves the ability to associate with, or refrain from associating with, a labor union. *Janus*, 138 S. Ct. at 2484 (explaining that requiring support of a political party and forced subsidization of union speech are just as unconstitutional as patronage). “[I]n the public sector, both collective bargaining and political advocacy and lobbying are directed at the government,” and bargaining subjects, “such as wages, pensions, and benefits are important

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<sup>12</sup> *See id.* (“[T]he freedom of an individual to associate for the purpose of advancing beliefs and ideas is protected by the First and Fourteenth Amendments ... Equally clear is the proposition that a government may not require an individual to relinquish rights guaranteed him by the First Amendment as a condition of public employment.”) (internal citations omitted).

political issues.” *Harris*, 573 U.S. at 636. Requiring employees to first join or subsidize a labor union to be eligible for an employer benefit is synonymous with compelling monetary contributions to political candidates or positions the Union supports.

The record here shows PRPB eliminated the employment benefit consisting of an additional \$25 monthly employer health insurance contribution from civilian employees that exercise their First Amendment right not to be part of the Union or pay its membership dues. SUMFs 86, 93, 98, 106, 111, 117, 128, 134, 139, 144, 150. Plaintiffs’ and class members’ decision to end their association with the Union triggered PRPB’s decision to reduce their monthly employer contribution. SUMFs 157, 162, 168, 172, 176, 180, 184, 187, 190, 196, 202. Awarding this extra benefit only to Union affiliates is both discrimination and coercion for civilian employees to join the Union. It means more money and greater chances of affording better quality health insurance—conditioned on Union membership. The resulting coercion to join and support the Union and discrimination against nonmembers violates Plaintiffs’ and class members’ First Amendment right of non-association, free from supporting a labor organization. *See Janus*, 138 S. Ct. at 2486.

2. *Denying employer benefits to public sector employees based on union membership violates the First Amendment.*

It violates the First Amendment for government employers to offer greater employer benefits to employees who join a labor union and pay its membership dues than to employees who do not join or financially support a union. *See Brannian v. City of San Diego*, 364 F. Supp. 2d 1187, 1194-1195 (S.D. Cal. 2005) (limiting eligibility for a dental plan only to union members violated nonunion employee’s constitutional rights). The *Brannian* court ruled that allowing only union members to use a leftover cash benefit to enroll in a dental plan violated nonunion employees’ constitutional rights. As in *Brannian*, having a government-provided employer benefit

reserved solely for union members—like a \$25 monthly employer contribution for health insurance—constitutes unlawful coercion to support the union. *See Brannian*, 364 F. Supp. 2d at 1195. (“From a commonsense standpoint, [the choice of either joining the union or losing a benefit] plainly constituted coercion to join the union.”) “Discriminatory conduct, such as that practiced here [where only union members received retroactive wages and vacation benefits], is inherently conducive to increased union membership. In this respect, there can be little doubt that it encourages union membership, by increasing the number of workers who would like to join and/or their quantum of desire.” *See Brannian*, 364 F. Supp. 2d at 1195 (citing *NLRB v. Gaynor News Co.*, 197 F.2d 719, 722 (2d Cir. 1952)). It is imperative to note that union membership by itself is not the only thing PRPB’s unlawful coercion encourages. The practical effect of an increased membership in the Union is more dues extracted from employees’ wages flowing into the Union’s coffers and ultimately into political matters. “This amounts to more than coercing union membership; it constitutes coercion to subsidize the union itself.” *Brannian*, 364 F. Supp. 2d at 1197.

The constitutional right under siege here is of the highest order: Individuals’ First Amendment right not to subsidize speech they do not wish to support. “Compelling individuals to mouth support for views they find objectionable violates . . . [a] cardinal constitutional command.” *Janus*, 138 S. Ct. at 2463. “As Jefferson famously put it, ‘to compel a man to furnish contributions of money for the propagation of opinions which he disbelieves and abhor[s] is sinful and tyrannical.’” *Id.* at 2464. Pressuring employees to join the Union and pay its membership dues has the unlawful purpose of endangering workers’ right not to subsidize the Union. The U.S. Constitution does not tolerate such extreme interference in employees’ First Amendment rights.

There is no compelling interest in prohibiting civilian employees from receiving the full

amount of employer health insurance contribution simply for having declined association with the Union. López and Moure have not attempted to explain why—or under what pretense—PRPB offers a higher employer contribution to Union affiliates only. *See Brannian*, 364 F. Supp. 2d at 1195 (finding a government employer offered no legitimate reason why it prevented nonunion employees from enrolling in an insurance plan.) Failing to explain why PRPB discriminates against nonmembers means PRPB has not provided even a rational basis for its illegal action, much less the required exacting basis. PRPB’s policy exists for the illegitimate purpose of impeding employees’ free choice not to subsidize the Union. It not only violates employees’ First Amendment rights—it is against public policy.

3. *Discrimination in public employment based on union membership is subject to strict scrutiny.*

Strict scrutiny is the standard of review when benefits of public employment are conditioned on organizational affiliation, and must be applied here.<sup>13</sup> The U.S. Supreme Court has employed this strict scrutiny standard in cases involving compelled speech and association. *See Janus*, 138 S. Ct. at 2483 (internal citations omitted); *See also Clingman v. Beaver*, 544 U.S. 581, 586 (2005).<sup>14</sup> Under strict scrutiny, the burden on associational rights must be narrowly tailored to

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<sup>13</sup> Strict scrutiny has been applied in cases involving patronage practices. *See McCloud v. Testa*, 97 F.3d 1536, 1542 (6th Cir. 1996) (“[T]he government’s proffered justifications for patronage must satisfy strict scrutiny.”) *See also Wren v. Jones*, 635 F.2d 1277, 1286 (7th Cir. 1980) (“if political association appears to be the sole basis for dismissal, then a strict scrutiny analysis should be applied.”)

<sup>14</sup> The *Janus* court explained “exacting scrutiny” was a lesser level of scrutiny than strict but then defined it the same way strict scrutiny has historically been defined: For an action to be constitutional under an exacting scrutiny standard, it “must serve a compelling state interest that cannot be achieved through means significantly less restrictive of associational freedoms.” *See Janus*, 138 S. Ct. at 2464-2465 (internal quotation marks and citations omitted); *Compare Wash. State Grange v. Wash. State Republican Party*, 552 U.S. 442, 444 (2008) (a government measure that “severely limits associational rights [ ] is subject to strict scrutiny and will be upheld only if it is ‘narrowly tailored to serve a compelling state interest.’”) (internal citation omitted). The *Janus* court also noted exacting scrutiny had been used in commercial speech cases and questioned whether that test provides sufficient protection for free speech rights. *See Janus*, 138 S. Ct. at 2464-2465. Given the Court’s definition of exacting scrutiny, strict scrutiny must be applied here, given that “minimal scrutiny” for commercial speech is “foreign” to the Court’s “free-speech jurisprudence.” *Id.* at 2465.

serve a compelling state interest. *See id.* The burden of proof is on the government employer to show an overriding interest validating an encroachment on an employee's First Amendment rights. *See Elrod v. Burns*, 427 U.S. 347, 368 (1976). But PRPB has articulated no government interest—compelling or otherwise—for increasing the membership rolls of the Union without offending employees' constitutional right of non-association. Even worse, it has not made any serious argument for why denying a health insurance benefit to employees based only on their nonmembership in the Union is narrowly tailored to achieve any governmental interest. While there are lawful ways for unions to encourage membership, employer discriminating against nonunion employees in employer benefits is not one of them.

The political nature of bargaining with the government dictates that unfavorable treatment in employer benefits due to an exercise of First Amendment rights must undergo the highest form of scrutiny. Discriminating against Plaintiffs and class members for exercising their First Amendment right not to be part of the Union is a practice that fails strict scrutiny. The purpose of this discriminatory policy is self-evident: To coerce union membership by penalizing nonmembership. PRPB has no compelling interest in discriminating against and ensuring that its nonunion employees receive less money to cover health insurance costs.

**V. Declaratory and Injunctive Relief are Warranted.**

The Court should award Plaintiffs and class members declaratory and injunctive relief for PRPB's unconstitutional action of reducing their employer contribution amounts solely for foregoing association with the Union. PRPB, in doing so, has subjected Plaintiffs and class members to the deprivation of their rights, privileges, and immunities guaranteed by the First and Fourteenth Amendments to the United States Constitution. The Court should enter a declaratory judgment pursuant to 28 U.S.C. § 2201 and Fed. R. Civ. P. 57, declaring that PRPB violated



Plaintiffs' and class members' constitutional rights by awarding a higher employer contribution exclusively to Union members, thereby discriminating against and coercing Plaintiffs and class members into membership and financial support for the Union. The Court should declare that PRPB violated Plaintiffs' and class members' constitutional rights by denying them the additional employer contribution benefit for exercising their First Amendment right not to join the Union's membership rolls nor pay its membership dues. The Court should also declare that PRPB cannot require Union membership nor the payment of Union dues as a condition for receiving the additional employer contribution benefit.

The Court should grant Plaintiffs' and class members' request for injunctive relief, permanently enjoining PRPB from denying the additional employer contribution benefit to civilian employees just because of their decision to forgo Union association and subsidization. PRPB's practice of awarding the additional employer contribution benefit exclusively to Union members remains in full force against Plaintiffs and class members. The Court should therefore permanently enjoin PRPB from maintaining and enforcing its policies and practices aimed at penalizing employees with reduced employer benefits for exercising their First Amendment right not to join or subsidize the Union.

The Court should grant any equitable relief it may deem just and proper to remedy the reduction in employer contribution Plaintiffs and class members have already suffered for exercising their constitutional right not to be associated with the Union. The Court should also grant Plaintiffs and class members their reasonable attorneys' fees under the Civil Rights Attorneys' Fees Award Act of 1976, 42 U.S.C. § 1988.

## **VI. Conclusion**

For these reasons, the Court should grant Plaintiffs' Motion for Summary Judgment against

Defendants Antonio López Figueroa and Michelle Moure in their official capacities as Commissioner and Human Resources Manager of the Puerto Rico Police Bureau, respectively.

**CERTIFICATE OF SERVICE**

It is hereby certified that the undersigned attorney electronically filed the foregoing Memorandum in Support of Motion for Summary Judgment with the Clerk of Court using the CM/ECF system which will send notification of such filing to all parties and attorneys of record. It is further certified that the undersigned attorney served Defendant Union of Organized Civilian Employees via regular mail at: 78 Calle Padial, Caguas, PR 00725.

**RESPECTFULLY SUBMITTED.**

In San Juan, Puerto Rico, this 19th day of January, 2024.

**s/Ángel J. Valencia-Gatell**

Ángel J. Valencia-Gatell

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