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

Cara O'Callaghan and Jenée Misraje,

Plaintiffs,

v.

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

Defendants.

Case No. 2-19-CV-02289 JVS (DFM)

**PLAINTIFFS' OPPOSITION TO DEFENDANT TEAMSTER'S MOTION TO DISMISS**

Hearing Date: September 9, 2019
Time: 1:30 P.M.
Judge: Hon. James V. Selna

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## INTRODUCTION

Plaintiffs, Cara O'Callaghan and Jenée Misraje ("Plaintiffs"), submit this Opposition to Defendant Teamsters Local 2010's Motion to Dismiss (Dkt 53) ("Union MTD"). Plaintiffs' First Amended Complaint (Dkt. 52) asserts seven causes of action. Count IV seeks the return of all union dues unconstitutionally paid to the union by both Plaintiff O'Callaghan and Plaintiff Misraje. Count IV also seeks the return of agency fees, or "fair share" fees, that were unconstitutionally paid to the union by Plaintiff O'Callaghan before she joined the union. Teamsters Local 2010 ("Teamsters" or the "Union") seeks to partially dismiss Count IV for Plaintiff O'Callaghan only, regarding a refund of fair-share fees, but not union dues, taken from her prior to the Supreme Court's decision in *Janus v. AFSCME*, 138 S.Ct. 2448 (2018). Teamsters' motion also seeks to dismiss Counts V, VI, and VII, which address the union's status as Plaintiffs' exclusive representative. Teamsters' motion does not seek to dismiss Counts I, II, or III, nor Count IV as it applies to union dues taken from both O'Callaghan and Misraje. For the reasons stated below, Plaintiffs have stated a claim on which relief may be granted for both the fair share fees taken from O'Callaghan and the forced association foisted on both Plaintiffs by the Teamsters' status as their exclusive representative.

## ARGUMENT

To survive this Motion to Dismiss, Plaintiffs need only state in their First Amended Complaint "sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). They should prevail provided their First Amended Complaint demonstrates something "more than a sheer possibility that a defendant has acted unlawfully." *Iqbal*, 556 U.S. at 678.

## I. The Teamsters Are Not Entitled to a "Good Faith" Defense to § 1983 Liability.

The Teamsters can find no safe harbor by claiming they were operating in accordance with pre-*Janus* case law. In *Harper v. Va. Dep't of Taxation*, 509 U.S. 86, 97 (1993), the Supreme Court explained that "[w]hen this Court applies a rule of federal law to the parties before it, that rule is the controlling interpretation of federal law and must be given full retroactive effect in all cases still open on direct review and as to all events, regardless of whether such events predate or postdate our announcement of the rule." The Third Circuit has called it a "truism" that "in the context of adjudication, retrospectivity is, and has since the birth of this nation been, the norm." *Laborers' Int'l Union v. Foster Wheeler Corp.*, 26 F.3d 375, 394 (3d Cir. 1994). The rule announced in *Janus* is, therefore, the relevant law when analyzing pre-*Janus* conduct.

Thus, at the time Plaintiffs signed their union dues authorizations, the Teamsters needed to secure Plaintiff's *affirmative consent* for the *knowing* and *voluntary* waiver of their rights not to join a union. The Teamsters did not do this. Because they did not secure Plaintiffs' affirmative consent, the Teamsters cannot compel them to remain members of the Union or to continue to pay union dues. In other words, Plaintiffs' union membership application card is void under *Janus*. Because it is void, any dues withheld from Plaintiffs before *Janus* were unconstitutional and, therefore, need to be returned.

The Union's liability for dues paid by Plaintiffs extends backward before *Janus*, limited only, if at all, by a statute of limitations defense. Monies or property taken from individuals under statutes later found unconstitutional must be returned to their rightful owner. In *Harper*, taxes collected from individuals under a statute later declared unconstitutional were returned. *Id.* at 98-99. Fines collected from individuals pursuant to statutes later declared unconstitutional also must be returned. *See Pasha v. United States*, 484 F.2d 630, 632-33 (7th Cir. 1973); *United States v. Lewis*, 478 F.2d 835, 846 (5th Cir. 1973); *Neely v. United States*, 546 F.2d 1059, 1061 (3d Cir. 1976). "Fairness and equity compel [the return of the unconstitutional fine], and a citizen has the right to expect as much from his government, notwithstanding the fact that the government and the court

were proceeding in good faith[.]" *United States v. Lewis*, 342 F. Supp. 833, 836 (E.D. La. 1972).

As the Supreme Court has explained, the nature of judicial review means that constitutional decisions should be applied retroactively:

> "To hold a governmental Act to be unconstitutional is not to announce that we forbid it, but that the Constitution forbids it; and when, as in this case, the constitutionality of a state statute is placed in issue, the question is not whether some decision of ours 'applies' in the way that a law applies; the question is whether the Constitution, as interpreted in that decision, invalidates the statute. Since the Constitution does not change from year to year; since it does not conform to our decisions, but our decisions are supposed to conform to it; the notion that our interpretation of the Constitution in a particular decision could take prospective form does not make sense."

*Danforth v. Minnesota*, 552 U.S. 264, 286 (2008) (quoting *American Trucking Assns., Inc. v. Smith*, 496 U.S. 266, 201(1987) (Scalia, J., dissenting)).

Under *Harper* and these precedents, the Union has no basis to keep the monies it seized from Plaintiffs' wages before the Supreme Court put an end to this unconstitutional practice. Plaintiffs are entitled to a refund of their dues.

There is no "good faith" defense to Section 1983 liability. The ostensible defense is: (1) incompatible with the statute's text, which mandates "that "every person" who deprives others of their constitutional rights "shall be liable to the party injured in an action at law . . ." 42 U.S.C § 1983; (2) incompatible with the statutory basis for immunities and the union's lack of immunity; and (3) incompatible with "[e]lemental notions of fairness [that] dictate that one who causes a loss should bear the loss." *Owen v. City of Indep.*, 445 U.S. 622, 654 (1980). Moreover, creating this sweeping mistake-of-law defense would undermine Section 1983's remedial purposes and burden the courts with having to evaluate defendants' motives for depriving others of their constitutional rights.

**A. A "good faith" defense conflicts with Section 1983's text.**

"Statutory interpretation . . . begins with the text." *Ross v. Blake*, 136 S. Ct. 1850, 1856 (2016). Section 1983 states:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable.

42 U.S.C. § 1983. Section 1983 means what it says: "[u]nder the terms of the statute, '[e]very person who acts under color of state law to deprive another of a constitutional right [is] answerable to that person in a suit for damages.'" *Rehberg v. Paulk*, 566 U.S. 356, 361 (2012) (quoting *Imbler v. Pachtman*, 424 U.S. 409, 417 (1976)) (emphasis added).

A "good faith" defense to Section 1983 cannot be reconciled with the statute's mandate that "every person"—not some persons, but "every person"—who deprives a party of constitutional rights "shall be liable to the party injured in an action at law . . ." The term "shall" is not a permissive term, but a mandatory one. The statute's plain language requires that Teamsters be held liable to Plaintiffs for damages.

The only exception to the law is stated in the text of the law: for "judicial officers." 42 U.S.C. § 1983. Under the rule of statutory interpretation that the expression of one thing is the exclusion of others, the expression of one exception for judicial officers excludes all other exceptions, including a "good faith" exception that Teamsters asks this Court to read into the statute. Such a reading is not allowed. Plaintiffs ask the Court to enforce the statute as it is written.

**B. A "good faith" defense is incompatible with the statutory basis for qualified immunity and Teamsters' lack of that immunity.**

Section 1983 "on its face does not provide for any immunities." *Malley v. Briggs*, 475 U.S. 335, 342 (1986). Thus, courts can "not simply make [their] own judgment about the need for immunity" and "do not have a license to create immunities based solely on our view of sound policy." *Rehberg*, 566 U.S. at 363. Rather, courts only can "accord[] immunity where a 'tradition of immunity was so firmly rooted in the common law and was supported by such strong policy reasons that Congress would have specifically so provided had it wished to abolish the doctrine'" when it enacted section 1983. *Richardson v. McKnight*, 521 U.S. 399, 403 (1997) (quoting *Wyatt v. Cole*, 504 U.S. 158, 164–65 (1992)). These policy reasons are "avoid[ing] 'unwarranted timidity' in performance of public duties, ensuring that talented candidates are not deterred from public service, and preventing the harmful distractions from carrying out the work of government that can often accompany damages suits." *Filarsky v. Delia*, 566 U.S. 377, 389–90 (2012) (citing *Richardson*, 521 U.S. at 409–11). Defendants are not entitled to qualified immunity to Section 1983 damages claims unless these exacting strictures are satisfied. *See, e.g., Owen*, 445 U.S. at 657 (holding municipalities lack qualified immunity).

Private defendants are not usually entitled to qualified immunity. *See Richardson*, 521 U.S. at 409–11; *Wyatt*, 504 U.S. at 164–65. A narrow exception to that rule exists for private individuals who "perform[ ] duties [for the government] that would otherwise have to be performed by a public official who would clearly have qualified immunity." *Williams v. O'Leary*, 55 F.3d 320, 324 (7th Cir. 1995) (citation omitted) (private physician contracted to provide medical services at state prison); *see, e.g., Filarsky*, 566 U.S. at 393–94 (holding private attorney retained by a city to conduct an official investigation entitled to qualified immunity).

The Union has never claimed qualified immunity to Section 1983 liability. In fact, it admits that "the Supreme Court has held that private parties cannot invoke 'qualified immunity.'" Union MTD M at 4. There is no history of unions enjoying immunity before

section 1983's enactment in 1871 that would explain why Congress felt no need to mention it. Public sector unions did not exist at the time. The government's interest in ensuring that public servants are not cowed by threats of personal liability has no application to the Union.

The relevance of the foregoing is three-fold. First, qualified immunity law shows that exemptions to Section 1983 liability cannot be created out of whole cloth. Immunities are based on the statutory interpretation that Section 1983 did not abrogate entrenched, pre-existing immunities. *See Filarsky*, 566 U.S. at 389–90. The "good faith" defense to Section 1983 for which Teamsters argues, by contrast, is based on nothing more than misguided notions of equity and fairness. Given that courts "do not have a license to create immunities based on [their] view[s] of sound policy," *Rehberg*, 566 U.S. at 363, it follows that courts do not have license to create equivalent defenses to Section 1983 liability based on policy reasons.

Second, unlike with recognized immunities, there is no common law history prior to 1871 of private parties enjoying a "good faith" defense to constitutional claims. As one scholar recently noted: "[t]here was no well-established, good-faith defense in suits about constitutional violations when Section 1983 was enacted, nor in Section 1983 suits early after its enactment." William Baude, *Is Qualified Immunity Unlawful?,* 106 CALIF. L. REV. 45, 49 (2018); *see Little v. Barreme*, 6 U.S. (2 Cranch) 170, 179 (1804) (Justice Marshall rejecting a good faith defense "the instructions cannot . . . legalize an act which without those instructions would have been a plain trespass."); *Anderson v. Myers*, 238 U.S. 368, 378 (1915) (rejecting "good faith" defense).

Finally, it is anomalous to grant defendants that lack qualified immunity the functional equivalent of an immunity under the guise of a "defense." Yet that is what the Union seeks here. Qualified immunity bars a damages claim against an individual if his or her "conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982). That accurately describes the ostensible "defense" the Union asserts. It makes little sense

to find that defendants, who are not entitled to qualified immunity to Section 1983 liability for damages, are nonetheless, entitled to substantively the same thing under a different name.

**C. A "good faith" defense to Section 1983 is inconsistent with equitable principles that injured parties be compensated for their losses.**

"As a general matter, courts should be loath to announce equitable exceptions to legislative requirements or prohibitions that are unqualified by the statutory text." *Guidry v. Sheet Metal Workers Nat. Pension Fund*, 493 U.S. 365, 376 (1990). That especially is true here. There is nothing equitable about depriving relief to victims of constitutional deprivations. Nor is there anything equitable about letting wrongdoers like Teamsters keep ill-gotten gains. Equity cannot justify writing into Section 1983 a defense found nowhere in its text.

If anything, equity favors enforcing Section 1983 as written, for "elemental notions of fairness dictate that one who causes a loss should bear the loss." *Owen,* 445 U.S. at 654. The Supreme Court in *Owen* wrote those words when holding municipalities are not entitled to a "good faith" immunity to Section 1983. The Court's two equitable justifications for so holding are equally applicable here.

First, the *Owen* Court reasoned that "many victims of municipal malfeasance would be left remediless if the city were also allowed to assert a good faith defense," and that "[u]nless countervailing considerations counsel otherwise, the injustice of such a result should not be tolerated." *Id.* at 651. That injustice also should not be tolerated here. Countless victims of constitutional deprivations will be left remediless if defendants to Section 1983 suits can escape liability by showing they had a good faith, but mistaken, belief their conduct was lawful. Those victims include not just Plaintiffs and other employees who had agency fees seized from them. Under the Union's argument, every defendant to every Section 1983 damages claim can assert a good faith defense. For example, the municipalities that the Supreme Court in *Owen* held not to be entitled to a

"good faith" immunity could raise an equivalent "good faith" defense, leading to the very injustice the Court sought to avoid.

Second, the *Owen* Court further recognized that Section "1983 was intended not only to provide compensation to the victims of past abuses, but to serve as a deterrent against future constitutional deprivations, as well." 445 U.S. at 651. "The knowledge that a municipality will be liable for all of its injurious conduct, whether committed in good faith or not, should create an incentive for officials who may harbor doubts about the lawfulness of their intended actions to err on the side of protecting citizens' constitutional rights." *Id.* at 651–52 (emphasis added). The same rationale weighs against a "good faith" defense to Section 1983.

**D. Recognizing a "good faith" defense to Section 1983 will undermine the statute's remedial purposes.**

The Court should pause to consider the implications of recognizing this sweeping defense. Under the Teamsters' rationale, every defendant that deprives any person of any constitutional right can escape liability for damages by claiming it had a good faith, but mistaken, belief its conduct was lawful.

This ostensible defense would be available not just to unions, but to all defendants sued for damages under Section 1983. Of course, individuals with qualified immunity would have little reason to raise the defense, since their immunity is similar. But defendants who lack immunity, such as private parties and municipal governments, would gain the functional equivalent of qualified immunity.

These defendants could raise a "good faith" defense not just to First Amendment compelled-speech claims but to any constitutional or statutory claim brought under Section 1983 for damages. Included would be claims alleging discrimination based on race, sex, or political affiliation.

A "good faith" defense is exceedingly broad. It would apply to any private party acting in concert with the state. In effect, a reasonable mistake of law would become a

cognizable defense to depriving a citizen of his or her constitutional rights.

This defense would deny citizens compensation for their injuries, as well as burden the courts with having to adjudicate whether defendants acted in good faith. Courts would have to both determine whether a defendant violated the Constitution and weigh the reasonableness of their subjective motives for doing so.

Even if Section 1983's text did not preclude courts from refusing to hold defendants liable, practical concerns justify not creating this massive exemption to Section 1983 liability. Doing so would undo Congress' remedial purpose in passing Section 1983.

**E. Other circuit courts recognized a "good faith" defense not to all Section 1983 claims but only to certain constitutional deprivations.**

Teamsters assert that several circuit courts found that private defendants have a "good faith" defense to Section 1983 liability for damages. Union MTD Memorandum at 3. A close reading of those cases, however, reveals that the courts did not recognize a defense to Section 1983 writ large but found that good faith was a defense to a particular due-process deprivation actionable under Section 1983.

Section 1983 provides a cause of action for the "deprivation of any rights, privileges, or immunities secured by the Constitution and laws . . . ." 42 U.S.C. § 1983. The elements and defenses material to different constitutional and statutory deprivations vary considerably. For example, the elements of a Fourteenth Amendment due-process deprivation are different from those of a Fourth Amendment search and seizure violation. Most importantly here, state of mind is material to some constitutional deprivations but not others. For instance, a specific intent is required in "due process claims for injuries caused by a high-speed chase," "Eighth Amendment claims for injuries suffered during the response to a prison disturbance," and invidious discrimination claims under the Equal Protection clauses. *OSU Student Alliance v. Ray*, 699 F.3d 1053, 1074 (9th Cir. 2012). In contrast, "free speech violations do not require specific intent." *Id.*

A chronological review of the case law reveals that the published appellate decisions that found defendants can raise a "good faith" defense did so because bad faith and lack of probable cause were material to the Fourteenth Amendment due-process deprivations at issue in those cases. The Sixth Circuit was the first appellate court to find that private parties can raise a "common law good faith defense to malicious prosecution and wrongful attachment cases" brought under Section 1983. *Duncan v. Peck*, 844 F.2d 1261, 1267 (6th Cir. 1988). The court did so because malice and lack of probable cause are elements of those types of due process deprivations. *Id*.

At the time, Duncan's holding conflicted with other appellate decisions holding that private parties enjoy "good faith" immunity to Section 1983 liability. *See id.* at 1265. A "defense" and an "immunity" are different things: a defense rebuts the alleged deprivation of rights, while an immunity is an exemption from Section 1983 liability, even if there is a deprivation. *See Richardson*, 521 U.S. at 403. "As the Wyatt concurrence pointed out, a legal defense may well involve 'the essence of the wrong,' while an immunity frees one who enjoys it from a lawsuit whether or not he acted wrongly." *Id.* (quoting Wyatt, 504 U.S. at 171– 72 (Kennedy, J., concurring)). The Sixth Circuit in *Duncan* believed that "courts who endorsed the concept of good faith immunity for private individuals improperly confused good faith immunity with a good faith defense." 844 F.2d at 1266.

In 1992, the Supreme Court in *Wyatt* held that private parties seldom enjoy "good faith" immunity to Section 1983 liability. 504 U.S. at 161, 168. Wyatt involved "private defendants charged with 42 U.S.C. § 1983 liability for invoking state replevin, garnishment, and attachment statutes later declared unconstitutional" for violating due process guarantees. 504 U.S. at 159. The claim was analogous to "malicious prosecution and abuse of process," and at common law, "private defendants could defeat a malicious prosecution or abuse of process action if they acted without malice and with probable cause." *Id.* at 164–65. The Court determined that "[e]ven if there were sufficient common law support to conclude that respondents . . . should be entitled to a good faith defense, that would still not entitle them to what they sought and obtained in the courts below: the

qualified immunity from suit accorded government officials . . . .” *Id.* at 165. The reason was, the “rationales mandating qualified immunity for public officials are not applicable to private parties.” *Id.* at 167.

The *Wyatt* Court left open the question of whether the defendants could raise “an affirmative defense based on good faith and/or probable cause.” *Id.* at 168–69. As the Supreme Court later explained in *Richardson*, “*Wyatt* explicitly stated that it did not decide whether or not the private defendants before it might assert, not immunity, but a special ‘good-faith’ defense.” 521 U.S. at 413. The Court in Richardson, “[l]ike the Court in Wyatt,” also “[did] not express a view on this last-mentioned question.” *Id.* at 414. The Supreme Court has yet to resolve the question.

On remand in *Wyatt*, the Fifth Circuit held the defendants could raise this defense because malice and lack of probable cause are elements of the due-process claim. 994 F.2d at 1119–21. The Fifth Circuit recognized that the Supreme Court “focused its inquiry on the elements of these torts,” and found “that plaintiffs seeking to recover on these theories were required to prove that defendants acted with malice and without probable cause.” *Id.* at 1119 (first emphasis added).

Three other circuits later followed the Sixth and Fifth Circuits’ lead and recognized that good faith is a defense to a due-process deprivation arising from private party’s ex parte seizure of property. *See Jordan v. Fox, Rothschild, O’Brien & Frankel*, 20 F.3d 1250, 1276–77 (3d Cir. 1994); *Pinsky v. Duncan*, 79 F.3d 306, 312–13 (2d Cir. 1996); *Clement v. City of Glendale*, 518 F.3d 1090, 1097 (9th Cir. 2008). The Second Circuit in *Pinsky* required proof of “malice” and “want of probable cause” because “malicious prosecution is the most closely analogous tort and [is] look[ed] to . . . for the elements that must be established in order for [the plaintiff] to prevail on his § 1983 damages claim.” 79 F.3d at 312–13. The Third Circuit in *Jordan* required proof of “malice” for the same reason, recognizing that while “section 1983 does not include any mens rea requirement in its text, . . . the Supreme Court has plainly read into it a state of mind requirement specific to the particular federal right underlying a § 1983 claim.” 20 F.3d at 1277

(emphasis added).

This line of cases recognized only a "rule to govern damage claims for due-process violations under § 1983 where the violation arises from a private party's invocation of a state's statutory remedy." *Pinsky*, 79 F.3d at 313. The cases did not hold that all deprivations of constitutional rights and statutory rights actionable under Section 1983 require proof of malice and lack of probable cause, which would be absurd. Nor did the cases hold good faith to be a blanket defense to Section 1983 liability itself—*i.e.*, finding an immunity. In fact, the Supreme Court in *Wyatt* rejected the proposition that private parties generally enjoy immunity to Section 1983 liability. 504 U.S. at 159.

## II. Recognizing the Union as Plaintiffs' exclusive representative for bargaining purposes violates their First Amendment rights of speech and association. Plaintiffs cannot be forced to associate with a group that they disagree with.

### A. Forcing Plaintiffs to have the Union serve as their exclusive representative is unconstitutional.

Under Cal. Gov't Code §§ 3570, 3571.1(e), 3574, 3578, as a condition of their employment, Plaintiffs must allow the union to speak on their behalf on wages and hours, matters that *Janus* recognizes to be of inherently public concern. 138 S. Ct. at 2473. California law grants the union prerogatives to speak on Plaintiffs' behalf on not only wages but also "terms and conditions of employment." Cal. Gov't Code § 3562(q)(1). These are precisely the sort of policy decisions that *Janus* recognized are necessarily matters of public concern. 138 S. Ct. 2467. When the state certifies the Teamsters to represent the bargaining unit, it forces all employees in that unit to associate with the Union. This coerced association authorizes the Teamsters to speak on behalf of the employees even if the employees are not members, even if the employees do not contribute fees, and even if the employees disagree with the Teamsters' positions and speech.

This arrangement has two constitutional problems: it is both compelled speech because the Union speaks on behalf of the employees as though its speech is the employees' own speech and compelled association because the Union represents everyone in the bargaining unit without any choice or alternative for dissenting employees not to associate.

Legally compelling Plaintiffs to associate with the Teamsters demeans their First Amendment rights. Although the issue has not been raised directly before the Supreme Court, it has questioned whether exclusive representation in the public sector context imposes a "significant impingement" on public employees' First Amendment rights. *Janus*, 138 S. Ct. at 2483; *see Harris v. Quinn*, 134 S. Ct. 2618, 2640 (2014); *Knox v. Service Employees*, 567 U. S. 298, 310–11 (2012). Indeed, "[f]orcing free and independent individuals to endorse ideas they find objectionable is always demeaning. . . . [A] law commanding involuntary affirmation of objected-to beliefs would require even more immediate and urgent grounds than a law demanding silence." *Janus*, 138 S. Ct. at 2464 (2018) (quoting *West Virginia Bd. of Ed. v. Barnette*, 319 U. S. 624, 633 (1943) (internal quotation marks omitted)). Exclusive representation forces employees "to voice ideas with which they disagree, [which] undermines" First Amendment values. *Janus*, 138 S. Ct. at 2464. California laws command Plaintiffs' involuntary affirmation of objected-to beliefs. The fact that Plaintiffs retain the right to speak for themselves in certain circumstances does not resolve the problem that the Teamsters organizes and negotiates as their representative in their employment relations.

Exclusive representation is also forced association: the Plaintiffs are forced to associate with the Union as their exclusive representative simply by the fact of their employment in this particular bargaining unit. "Freedom of association . . . plainly presupposes a freedom not to associate." *Roberts v. United States Jaycees*, 468 U.S. 609, 623 (1984). Yet Plaintiffs have no such freedom, no choice about their association with the Union; it is imposed and coerced by state laws.

Exclusive representation is, therefore, subject to at least exacting scrutiny, if not

strict scrutiny. It must "serve a compelling state interest that cannot be achieved through means significantly less restrictive of associational freedoms." *Knox*, 597 U.S. at 310. This the Defendants cannot show. *Janus* has already dispatched "labor peace" and the so-called "free-rider problem" as sufficiently compelling interests to justify this sort of mandate. 138 S. Ct. at 2465-69. And Plaintiffs are not seeking the right to form a rival union or to force the government to listen to their individual speech. They only wish to disclaim the Union's speech on their behalf. They are guaranteed that right not to be forced to associate with the union and not to let the union speak on their behalf by the First Amendment.

**B. The Union's reliance on Knight and Mentele is misplaced.**

In defending the California exclusive representation statutory scheme, Defendants rely heavily on *Minn. State Bd. for Cmty. Colls. v. Knight*, 465 U.S. 271 (1984). *Knight* held that employees do not have a right, as members of the public, to a formal audience with the government to air their views. *Knight* does not decide, however, whether such employees can be forced to associate with the union; therefore, the case is inapposite. As the *Knight* court framed the issue, "The question presented . . . is whether this restriction on participation in the nonmandatory-subject exchange process violates the constitutional rights of professional employees." 465 U.S. at 273.

The plaintiffs in *Knight* were community college faculty who dissented from the certified union. *Id*. at 278. The Minnesota statute at issue required that their employer "meet and confer" with the union alone regarding "non-mandatory subjects" of bargaining. The statute explicitly prohibited negotiating separately with dissenting employees. *Id.* at 276. The plaintiffs filed their suit claiming a constitutional right to take part in these negotiations.

The Court explained the issue it was addressing well: "[A]ppellees' principal claim is that they have a right to force officers of the State acting in an official policymaking capacity to listen to them in a particular formal setting." *Id.* at 282. Confronted with this

claim, the Court held that "[a]ppellees have no constitutional right to force the government to listen to their views. They have no such right as members of the public, as government employees, or as instructors in an institution of higher education." *Id.* at 283.

The First Amendment guarantees citizens a right to speak. It does not deny the government, or anyone else, the right to ignore such speech. Unlike the plaintiffs in *Knight*, Plaintiffs here do not claim that their employer—or anyone else—should be compelled to listen to their views. Instead, they assert a right against the compelled association forced on them by exclusive representation.

The Defendants' invocation of *Knight* makes two important missteps. First, in its brief the Teamsters assert that the "the Supreme Court summarily affirmed the lower court's rejection of the Knight plaintiffs' 'attack on the constitutionality of exclusive representation in bargaining over terms and conditions of employment.'" Union MTD Memorandum at 13 (quoting *Knight,* 465 U.S. at 278-79). But the Teamsters did not clarify what was summarily affirmed. What was summarily affirmed was a rejection of the argument that collective bargaining violates the non-delegation doctrine, not that it violates a right of association, as the relevant portion of the lower court opinion makes clear. *See Knight v. Minn. Cmty. Coll. Faculty Ass'n.*, 571 F. Supp. 1, 4 (D. Minn. 1982). That the non-delegation doctrine is at issue is demonstrated when the Supreme Court cites to *A.L.A. Schechter Poultry Corp. v. United States*, 295 U.S. 495 (1935) and *Carter v. Carter Coal Co*., 298 U.S. 238 (1936), neither of which address a right to freedom of association. *Knight*, 465 U.S. at 279. The plaintiffs in *Knight* viewed the granting of negotiating rights to the union as a delegation of legislative power to a private organization, and the district court rejected the claim, explaining simply that the claim "is clearly foreclosed by the Supreme Court's decision in *Abood v. Detroit Board of Education*, 431 U.S. 209, 97 (1977)." *Knight,* 571 F. Supp. at 4. The statutory arrangement did not violate the non-delegation doctrine "merely because the employee association is a private organization." *Id.* at 5. In its own *Knight* decision, the Supreme

Court was not affirming a claim of exclusive representation equivalent to Counts V, VI, and VII.

Defendants' second misreading of *Knight* severely elevates and misinterprets dicta in the decision. The central issue of the *Knight* decision is whether plaintiffs could compel the government to negotiate with them instead of, or in addition to, the union. That question is fundamentally different from Plaintiffs' claim that the government cannot compel them to associate with the Teamsters by making the Teamsters bargain on their behalf.

In arguing that these two distinct claims are the same, the Teamsters point only to dicta towards the end of the *Knight* opinion that suggests the challenged policy "in no way restrained [plaintiffs'] freedom to speak on any education related issue or their freedom to associate or not associate with whom they please." *Knight*, 465 U.S. at 288. Yet the Defendants' own quotations from that portion of the opinion reinforce that the Court was still addressing the question of being heard. *See* Union MTD Memorandum at 14. The Court explains that the government's right to "choose its advisers" is upheld because a "person's right to speak is not infringed when the government simply ignores that person while listening to others." *Knight,* 465 U.S. at 288. The Court raises the matter of association only to address the objection that exclusive representation "amplifies [the union's] voice in the policymaking process. But that amplification no more impairs individual instructors' constitutional freedom to speak than the amplification of individual voices" impairs the ability of others to speak as well. *Id.* This, again, is another path to the same conclusion: First Amendment "rights do not entail any government obligation to listen." *Id.* at 287.

*Knight* is, therefore, not responsive to the question Plaintiffs now raise: whether someone else can speak in their name, with their imprimatur granted to it by the government. Plaintiffs do not contest the right of the government to choose whom it meets with, to "choose its advisors," or to amplify the Teamsters' voice. They do not demand that the government schedule meetings with them, engage in negotiation, or any of the

other demands made in *Knight*. They demand only that the Union not do so in their name, and they respectfully request that this Court issue a declaration to that effect.

The Teamsters also rely on *Mentele v. Inslee*, 916 F.3d 783, 784 (9th Cir. 2019). *Mentele* recognizes that the question presented in *Knight* can be distinguished from the current question of whether a union can act as exclusive representative of non-members. *Id.* at 788 (the two questions are "arguably distinct"). Nonetheless, *Mentele* goes on to state that *Knight* continues to apply to "partial" state employees with limited representation by the union.

*Mentele* should be distinguished on this point. The plaintiffs in *Mentele* are not government workers but private employees. Under the childcare system of the State of Washington, "families choose independent childcare providers and pay them on a scale commensurate with the families' income levels. The State covers the remaining cost." *Id.* at 785. Washington only considers the plaintiffs in *Mentele* to be "'public employees' for purposes of the State's collective bargaining legislation." *Id.* As such, the exclusive representation provided these employees by their union is limited: "[T]hey are considered 'partial' state employees, rather than full-fledged state employees, and Washington law limits the scope of their collective bargaining agent's representation." *Id.* The exclusive representative cannot organize a strike, negotiate over retirement benefits, or even govern the hiring or firing of employees because they are private employees hired by the families in need of their services. *Id.* The harm of being forced to associate with such an exclusive representative is, thus, minimal.

By contrast, Plaintiffs are public employees in every aspect of the phrase. They are public university employees, hired and fired by the government, and are forced to associate with a government union that has different views from their own on important policy issues.

The *Janus* case clearly recognized the difference between government employees like Plaintiffs and privately hired employees like those in *Mentele* when it ended the collection of agency fees from non-members of the union for government workers only and not for private employees. 138 S. Ct. at 2486.

Likewise, in *Harris v. Quinn*, the Supreme Court distinguished between "full-fledged public employees" like Plaintiffs and partial state employees. 573 U.S. 616, 639 (2014). In fact, the plaintiffs in *Harris* were almost identical in nature to the plaintiffs in *Mentele*, and the Supreme Court in *Harris* limited its holding to partial state employees because of the differences between such employees and full-fledged public employees. *Id*. at 647. The plaintiffs in *Harris* were personal assistants hired solely by families to provide homecare services for Medicaid recipients. *Id.* at 621. Like the plaintiffs in *Mentele*, they were considered partial state employees because they were paid by the state and subject to limited collective bargaining and exclusive representation by state statute. *Id*. at 621-623. Just as the Court in *Harris* limited its holding to employees who were public only for collective bargaining purposes, so should the *Mentele* holding be limited to partial state employees and not extended to full-fledged public employees like Plaintiffs.

## CONCLUSION

For the reasons stated above, the Motion to Dismiss should be denied.

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Respectfully submitted,

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