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14 *Michael Jackson and Tory Smith*

15 UNITED STATES DISTRICT COURT  
16 SOUTHERN DISTRICT OF CALIFORNIA

17 Michael Jackson and Tory Smith,  
18 Plaintiffs,

19 v.

20 Janet Napolitano in her official capacity as  
21 President of the University of California;  
22 Teamsters Local 2010; Xavier Becerra, in his  
23 official capacity as Attorney General of the  
24 State of California; and Betty T. Yee, in her  
25 official capacity as Controller of the State of  
California,  
26 Defendants.

) Case No.:

) **CIVIL RIGHTS COMPLAINT SEEKING**  
) **DECLARATORY RELIEF, INJUNCTIVE**  
) **RELIEF, AND DAMAGES**

) [42 U.S.C. § 1983]

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1 **INTRODUCTION**

2 Public employees have a First Amendment right not to be compelled by their employer to  
3 join a union, *Knox v. Service Employees Int’l Union, Local 1000*, 567 U.S. 298, 322 (2012), or to  
4 pay any fees to that union unless an employee “affirmatively consents” to waive that right, *Janus*  
5 *v. Am. Fed. of State, Cty. and Mun. Employees, Council 31*, 138 S. Ct. 2448, 2486 (2018). Such a  
6 waiver must be “freely given and shown by ‘clear and compelling’ evidence.” *Id.* Union dues  
7 deduction authorizations signed by public employees in California before *Janus* cannot constitute  
8 affirmative consent by those employees to waive their First Amendment right not to join or pay  
9 dues to a union because the Supreme Court had not yet recognized that right.

10 Additionally, in order to give informed, affirmative consent to waive the exercise of a  
11 constitutional right, an individual must first know that the constitutional right exists. But on the  
12 day that *Janus* was decided, then-Governor Jerry Brown signed Senate Bill 866 into law. A  
13 “budget rider” bill that went into effect immediately, it contains provisions, collectively referred  
14 to herein as the Gag Rule statutes, that prohibit public employees from talking to their own  
15 employers—and employers from talking to their own employees—about payroll deductions, union  
16 membership, or their constitutional rights recognized by the *Janus* decision.

17 Michael Jackson and Tory Smith (Plaintiffs) have not provided the affirmative consent  
18 necessary to waive their First Amendment rights to refrain from joining or providing monetary  
19 support to Teamsters Local 2010, nor were they able to communicate with their employer about  
20 the nature—or even existence—of their rights recognized by *Janus*. Instead, officials at the  
21 University of California, San Diego, told Plaintiffs that they were muzzled from discussing union  
22 dues deductions because of the SB 866 Gag Rule statutes and that Plaintiffs must direct their  
23 question to union representatives (who have an incentive to remain silent). UCSD continued to  
24 take money out of their paychecks to send to the union. The Gag Rule statutes withhold the  
25 information Plaintiffs and other public employees need in order to meet the standard for waiver  
26 required by *Janus*, burden their First Amendment right to refrain from subsidizing a union, and  
27 violate their rights to procedural and substantive due process under the 14th Amendment.

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1 including the provisions challenged in this case. His address for service of process is 300 South  
2 Spring Street, Los Angeles, California, 90013 in Los Angeles County.

3 8. Defendant Betty T. Yee, California’s Controller, is sued in her official capacity as the  
4 state’s chief fiscal executive officer responsible for disbursing paychecks for all state employees.  
5 Her address for service of process is Legal Office, State Controller’s Office, 300 Capitol Mall,  
6 Suite 1850, Sacramento, California 95814.

7 **BACKGROUND AND FACTS**

8 **A. First Amendment Rights Recognized by *Janus***

9 9. On June 27, 2018, the Supreme Court held in *Janus v. AFSCME*, 138 S. Ct. 2448, that  
10 the government cannot require public employees to pay union dues without the employees’ “clear  
11 and affirmative” waiver of their First Amendment right to refrain from supporting the union. *Janus*  
12 overturned forty years of case law that authorized agency shop, or mandatory union service fees,  
13 in public sector employment. In California, and all other states, no public employee can be  
14 compelled, as a condition of employment to pay dues or fees to a union.

15 10. *Janus* explains what is required for public employees to waive their First Amendment  
16 right to refrain from subsidizing the union:

17 Neither an agency fee nor any other payment to the union may be deducted from a  
18 nonmember’s wages, nor may any other attempt be made to collect such a payment,  
19 unless the employee affirmatively consents to pay. By agreeing to pay,  
20 nonmembers are waiving their First Amendment rights, and such a waiver cannot  
21 be presumed. Rather, to be effective, the waiver must be freely given and shown by  
22 “clear and compelling” evidence. Unless employees clearly and affirmatively  
23 consent before any money is taken from them, this standard cannot be met.

24 138 S. Ct. at 2486.

25 **B. Statutory Authorization for Union Membership and Dues Collection**

26 11. The relevant sections of SB 866 are attached as Exhibit A.

27 12. California law requires the University of California to deduct union dues from its  
28 employees’ paychecks. Cal. Gov’t Code § 3583.5.

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1 13. Public employees can make, cancel, or change a payroll deduction by submitting a form  
2 approved by the state Controller, *except* deductions that are paid to an employee organization. Cal.  
3 Gov't Code §§ 1153(a), (b); 1157.10.

4 14. Only an “employee organization” (union) can ask the Controller to make, cancel, or  
5 change payroll deductions related to the union’s representation. Cal. Gov’t Code §§ 1153(h);  
6 1157.10.

7 15. Local 2010 requested that membership dues be deducted directly from the paychecks  
8 of Jackson and Smith, as permitted by Cal. Gov’t Code § 1152.

9 16. Under California law, unions may adopt a “maintenance of membership provision”  
10 regarding how and when government employees can withdraw from a union. Cal. Gov’t Code  
11 § 3515.

12 17. Under California law, government employees can be forced to remain members of a  
13 union without their consent, as long as the collective bargaining memorandum of understanding  
14 contains a “maintenance of membership” provision that allows employees to withdraw from the  
15 union thirty days prior to the expiration of the memorandum by signing a withdrawal letter to the  
16 union and to the Controller. Cal. Gov’t Code §§ 3513(i) and 3583.

17 18. Under California law, government employers are instructed to rely on unions to  
18 determine which employees have authorized dues deductions, and employee requests to stop  
19 deductions must be directed to the union rather than the employer. Cal. Gov’t Code § 1157.12.

20 19. Acting in concert under color of state law, the University of California, through  
21 Defendant Napolitano, entered into a collective bargaining agreement (Agreement), with Local  
22 2010 effective April 19, 2017, through March 31, 2022.

23 20. The Agreement contains an article entitled “Payroll Deductions” which provides, in  
24 relevant part:

25 **A. GENERAL CONDITIONS**

26 Upon receipt of a written individual authorization form from Teamsters Local 2010  
27 or an employee covered by this Agreement, the University will deduct from the pay  
28 due such employee the monthly amount certified by the Union to be the dues  
required for the employee’s membership in the Union. . . .

\* \* \*

1 D. CANCELLATION OF DEDUCTIONS

2 Any employee may cancel or terminate his/her authorization for Teamsters Local  
3 2010 payroll deduction payment of member dues in accordance with the Teamsters  
4 Local 2010 membership application signed by the employee. Following Teamsters  
5 Local 2010 notification to the University of such cancellation such an employee's  
6 payroll deduction shall automatically revert from dues to fair share service fees,  
7 without loss of any time, unless conscientious objector status has been previously  
8 authorized by Teamsters Local 2010.

9 **C. Plaintiffs' Employment, Union Membership, and Assertion of Rights**

10 **1. Michael Jackson**

11 21. Jackson began his employment on the Parking Management staff at UCSD in October  
12 2013.

13 22. A Special Events Parking Lead in the Transportation department, Jackson is a morning  
14 shift supervisor responsible for managing all aspects of the ebb and flow of traffic on campus,  
15 facilitating parking in general and for special events. He works with a staff of student and full-time  
16 employees.

17 23. When he was hired, neither UCSD nor Local 2010 informed Jackson that he had the  
18 option to refrain from joining Local 2010.

19 24. When he was hired, Jackson thought he was required to join Local 2010 as a condition  
20 of his employment.

21 25. Given that Jackson believed he had no choice in the matter, Jackson joined Local 2010  
22 at the start of his employment.

23 26. Jackson happened to learn of the *Janus* decision from a local radio program.

24 27. Subsequently, while in the UCSD Human Resources office to assist a student worker  
25 pick up a final paycheck, Jackson asked a Human Resources employee how he could resign from  
26 Local 2010.

27 28. The employee in the UCSD Human Resources office refused to speak to Jackson about  
28 resigning from Local 2010 or any aspects of union membership.

29. The employee in the UCSD Human Resources office advised Jackson to go to the union  
with his questions.

1           30. Jackson sent a letter dated January 23, 2019, to Local 2010 explaining that he did not  
2 affirmatively consent to pay dues or fees to Local 2010, terminating his union membership,  
3 directing Local 2010 to discontinue its dues deduction, and directing Local 2010 to refund all fees  
4 deducted since the *Janus* decision was issued. Exhibit B.

5           31. Local 2010 replied in a letter dated February 7, 2019, asserting that Jackson would have  
6 to continue paying dues pursuant to a Membership Application that he signed prior to the *Janus*  
7 decision. Exhibit C. Attached to that letter (and Exhibit C) was a Membership Application  
8 allegedly signed by Jackson.

9           32. Jackson denies that his signature is on the Membership Application in Exhibit C. A  
10 copy of Jackson's signature is attached to this complaint as Exhibit D.

11           33. On March 20, 2019, Jackson sent a letter to UCSD requesting that it stop deducting  
12 union dues from his paycheck. Exhibit E.

13           34. In an email dated March 28, 2019, UCSD replied that, per the Gag Rule statutes,  
14 Jackson needed to communicate directly with the Union with regard to his union membership and  
15 dues. Exhibit F.

16           35. Local 2010 refused Jackson's request to cancel his union membership and stop making  
17 deductions from his paycheck.

18           36. Local 2010 has not asked the Controller to cancel or change the payroll deductions it  
19 receives from Jackson.

20           37. Local 2010 will not ask the Controller to cancel or change the payroll deductions it  
21 receives from Jackson unless and until Jackson makes a written request within 30 days of the  
22 collective bargaining agreement's end date of March 31, 2022.

23           38. The Controller has deducted union dues of \$23.98 from Jackson's bi-weekly paychecks  
24 since he began employment in 2012 and remitted those dues to Local 2010.

25           39. Jackson pays approximately \$575 in union dues against his will annually.

26           40. The Controller will continue to deduct union dues from Jackson's paychecks and remit  
27 those dues to Local 2010 until Local 2010 notifies the Controller to stop.

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1                   **2. Tory Smith**

2                   41. Smith works on the Special Events Parking staff at UCSD.

3                   42. Smith is responsible for making parking signs for special events on campus, giving  
4 guests directions, and directing traffic.

5                   43. When he was hired in April 2006, neither UCSD nor Local 2010 informed Smith that  
6 he had the option to refrain from joining Local 2010.

7                   44. When he was hired, Smith thought that joining Local 2010 was required.

8                   45. Given that Smith believed he had no choice in the matter, he joined Local 2010 at the  
9 start of his employment.

10                  46. Smith happened to learn of the *Janus* decision from a television news program several  
11 months after the case was decided.

12                  47. Smith sent a letter to Local 2010 dated May 24, 2019, explaining that he did not  
13 affirmatively consent to pay dues or fees to Local 2010, terminating his union membership,  
14 directing Local 2010 to discontinue its dues deduction, and directing Local 2010 to refund all fees  
15 deducted since the *Janus* decision was issued. Exhibit G.

16                  48. Local 2010 replied in a letter dated February 27, 2019, asserting that Smith would have  
17 to continue paying dues pursuant to a Membership Application that he signed prior to the *Janus*  
18 decision. Exhibit H.

19                  49. On May 24, 2019, Smith sent a letter to UCSD informing UCSD that he had terminated  
20 his union membership and that previous dues authorizations signed by him were invalid, and that  
21 UCSD was no longer authorized to deduct dues from his paycheck. Exhibit I.

22                  50. UCSD never responded to Smith's demand that they stop withdrawing dues from his  
23 paychecks.

24                  51. Local 2010 refused Smith's request to cancel his union membership and stop making  
25 deductions from his paycheck.

26                  52. Local 2010 has not asked the Controller to cancel or change the payroll deductions it  
27 receives from Smith.

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1           53. Local 2010 will not ask the Controller to cancel or change the payroll deductions it  
2 receives from Smith unless and until Smith makes a written request within 30 days of the collective  
3 bargaining agreement’s end date of March 31, 2022.

4           54. The Controller has deducted union dues of \$24.92 from Smith’s bi-weekly paychecks  
5 since he began employment in 2006 and remitted those dues to Local 2010.

6           55. Smith pays approximately \$600 in union dues against his will annually.

7           56. The Controller will continue to deduct union dues from Smith’s paychecks and remit  
8 those dues to Local 2010 until Local 2010 notifies the Controller to stop.

9           **D. Impact of SB 866 Gag Rule Statutes**

10          57. UCSD has adopted and implemented a policy of refusing to engage in any discussion  
11 whatsoever with its employees about union membership or union dues. *See, e.g.*, Exhibit F.

12          58. UCSD does not inform its employees that they have a constitutional right to work  
13 without joining the union.

14          59. UCSD does not inform its employees that they have a constitutional right to resign  
15 from the union while maintaining their employment with UCSD.

16          60. UCSD refers all employee questions related to union membership and dues to the union  
17 that represents the inquiring employees.

18          61. Local 2010 does not inform workers within its bargaining unit that they have a  
19 constitutional right to work without joining the union.

20          62. Local 2010 does not inform workers within its bargaining unit that they have a  
21 constitutional right to choose to resign their union membership while maintaining their  
22 employment with UCSD.

23          63. Local 2010 considers any communication between UCSD and its employees regarding  
24 union membership and dues to be an act of “detering” or “discouraging” workers from “becoming  
25 or remaining in an employee organization” in violation of Cal. Gov’t Code section 3550.

26          64. UCSD believes it would violate Cal. Gov’t Code section 3550’s prohibition of  
27 “detering” or “discouraging” workers from “becoming or remaining in an employee organization”

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1 if it advises employees that they have a constitutional right to choose whether or not to join or pay  
2 dues to a union.

3 65. UCSD does not permit any organizations other than an “employee organization”  
4 (union) to use UCSD’s employee contact information to communicate with employees about their  
5 constitutional rights related to union membership and dues.

6 66. UCSD does not permit any organizations other than an “employee organization”  
7 (union) to meet with UCSD employees on campus or at other UCSD-owned or UCSD-controlled  
8 property to advise them of their constitutional rights related to union membership and dues.

9 67. UCSD has not sent any “mass communication” as defined in Cal. Gov’t Code section  
10 3553(e) to its employees advising them that they have a constitutional right to choose whether or  
11 not to join or pay dues to Local 2010.

12 68. Local 2010 has not sent any “mass communication” as defined in Cal. Gov’t Code  
13 section 3553(e) to UCSD employees advising them that they have a constitutional right to choose  
14 whether or not to join or pay dues to the Union.

15 69. Neither the Public Employment Relations Board nor the California Department of  
16 Human Relations has drafted a “communication concerning public employee rights” related to  
17 workers’ rights to join or pay dues to a union (*see* Cal Gov’t Code section 3553(d)), and therefore,  
18 UCSD has not distributed any such communication to its employees.

19  
20 **COUNT I**  
21 **Defendants Violated Plaintiffs’ Rights to Free Speech and Freedom of**  
22 **Association Protected By the First Amendment of the United States Constitution.**

23 70. The allegations contained in all preceding paragraphs are incorporated herein by  
24 reference.

25 71. The First Amendment to the United States Constitution provides: “Congress shall make  
26 no law . . . abridging the freedom of speech.”

27 72. The Fourteenth Amendment to the United States Constitution incorporates the  
28 protection of the First Amendment against the States, providing: “No State shall make or enforce  
any law which shall abridge the privileges or immunities of citizens of the United States; nor shall

1 any State deprive any person of life, liberty, or property, without due process of law; nor deny to  
2 any person within its jurisdiction the equal protection of the laws.”

3 73. By requiring Plaintiffs to make financial contributions in support of Local 2010,  
4 Defendants, through their agreements and actions, are violating Plaintiffs’ rights under the First  
5 and Fourteenth Amendments to the United States Constitution.

6 74. By requiring Plaintiffs, who have resigned their union memberships, to take additional  
7 steps to cease being subject to compelled financial contributions in support of any union (i.e., an  
8 “opt-out” requirement), Defendants are violating the Plaintiffs’ rights under the First and  
9 Fourteenth Amendments to the United States Constitution.

10 75. Requiring a government employee to pay money to a union violates that employee’s  
11 First Amendment rights to free speech and freedom of association unless the employee  
12 “affirmatively consents” to waive his or her rights. *Janus*, 138 S. Ct. at 2486. Such a waiver must  
13 be “freely given and shown by ‘clear and compelling’ evidence.” *Id.*

14 76. The actions of Defendants constitute a violation of Plaintiffs’ First Amendment rights  
15 to free speech and freedom of association to not join or financially support a union without their  
16 affirmative consent.

17 77. Plaintiffs did not provide affirmative consent to Defendants to deduct dues from their  
18 paychecks from the date that they joined the union until June 27, 2018 (the date the *Janus* decision  
19 was issued), because unconstitutional agency shop provisions of the Agreement prohibit them from  
20 exercising the option of paying nothing to the union as a non-member.

21 78. Plaintiffs’ purported “consent” to dues collection via a checkoff card collected prior to  
22 the *Janus* decision was not “freely given” because it was given based on an unconstitutional choice  
23 of either union membership or the payment of union agency fees without the benefit of  
24 membership. *Janus*, 138 S. Ct. at 2486.

25 79. If Plaintiffs had a choice between paying union dues and being a member of the union  
26 or paying nothing as a non-member, they would have chosen to pay nothing as a non-member.  
27 Accordingly, Plaintiffs’ consent was compelled by the enforcement of unconstitutional agency  
28 shop requirements, and not freely given.

1 80. Plaintiffs have no adequate remedy at law.

2 81. The controversy between Defendants and Plaintiffs is a definite and concrete dispute  
3 concerning the legal relations of parties with adverse legal interests.

4 82. The dispute is real and substantial, as Local 2010 is continuing to collect fees each pay  
5 period from Plaintiffs' paychecks.

6 83. The declaratory relief sought is not based on a hypothetical state of facts, nor would it  
7 amount to a mere advisory opinion, as the parties dispute the legality of ongoing seizure of a  
8 portion of the Plaintiffs' paychecks.

9 84. As a result of the foregoing, an actual and justiciable controversy exists between the  
10 Plaintiffs and the Defendants regarding their respective legal rights, and the matter is ripe for  
11 review.

## 12 **COUNT II**

### 13 **The SB 866 Gag Rule Statutes Violate Plaintiffs' First Amendment Rights 14 to Receive Information Necessary to Decide Whether to Support a Union.**

15 85. The allegations contained in all preceding paragraphs are incorporated herein by  
16 reference.

17 86. Every public employee has a fundamental First Amendment right to refrain from  
18 providing monetary support to a union against his or her will.

19 87. The First Amendment does not allow any payment or fee deduction from a public  
20 employee's paycheck, or any attempt to collect such payment, unless the employee clearly and  
21 affirmatively consents.

22 88. By agreeing to provide monetary support to a union through clear affirmative consent,  
23 public employees waive their First Amendment rights.

24 89. The ability to provide clear and affirmative consent depends on an employee having  
25 sufficient information as to his or her rights and obligations under the First Amendment and *Janus*  
26 decision.

27 90. The First Amendment protects the right to receive information wholly separate from  
28 the coordinate right to convey information.

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1 91. Because *Janus* requires a public employer to secure an employee’s affirmative consent  
2 for all union paycheck deductions, UCSD has a First Amendment obligation to provide sufficient  
3 information to employees about their *Janus* rights.

4 92. The Gag Rule statutes violate Plaintiffs’ First Amendment right to receive the  
5 information necessary to make the clear and affirmative waiver to financially support a union, as  
6 required by *Janus*.

7 93. There is no legitimate, much less compelling, state interest in restraining the  
8 conveyance of information about employees’ constitutional rights.

9 94. Plaintiffs have no adequate remedy at law.

10 95. The controversy between Defendants and Plaintiffs is a definite and concrete dispute  
11 concerning the legal relations of parties with adverse legal interests.

12 96. The dispute is real and substantial, as Plaintiffs have a First Amendment right to receive  
13 information necessary to make informed decisions about whether to give financial support to a  
14 union.

15 97. The declaratory relief sought is not based on a hypothetical state of facts, nor would it  
16 amount to a mere advisory opinion, as the parties dispute the constitutionality of the SB 866 Gag  
17 Rule statutes.

18 98. As a result of the foregoing, an actual and justiciable controversy exists between the  
19 Plaintiffs and the Defendants regarding their respective legal rights, and the matter is ripe for  
20 review.

21 **COUNT III**  
22 **The SB 866 Gag Rule Statutes Unconstitutionally Burden Plaintiffs’ First**  
23 **Amendment Right to Refrain from Supporting a Union.**

24 99. The allegations contained in all preceding paragraphs are incorporated herein by  
25 reference.

26 100. Every public employee has a fundamental First Amendment right to refrain from  
27 providing monetary support to a union against his or her will.

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1           101. The First Amendment does not allow any payment or fee deduction from a public  
2 employee’s paycheck, or any attempt to collect such payment, unless the employee clearly and  
3 affirmatively consents.

4           102. By agreeing to provide monetary support to a union through clear affirmative consent,  
5 public employees waive their First Amendment rights.

6           103. This waiver must be “freely given.”

7           104. Public employees’ First Amendment waivers cannot be “freely given” unless they  
8 first know that they possess and may freely exercise that right.

9           105. Under the Gag Rule statutes, public employees are prohibited from speaking to their  
10 own employers about their First Amendment rights recognized by the *Janus* decision and their  
11 ability to exercise those rights.

12           106. This communicative prohibition unconstitutionally burdens public employees’ ability  
13 to exercise their First Amendment right to refuse to financially support a union as recognized by  
14 the *Janus* decision.

15           107. There is no legitimate, much less compelling, state interest in burdening public  
16 employees’ ability to exercise their First Amendment rights.

17           108. Public employees have a right to refrain from supporting a union without suffering  
18 the burdens on the exercise of their First Amendment rights imposed by the Gag Rule statutes.

19           109. Plaintiffs have no adequate remedy at law.

20           110. The controversy between Defendants and Plaintiffs is a definite and concrete dispute  
21 concerning the legal relations of parties with adverse legal interests.

22           111. The dispute is real and substantial, as Plaintiffs’ First Amendment rights as recognized  
23 by the *Janus* decision are significantly burdened.

24           112. The declaratory relief sought is not based on a hypothetical state of facts, nor would  
25 it amount to a mere advisory opinion, as the parties dispute the legality of the Gag Rule statutes.

26           113. As a result of the foregoing, an actual and justiciable controversy exists between the  
27 Plaintiffs and the Defendants regarding their respective legal rights, and the matter is ripe for  
28 review.

**Count IV**

**The SB 866 Gag Rule Statutes Violate the Due Process Clause of the Fourteenth Amendment. 42 U.S.C. § 1983 (Procedural Due Process).**

114. The allegations contained in all preceding paragraphs are incorporated herein by reference.

115. Every public employee has a fundamental First Amendment right to refrain from providing monetary support to a union against his or her will.

116. The First Amendment does not allow any payment or fee deduction from a public employee's paycheck, or any attempt to collect such payment, unless the employee clearly and affirmatively consents.

117. By agreeing to provide monetary support to a union through clear affirmative consent, public employees waive their First Amendment rights.

118. Public employees' waiver of First Amendment rights cannot be presumed by public employers.

119. Rather, the waiver must be shown by "clear and compelling evidence."

120. The evidence must unambiguously demonstrate that the waiver was the free, voluntary, intelligent, and intentional relinquishment of a known right.

121. Unless it can be shown by clear and compelling evidence that a public employee has clearly and affirmatively waived his or her First Amendment right to refuse providing monetary support for a union, no money may be deducted from his or her paycheck for that purpose.

122. Any money deducted without meeting this standard violates the employee's right to procedural due process.

123. The Gag Rule statutes prohibit communication between an employee and his or her employer regarding the decision to waive his or her First Amendment rights.

124. Instead, public employers are required to rely on the assertions of the union regarding employee deductions preferences.

125. This reliance on third party unions to deduce whether a public employee has waived his or her First Amendment rights cannot meet the standard for clear and compelling evidence required by *Janus*.





1           137. By agreeing to provide monetary support to a union through clear affirmative consent,  
2 public employees waive their First Amendment rights.

3           138. The sole means provided by law for public employees to obtain information regarding  
4 their First Amendment rights recognized by *Janus* requires them to consult a private third-party  
5 (the union).

6           139. Public employee unions have no incentive to provide information that might result in  
7 fewer dues-paying members and no obligation to convey it to current and potential members.

8           140. Public employee unions have a financial incentive to represent to public employers  
9 that public employees have provided the clear and affirmative consent required by *Janus*.

10          141. The state has no legitimate, let alone compelling, interest in burdening or discouraging  
11 employees' exercise of their First Amendment rights to terminate support for a union.

12          142. By requiring employees to obtain information about terminating support from a  
13 private third-party union with a financial interest in maintaining that support, the Gag Rule statutes  
14 create a conflict of interest allowing the Union to exploit the Gag Rule statutes at the expense of  
15 public employees' First Amendment rights.

16          143. The Gag Rule statutes thus have the purpose and effect of arbitrarily limiting public  
17 employees' access to information about their First Amendment rights to terminate support for a  
18 union.

19          144. Even if the Gag Rule statutes did have a legitimate or compelling purpose, they are  
20 not narrowly tailored to support that purpose.

21          145. The Gag Rule statutes thus create a fundamentally unfair, biased procedure for  
22 exercising public employees' First Amendment rights to terminate support for a union that violates  
23 public employees' rights to substantive due process.

24          146. Public employees have a substantive right to exercise their First Amendment rights  
25 without suffering the conflict of interest imposed by designating the third-party union as the sole  
26 point of contact.

27          147. Plaintiffs have no adequate remedy at law.

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1 148. The controversy between Defendants and Plaintiffs is a definite and concrete dispute  
2 concerning the legal relations of parties with adverse legal interests.

3 149. The dispute is real and substantial, as Plaintiffs' First Amendment rights as recognized  
4 by the *Janus* decision are significantly burdened.

5 150. The declaratory relief sought is not based on a hypothetical state of facts, nor would  
6 it amount to a mere advisory opinion, as the parties dispute the constitutionality of the Gag Rule  
7 statutes.

8 151. As a result of the foregoing, an actual and justiciable controversy exists between the  
9 Plaintiffs and the Defendants regarding their respective legal rights, and the matter is ripe for  
10 review.

11 **PRAYER FOR RELIEF**

12 Plaintiffs respectfully request that this Court:

13 a. Enter a judgment declaring that Defendants' collective bargaining agreement,  
14 entered under color of and pursuant to California law, violates Plaintiffs' free speech rights by  
15 limiting the ability of Plaintiffs to revoke their union membership and the authorization to withhold  
16 union dues from their paychecks to a window of time without affirmative consent;

17 b. Enter a judgment declaring that Cal. Gov't Code sections 1157.12, 3513(i), 3515,  
18 3515.5, and 3583 violate Plaintiffs' free speech rights to the extent that they limit the ability of  
19 Plaintiffs to revoke their union membership and the authorization to withhold union dues from  
20 their paychecks to a window of time without affirmative consent;

21 c. Enter a judgment declaring that membership cards signed by the Plaintiffs—when  
22 such authorization was based on an unconstitutional choice between paying the union as a member  
23 or paying the union as a non-member—does not meet the standard for affirmative consent required  
24 to waive First Amendment rights announced recognized in *Janus*;

25 d. Enter a judgment declaring that Defendants' practice of withholding union dues  
26 from Plaintiffs' paychecks in the absence of affirmative consent is unconstitutional;

27 e. Enjoin Local 2010 to allow Plaintiffs to resign their union membership  
28 immediately, retroactive to the date of their letters announcing their resignation;

1 f. Enjoin the Controller from continuing to deduct, and enjoin Local 2010 from  
2 accepting, dues from Plaintiffs' paychecks, unless they first provide freely-given consent to such  
4 deductions;

5 g. Award monetary damages against Local 2010 for all union dues collected from  
6 Plaintiffs in the absence of valid, freely-given affirmative consent;

7 h. Enter a judgment declaring that the SB 866 Gag Rule statutes are unconstitutional  
8 under the First and Fourteenth Amendments;

9 i. Enjoin the Attorney General from enforcing the SB 866 Gag Rule statutes;

10 j. Enjoin the Controller from deducting any monies from any public employee's  
11 paychecks for the benefit of employee organizations without the written consent of the public  
12 employee;

13 k. Award Plaintiffs their costs and attorneys' fees under 42 U.S.C. § 1988; and

14 l. Award Plaintiffs any further relief to which they may be entitled and such other  
15 relief as this Court may deem just and proper.

16 Dated: July 30, 2019.

Respectfully Submitted,

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