



Mike Jackson  
PLF client

Tory Smith  
PLF client

## California's Gag Rule statutes keep workers in the dark about their rights

*PLF deploys innovative strategy to defend public employees' right to know ... their rights*

AS ENTHUSIASTIC MEMBERS OF THE UNIVERSITY OF CALIFORNIA, SAN DIEGO (UCSD) parking staff, Mike Jackson and Tory Smith love their jobs.

As reluctant members of Teamsters Local 1010, however, they hate being forced to give the union money against their will.

"We handle all logistics for campus special events, and I oversee a fine staff," Mike explained. "When I was hired in 2013, I thought I had to join the union as a condition of employment. I didn't question it."

Neither did Tory, who's worked at UCSD since 2006. "I'm no different than most people—no one likes having their money taken without their say-so," he said.

So when the co-workers heard news reports about a Supreme Court ruling dealing with coerced union support, they

thought their problems were solved. The 2018 decision in *Janus v. AFSCME* recognized employees' First Amendment right to choose for themselves whether or not to financially support a union. That is, before the state can authorize payroll deductions, public employees must give their clear permission, and employers bear the burden of confirming that consent.

"I had the Supreme Court's permission to tell the union to stop taking money out of my paycheck," Tory said. "I thought it was a slam dunk."

It was a slam all right—on their rights, which Mike and Tory discovered when they tried to stop automatic payroll deductions to the union.

"When I asked the university's human resources department to help me, they said

they couldn't because of a state law," Mike recalled. "They told me I could only take my union questions to the union."

That law is SB 866, a collection of Gag Rule statutes passed by the state legislature and signed into law by then-Governor Jerry Brown on the very same day as the *Janus* decision. The Gag Rule statutes make it illegal for employers and employees to discuss their rights concerning union membership, dues, or even the *Janus* decision; such discussions are allowed only with the union itself.

That is, SB 866 is designed to intentionally keep California's public workers in the dark about their constitutional rights and forces them to deal with a union that's got every financial incentive to keep them in the dark.

Faced with no other choice, Mike and Tory went to their union to talk about their *Janus*-affirmed rights and asked to resign their membership. With no mention of their First Amendment right to choose, the union told the pair they'd have to pay dues until the collective bargaining agreement with UCSD expires—in 2022.

"The union said I can't end payments to them even though the Supreme Court said I can. And the university said I can only talk about my union-related rights with the union," said Tory. "I couldn't believe government made a law that disobeys the Supreme Court just to hide my rights from me."

Public employees have a right to truthful information about their constitutional rights. And a state cannot undermine this right by instituting Gag Rule barriers between employers and employees.

"This was not what the Court intended with *Janus*, and it is certainly not what was intended by the Bill of Rights," said PLF attorney Timothy Snowball. "Our ability to exercise our constitutional rights should not depend on the whims of a biased union."

Represented free of charge by PLF and the Liberty Justice Center, the firm that represented Mark Janus at the Supreme Court, Mike and Tory are fighting back in a federal lawsuit challenging the Teamsters' insistence they remain members against their will. And, in an entirely original strategy, they're also asking the court to strike down California's Gag Rule statutes.

PLF's unique legal theory is this: in order to exercise the right to choose to pay a union, public workers must know that right exists *and* have sufficient information to exercise it. And this burden falls squarely on government employers like

UCSD, who must have employees' clear and affirmative consent before any money is taken out.

"A *Miranda* warning gives notice of our right to remain silent under the Fifth Amendment, so we can choose whether to exercise those rights during an arrest," explained

Snowball. "Similarly, public employers have an obligation to put public employees on notice of their First Amendment right to not support a union, before the government takes money from their paycheck for that purpose."

A win will ensure California can no longer keep Mike, Tory, or any of the one million public workers in the dark about their constitutional rights. Victory will also send a message to other states concocting unlawful schemes to circumvent *Janus* that they cannot enable union hijacking of employee paychecks at the expense of the First Amendment.

"This is just plain wrong, and somebody's got to stand up and do something," said Mike. "This isn't about unions. This is about the right to choose what I do with my money—and the right to know my rights."



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## Government must honor Supreme Court precedent

In its *Janus* decision, the Supreme Court affirmed that public employees cannot be forced to fill union coffers against their will. Neither governments nor unions can create barriers that hide these rights from workers.

### To Our Donors

Employees have the right to decide whether to subsidize a union, and the state can't enact Gag Rules to deliberately keep workers in the dark about their constitutional rights. Your investment in PLF empowers Mike and Tory to fight government efforts to muzzle their rights recognized by the Supreme Court. Thank you!

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— Tory Smith