No. 14-___

IN THE

Supreme Court of the United States

REBECCA FRIEDRICHS; SCOTT WILFORD; JELENA FIGUEROA; GEORGE W. WHITE, JR.; KEVIN ROUGHTON; PEGGY SEARCY; JOSE MANSO; HARLAN ELRICH; KAREN CUEN; IRENE ZAVALA; and CHRISTIAN EDUCATORS ASSOCIATION INTERNATIONAL,
Petitioners,

v.

CALIFORNIA TEACHERS ASSOCIATION, ET AL.,
Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

PETITION FOR A WRIT OF CERTIORARI

MICHAEL E. ROSMAN
CENTER FOR INDIVIDUAL RIGHTS
1233 20th St., N.W.
Suite 300
Washington, DC 20036

MICHAEL A. CARVIN
Counsel of Record
JAMES M. BURNHAM
WILLIAM D. COGLIANESE
JONES DAY
51 Louisiana Ave., NW
Washington, DC 20001
(202) 879-3939
macarvin@jonesday.com

Counsel for Petitioners

QUESTIONS PRESENTED

Twice in the past three years this Court has recognized that agency-shop provisions—which compel public employees to financially subsidize public-sector unions' efforts to extract union-preferred policies from local officials—impose a "significant impingement" on employees' First Amendment rights. *Knox v. Serv. Emps. Int'l Union*, 132 S. Ct. 2277, 2289 (2012); *see also Harris v. Quinn*, 134 S. Ct. 2618 (2014). California law requires every teacher working in most of its public schools to financially contribute to the local teachers' union and that union's state and national affiliates in order to subsidize expenses the union claims are germane to collective bargaining. California law also requires public-school teachers to subsidize expenditures unrelated to collective bargaining unless a teacher affirmatively objects and then renews his or her opposition in writing every year. The questions presented are therefore:

1. Whether *Abood v. Detroit Bd. of Ed.*, 431 U.S. 209 (1977), should be overruled and public-sector "agency shop" arrangements invalidated under the First Amendment.

2. Whether it violates the First Amendment to require that public employees affirmatively object to subsidizing nonchargeable speech by public-sector unions, rather than requiring that employees affirmatively consent to subsidizing such speech.

PARTIES TO THE PROCEEDING AND RULE 29.6 STATEMENT

Petitioners, who were Plaintiffs-Appellants in the court below, are: Rebecca Friedrichs, Scott Wilford, Jelena Figueroa, George W. White, Jr., Kevin Roughton, Peggy Searcy, Jose Manso, Harlan Elrich, Karen Cuen, and Irene Zavala; and the Christian Educators Association International ("CEAI"). CEAI is a nonprofit religious organization that is the only professional association specifically serving Christians working in public schools. Founded and incorporated in the state of California, CEAI's membership consists of teachers, administrators, and para-professionals, and many other public- and private-school employees. CEAI has approximately 600 members in the State of California. CEAI is not a publicly traded corporation, issues no stock, and has no parent corporation. There is no publicly held corporation with more than a 10% ownership stake in CEAI.

Respondents, who were Defendants-Appellees in the court below, are the California Teachers Association; National Education Association; Savanna District Teachers Association, CTA/NEA; Saddleback Valley Educators Association; Orange Unified Education Association, Inc.; Kern High School Teachers Association; National Education Association-Jurupa; Santa Ana Educators Association, Inc.; Teachers Association of Norwalk-La Mirada Area; Sanger Unified Teachers Association; Associated Chino Teachers; San Luis Obispo County Education Association; Sue Johnson (as superintendent of Savanna School District); Clint Harwick (as superintendent of the Saddleback Valley Unified School District); Michael

L. Christensen (as superintendent of the Orange Unified School District); Donald E. Carter (as superintendent of the Kern High School District); Elliott Duchon (as superintendent of the Jurupa Unified School District); Thelma Meléndez de Santa Ana (as superintendent of the Santa Ana Unified School District); Ruth Pérez (as superintendent of the Norwalk-La Mirada Unified School District); Marcus P. Johnson (as superintendent of the Sanger Unified School District); Wayne Joseph (as superintendent of the Chino Valley Unified School District); and Julian D. Crocker (as superintendent of the San Luis Obispo County Office of Education).

In addition to these parties, California Attorney General Kamala D. Harris intervened in the district court proceeding, was a Defendant-Intervenor in the court of appeals, and is thus a party to the proceeding.

TABLE OF CONTENTS

TABLE OF CONTENTS
(continued)

Page

TABLE OF CONTENTS
(continued)

Page

TABLE OF AUTHORITIES

Page(s)

CASES

TABLE OF AUTHORITIES
(continued)

Page(s)

TABLE OF AUTHORITIES
(continued)

Page(s)

TABLE OF AUTHORITIES
(continued)

Page(s)

STATUTES

OTHER AUTHORITIES

TABLE OF AUTHORITIES
(continued)

Page(s)

OPINIONS BELOW

The Ninth Circuit's order affirming the district court is reproduced in the appendix (Pet.App.1a), as is the district court's order dismissing Petitioners' claims on the pleadings (Pet.App.3a).

JURISDICTION

The Ninth Circuit entered judgment on November 18, 2014. Pet.App.1a. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTES AND REGULATIONS INVOLVED

Relevant statutory and regulatory provisions are reproduced in the Appendix (Pet.App.9a).

STATEMENT OF THE CASE

This is a challenge to the largest regime of state-compelled speech for public employees in the Nation. Each year, the State of California compels its public-school teachers to make hundreds of millions of dollars in payments to Respondent California Teachers Association ("CTA"), Respondent National Education Association ("NEA"), and their local affiliates. California law makes these payments mandatory for every teacher working in an agency-shop school—which is virtually every teacher—regardless of whether that teacher opposes the positions CTA takes in collective bargaining and regardless of whether the positions CTA takes in collective bargaining are directly contrary to that teacher's on-the-job interests. This multi-hundred-million-dollar regime of compelled political speech is irreconcilable with this Court's recent recognition of "the critical First Amendment rights at stake" in such arrangements. *Knox v. Serv. Emps. Int'l Union*, 132 S. Ct. 2277,

2289 (2012). The logic and reasoning of this Court's recent decisions have shattered the intellectual foundation of its approval of such compulsion in *Abood v. Detroit Board of Education*, 431 U.S. 209 (1977)—a decision that was questionable from the start, as Justice Powell argued persuasively in his separate opinion. *Id.* at 245 (Powell, J., concurring in the judgment) (describing the majority's opinion as "unsupported by either precedent or reason"). The time has therefore come for this Court to reconsider that decision and, at long last, give "a First Amendment issue of this importance" the consideration it deserves. *Harris v. Quinn*, 134 S. Ct. 2618, 2632, 2639 (2014).

A. California's Agency-Shop Laws For Public-School Teachers

1. The "Agency Shop" Arrangement

The State of California empowers school districts to require public-school teachers, as a condition of employment, to either join the union representing teachers in their district or pay the equivalent of dues to that union. This requirement, known as an "agency shop" arrangement, operates as follows.

California law allows a union to become the exclusive bargaining representative for "public school employees" in a bargaining unit (usually a public school district) by submitting proof that a majority of employees in the unit wish to be represented by the union. CAL. GOV'T CODE § 3544(a). A "public school employee" is "a person employed by a public school employer except persons elected by popular vote, persons appointed by the Governor of this state, management employees, and confidential employees

[who facilitate employee relations on behalf of management]." *Id.* § 3540.1(j). Once a union becomes the exclusive representative, it represents all "public school employees" in that district for purposes of bargaining with the district. *Id.* § 3543.1(a). The union is thus authorized to bargain over a wide range of "[t]erms and conditions of employment" that go to the heart of education policy, including wages, hours, health and welfare benefits, leave, transfer and reassignment policies, class size, and procedures to be used for evaluating employees and processing grievances. *Id.* § 3543.2(a).

Once a union becomes the exclusive bargaining representative within a district, it is authorized by California law to establish an agency-shop arrangement (or "organizational security arrangement") with that district. State law defines this arrangement as one in which all employees "shall, as a condition of continued employment, be required either to join the recognized employee organization or pay the fair share service fee." *Id.* § 3546(a). The amount of this "fair share service fee"—commonly known as an "agency fee"—is determined by the union and "shall not exceed the dues that are payable by members" of the union. *Id.* The fee is meant to support union activities that are "germane to [the union's] functions as the exclusive bargaining representative." *Id.* California law includes a range of expenses in this category, including "the cost of lobbying activities designed to foster collective-bargaining negotiations and contract administration, or to secure for the represented employees advantages in wages, hours, and other conditions of employment in addition to those secured through meeting and negotiating with the

employer." *Id.* § 3546(b). In practice, the agency fee typically equals the amount of union dues and includes both the amounts that are chargeable and those that are not chargeable under this Court's prior decisions. *See* Pet.App.79a.

Although nonmembers must pay fees to support union activities that are "germane" to collective bargaining, the First Amendment has long forbade compelling them to support union activities that are "*not* devoted to … negotiations, contract administration, and other activities of the employee organization that are germane to its function as the exclusive bargaining representative." *Id.* § 3546(a) (emphasis added); *Abood*, 431 U.S. at 235-36. The latter expenses are "nonchargeable" and it is the union's responsibility to annually determine the portion of its expenses falling into that category. The union makes this determination by calculating the total amount of the agency fee based on its expenditures for the coming year, and then calculating the nonchargeable portion of this fee based on a report of a recent year's expenditures. REGS. OF CAL. PUB. EMP'T RELATIONS BD. § 32992(b)(1).

2. The *Hudson* Notice And Objection Process

Each fall, after the union has made the requisite determinations, it must send a "*Hudson* notice" to all nonmembers that sets forth the amount of the agency fee as well as a breakdown of the chargeable and nonchargeable portions of this fee. CAL. GOV'T CODE § 3546(a); REGS. OF CAL. PUB. EMP'T RELATIONS BD. § 32992(a); *see generally Chi. Teachers Union v. Hudson*, 475 U.S. 292, 304-07 (1986) (setting forth

the information unions must provide regarding their expenses). The *Hudson* notice must also include either the union's audited financial report for the year or a certification from the union's independent auditor confirming that the chargeable and nonchargeable expenses have been accurately stated. *Id.* § 32992(b)(1). The independent auditor does not, however, confirm that the union has properly classified expenditures as being chargeable or nonchargeable. *See Knox*, 132 S. Ct. at 2294 (explaining as much).

To avoid paying for nonchargeable expenditures, a nonmember is required to affirmatively "opt out" of such payments each year by notifying the union of his or her objection after receipt of the *Hudson* notice. REGS. OF CAL. PUB. EMP'T RELATIONS BD. § 32993. The period to lodge this objection must last at least thirty days, and typically lasts no more than six weeks. *Id.* § 32993(b). Teachers who opt out are then entitled to a rebate or fee-reduction for that year. CAL. GOV'T CODE § 3546(a).

B. The Respondent Unions' Implementation Of These Procedures

1. The Respondent Unions Collect Agency Fees At The National, State, And Local Level.

For each school district in which Petitioners are employed, the local union that is recognized as the exclusive bargaining representative determines the total agency fee, often in collaboration with CTA. Pet.App.60a. After the local union or CTA informs the school district of the year's agency-fee amount, the school district automatically deducts that

amount in pro rata shares from the teacher's regular paychecks unless the teacher informs the district that he or she will pay the union directly. The school district sends the deducted amounts directly to the local union affiliate.

For each district in which Plaintiffs are employed, the local union's agency fee includes "affiliate fees" for both CTA and NEA. Those "affiliate fees" are treated as partially "chargeable" for every teacher, with the allocation between chargeable and nonchargeable fees based on statewide or nationwide expenditures by CTA and NEA. Thus, the portions of CTA and NEA "affiliate fees" deemed "chargeable" to teachers in local school districts are not designed to correspond to actual collective-bargaining expenditures CTA and NEA make within those districts. Pet.App.61a-62a.

Agency fees for nonmembers typically consume roughly two percent of a new teacher's salary. These fees sometimes increase regardless of whether there is an increase in teacher pay. The total amount of annual dues often exceeds $1,000 per teacher, while the amount of the refund received by nonmembers who successfully opt out each year is generally around $350 to $400. Pet.App.62a.

2. Teachers Who Object To Subsidizing "Nonchargeable" Expenses Must Renew Their Objections Every Year.

Respondents require teachers who are not union members to renew their objections to subsidizing nonchargeable expenditures every year, in writing, during a roughly six-week period following the Unions' mailing of their annual *Hudson* notice.

Pet.App.62a. No matter how many years in a row a nonmember has opted out of paying the nonchargeable portion of his or her agency fees, that person must send an annual letter to CTA to successfully opt out. If a teacher misses the deadline, he or she is obligated to pay the full agency fee for the next year. *See, e.g.*, Pet.App.79a; Pet.App.96a-97a.

Neither the school districts in California nor the Respondent Unions educate teachers about their right to opt out of subsidizing nonchargeable union expenses. That leads to ignorance about the mechanics of "opt out"—ignorance that causes teachers to unwittingly contribute to Respondent Unions' nonchargeable expenses. For example, Respondents provide public-school teachers with a membership enrollment form that many teachers wrongly interpret as saying that they can join the union without subsidizing its political activities. Pet.App.80a-81a. The form states that CTA maintains a political action committee ("PAC"), for which it solicits member donations. Pet.App.83a. The form then invites CTA members to check a box "if you choose not to allocate a portion of your dues to the [CTA's PAC] account and want all of your dues to remain in the General Fund." *Id.* As one of the Petitioners has explained, this box-checking option gives many teachers the mistaken impression that checking the box means they have opted out of subsidizing political expenditures altogether. Pet.App.80a-81a.

C. Proceedings Below

On April 30, 2013, Petitioners filed a complaint challenging the agency-shop regimes and opt-out requirements maintained by Respondents. On Sep-

tember 19, 2013, California Attorney General Kamala Harris intervened in the district court proceeding. Petitioners acknowledged in their complaint and explained to the district court that, while this Court's decision in *Knox* had called its prior decision in *Abood* into question, the district court did not have the authority to revisit *Abood* on its own. *See Agostini v. Felton*, 521 U.S. 203, 237 (1997). Petitioners therefore sought a quick ruling from the district court that would enable them to promptly take their claims to a forum with the power to vindicate them and, in turn, abate the irreparable First Amendment harms that California's agency-shop regime imposes daily on Petitioners. As for Petitioners' second claim concerning "opt-out," Petitioners acknowledged that the Ninth Circuit's decision in *Mitchell v. Los Angeles Unified School District*, 963 F.2d 258 (9th Cir. 1992), precluded the district court from granting relief. The district court agreed, entering judgment on the pleadings against Petitioners on December 5, 2013.

Petitioners promptly appealed the district court's judgment to the Court of Appeals for the Ninth Circuit, where they again conceded that *Abood* and *Mitchell* foreclosed their claims. Petitioners again asked for a quick ruling without delaying for oral argument on issues the three-judge panel lacked the authority to revisit. Respondents opposed that course, asking the Ninth Circuit to conduct oral argument and issue a published opinion "address[ing] the merits of [the] issue[s] despite acknowledging that the outcome was dictated by controlling precedent." Union Opp. to Mot. for Summary Affirmance at p. 5, *Friedrichs v. Cal. Teachers Ass'n*, No. 13-

57095 (9th Cir. Oct. 14, 2014). The Ninth Circuit declined Respondents' request to issue an advisory opinion and instead summarily affirmed the district court on November 18, 2014. Pet.App.1a.

REASONS FOR GRANTING THE PETITION

The reasons for granting the petition are simple and compelling. Twice in the past three terms, this Court has recognized that its decisions permitting public-sector agency shops misinterpreted the vital First Amendment rights at stake when governments compel public employees to subsidize political speech with which they disagree. In this era of broken municipal budgets and a national crisis in public education, it is difficult to imagine more politically charged issues than how much money cash-strapped local governments should devote to public employees, or what policies public schools should adopt to best educate children. Yet California compels Petitioners to fund a very specific point of view on these pressing public questions. Nor is California alone. More than twenty other states compel millions of public employees to pay hundreds of millions of dollars to public-employee unions regardless of whether those unions advocate policies the employees support or, indeed, regardless of whether the policies even benefit those employees.

The constitutionality of such regimes is thus of profound importance, and yet is approved only in outmoded decisions that are irreconcilable with this Court's more recent opinions, as well as the general principles underlying bedrock First Amendment protections. This Court has never before sustained a decision that wrongly permitted the ongoing deprivation of a core constitutional right solely out of fidelity to the prudential principle of stare decisis. It should not start now. The Court should instead do as it has twice suggested it should do and give this important First Amendment issue the full and fair considera-

tion it deserves. *See Harris*, 134 S. Ct. at 2632 ("Surely a First Amendment issue of this importance deserved better treatment" than it received in *Abood*.)

The requirement that Petitioners affirmatively object to subsidizing the Respondent Unions' nonchargeable expenditures likewise cannot survive the exacting First scrutiny this Court gives to such arrangements. There is no rational justification—let alone one that satisfies First Amendment scrutiny—for requiring every public-school teacher to annually renew, in writing, his or her objection to subsidizing the unions' political agenda. The only reason to put the onus on individual teachers is to give the unions the "advantage of … inertia," *South Carolina v. Katzenbach*, 383 U.S. 301, 328 (1966), and thereby enable them to capitalize on teachers' ignorance, confusion, or forgetfulness. The Court should therefore also directly consider the constitutionality of such presumed consent, particularly given the differences among the circuits in reviewing such regimes.

I. *Abood* Cannot Be Reconciled With The Rest Of This Court's First Amendment Jurisprudence.

It is a "bedrock principle that, except perhaps in the rarest of circumstances, no person in this country may be compelled to subsidize speech by a third party that he or she does not wish to support." *Harris*, 134 S. Ct. at 2644. That is because "compelled funding of the speech of other private speakers or groups presents the same dangers as compelled speech." *Id.* at 2639; *see also id.* at 2656 (Kagan, J. dissenting) ("[T]he 'difference between compelled speech and

compelled silence' is 'without constitutional significance.'" (quoting *Riley v. National Federal of Blind of N.C., Inc.*, 487 U.S. 781, 796 (1988)). There is thus no constitutionally significant difference between compelling public employees to subsidize public-sector unions' collective-bargaining efforts, compelling employees to speak in favor of such efforts, or prohibiting employees from speaking about such efforts. While compelled subsidization, like all coerced association, must be justified by a "'compelling state interest that cannot be achieved through means significantly less restrictive of associational freedoms,'" *Knox*, 132 S. Ct. at 2289 (quoting *Roberts v. U.S. Jaycees*, 468 U.S. 609, 623 (1984)), scrutiny is particularly exacting when it involves political speech about public-policy choices. *See, e.g.*, *Snyder v. Phelps*, 131 S. Ct. 1207, 1215 (2011) ("'[S]peech concerning public affairs is more than self-expression; it is the essence of self-government.' Accordingly, 'speech on public issues occupies the highest rung of the hierarchy of First Amendment values, and is entitled to special protection.'") (citations omitted); *Citizens United v. F.E.C.*, 558 U.S. 310, 340 (2010) ("Laws that burden political speech are 'subject to strict scrutiny' ….") (citation omitted).

This Court's decision in *Abood* faithfully applied these principles to invalidate compelled subsidization of "ideological" or "political" public-sector union speech, but it simultaneously created an exception that permits the compelled subsidization of identical speech uttered in collective bargaining. 431 U.S. at 232. That exception is a constitutional anomaly that conflicts with this Court's decisions in every analo-

gous area and permits compelled speech that cannot survive *any* level of First Amendment review.

Specifically, the *rationale* of *Abood* is consistent with these principles only if there is a constitutionally meaningful difference between a public-sector union's efforts to advance an "ideological" agenda through collective bargaining, and the same union's efforts to advance the same "ideological" agenda through lobbying or campaign spending. But the *context* in which a public-sector union advocates the *same* political and public-policy views plainly does not make a First Amendment difference. *Abood* based its contrary conclusion solely on a flawed analogy to decisions concerning private-sector collective bargaining—an analogy so flawed that no Justice of this Court attempted to defend it last term in *Harris*.

Not only that, but the *result* in *Abood* can be reconciled with the rest of this Court's decisions only if (1) public-sector union speech in collective bargaining is not—contrary to *Abood* itself—"political" or "ideological" speech designed to "influence government decision-making," *Abood*, 431 U.S. at 231; or (2) the governmental interests in promoting "labor peace" and preventing "free-riding" justify compelled subsidization of political speech. The first contention is not only contrary to *Knox*, *Harris*, and *Abood*—it "flies in the face of reality." *Harris*, 134 S. Ct. at 2642. And the second contention had no supporters in *Abood* or *Harris*, directly contradicts this Court's opinions in *Knox* and *Harris*, and conflicts with this Court's decisions holding that similar rationales do not justify compelling subsidization of even "mundane commercial" speech. *United States v. United Foods, Inc.*, 533 U.S. 405 (2001). Indeed, this Court

held in *Harris* that these justifications cannot satisfy even the deferential balancing test established in *Pickering v. Board of Education of Township High School District 205, Will County, Illinois*, 391 U.S. 563, 573 (1968).

For all these reasons, the conflict between *Abood* and the rest of this Court's decisions can only be cured—and basic First Amendment protections can only be restored—if this Court reconsiders and overturns that decision.

A. Public-Sector Collective Bargaining Is Core Political Speech Materially Indistinguishable From Lobbying.

1. *Abood* readily recognized that public-sector unions' collective-bargaining efforts constitute political speech designed to influence governmental decision-making. As the Court put it, "[t]here can be no quarrel with the truism" that, in the collective-bargaining context, "public employee unions attempt to influence governmental policymaking." 431 U.S. at 231. Consequently, "their activities—and the views of members who disagree with them—may be properly termed political." *Id.*

In particular, *Abood* recognized that collective bargaining involves taking positions on a "wide variety" of "ideological" issues, such as the "right to strike," the contents of an employee "medical benefits plan" and the desirability of "unionism itself." *Id.* at 222. And the Court recognized that collective bargaining is intended "to affect the decisions of government representatives who sit on the other side of the bargaining table." *Id.* at 228. Those government representatives are engaged in what is "above all a

political process," as decisions on "[w]hether [to] accede to a union's demands" turn on "political ingredients" that require balancing public interest factors such as the "importance of the service involved and the relation between the [union's] demands and the quality of service." *Id.* at 228-29. (And such "petitioning" of government is specifically and equally protected by the First Amendment. *See*, *e.g.*, *BE&K Constr. Co. v. NLRB*, 536 U.S. 516, 524 (2002) ("We have recognized this right to petition as one of 'the most precious of the liberties safeguarded by the Bill of Rights'" (quoting *Mine Workers v. Illinois Bar Ass'n.*, 389 U.S. 217, 222 (1967)); *Borough of Duryea, Pa. v. Guarnieri*, 131 S. Ct. 2488, 2495 (2011) ("The considerations that shape the application of the Speech Clause to public employees apply with equal force to claims by those employees under the Petition Clause").)

Abood thus held that public-sector collective bargaining is "political" speech designed to "influence governmental policy-making" about "ideological" issues. It also held that the First Amendment prohibits the Government from "requiring any [objecting nonmember] to contribute to the support of an ideological cause he may oppose." 431 U.S. at 235. It did so on the well-established grounds that the "central purpose of the First Amendment was to protect the free discussion of governmental affairs," and that this "fundamental First Amendment interest" was "no less" infringed simply because the nonmembers were "compelled to make, rather than prohibited from making, [the financial] contributions" that agency-shop arrangements require. *Id.* at 231, 234.

But while *Abood* recognized that this principle prohibited compelled funding of union speech directed at "*other* ideological causes not germane to its duties as a collective bargaining representative," it nonetheless allowed compelled funding of ideological union lobbying in the context of "collective bargaining." *Id.* at 235 (emphasis added). Neither *Abood* nor subsequent cases have articulated any principled basis for distinguishing between collective-bargaining lobbying and non-collective-bargaining lobbying. Rather, *Abood* justified this artificial line solely on the ground that the Court had previously drawn it in the private-sector context in *Railway Employees v. Hanson*, 351 U.S. 225 (1956), and *International Ass'n of Machinists v. Street*, 367 U.S. 740 (1961). *Abood*, 431 U.S. at 232.

This Court has, however, since recognized—without apparent disagreement by any Justice—that the "*Abood* Court seriously erred" in concluding that *Street* and *Hanson's* authorization of compelled subsidization of private-sector collective bargaining somehow supported such compulsion in the "very different" public-sector context. *Harris*, 134 S. Ct. at 2632. As *Harris* explained, approving the Government's "bare authorization" of private employers to compel subsidization of speech that can only affect private decision-makers and private affairs does not support the "very different" proposition that a "state instrumentality" may directly "impose" subsidization of collective-bargaining speech that is "directed at the Government" and designed to "'influence [] the decisionmaking process.'" *Id.* at 2632-33 (citation omitted).

Street and *Hanson* thus support neither *Abood*'s conclusion that compelled subsidization of public-sector collective bargaining is permissible, nor its distinction between collective bargaining and unions' other forms of public advocacy.

2. Nor do this Court's other decisions support those propositions. To the contrary, well-established precedent establishes that public-sector collective bargaining constitutes core political speech about governmental affairs that is not materially different from lobbying. *Abood* recognized precisely that point, and this Court's subsequent decisions have consistently reaffirmed that aspect of *Abood*. In *Knox*, this Court recognized that a "public-sector union takes many positions during collective bargaining that have powerful political and civic consequences." *Knox*, 132 S. Ct. at 2289. And *Harris* squarely held that collective bargaining over "wages and benefits" is "a matter of great public concern." 134 S. Ct. at 2642-43. Indeed, any contrary "argument flies in the face of reality." *Id*. at 2642.

First, the broad *fiscal* impact of bargaining about wages and benefits makes it political speech about public affairs. As *Harris* explained, "it is impossible to argue that … state spending for employee benefits in general[] is not a matter of great public concern." *Id*. at 2642-43. Such spending necessarily requires either spending less on other public programs or raising additional public revenues—either of which is an important public issue. Indeed, this Court held as much in *Pickering*, ruling that a public-school teacher's criticism of his district's efforts to raise revenues were related to "issues of public importance." 391 U.S. at 574.

That is particularly true for California, where unfunded pension liabilities for retired public workers have ballooned in recent years to $198 billion, $74 billion of which is attributable to the State's retired teachers *alone*. Cal. State Controller's Office, *Defined Benefit Systems—11-Year UAAL Trend*, http://goo.gl/dgwEHL; Cal. State Budget 2014-15 at 57-58, http://goo.gl/BSs17N. And those union-negotiated benefits for retirees are now consuming the increased revenues derived from tax increases and higher school-district contributions that were imposed specifically to address the education-funding shortfalls. *Id.*; *see also* Dale Kasler, *Legislature Delivers Financial Rescue for CalSTRS; State, Schools, Teachers to Contribute More*, The Sacramento Bee, June 16, 2014, http://goo.gl/P20Sa1. This vividly illustrates the degree to which union-secured benefits affect taxes and educational spending for current students and teachers.

Moreover, collective bargaining directly addresses and affects matters of "education policy." *Harris*, 134 S. Ct. at 2655 (Kagan, J., dissenting) (citing *Abood*, 431 U.S. at 263 n.16 (Powell, J., concurring in judgment)). In California, for example, state law authorizes teachers unions to bargain over "class size," CAL. GOV'T CODE § 3543.2(a), an important and hotly debated education policy issue. Unions also collectively bargain for tenure, transfer and reassignment policies, and prohibitive termination procedures. *Id.* Such policies have an important—and, many believe, detrimental—effect on education policy. Indeed, just last year, a California court found that the union's job security and seniority-based assignment policies caused "a significant number of grossly ineffective

teachers [to be] currently active in California classrooms," particularly minority classrooms, to the severe "detriment" of students' education. *Vergara v. California*, No. BC 484642, slip op. at 8, 11, 15 (Cal. Sup. Ct. Aug. 27, 2014), available at http://goo.gl/ThBjNQ. Such consequential speech is, to say the least, as much about a "matter of public concern" as are threats to "blow off their front porches" during a labor dispute, or protest signs declaring that "God Hates Fags"—both of which this Court has found to be "unquestionably a matter of public concern" or "public import." *Bartnicki v. Vopper*, 532 U.S. 514, 535 (2001); *Snyder*, 131 S. Ct. at 1216-17; *see also Connick v. Myers*, 461 U.S. 138, 146 (1983) (speech is on a matter of public concern if it can be "fairly considered as relating to any matter of political, social or other concern to the community").

It is, moreover, axiomatic that, just like lobbying, public-sector collective bargaining's *raison d'etre* is "to affect the decisions of government representatives"—the only difference being that, in one context, the representatives "sit on the other side of the bargaining table." *Abood*, 431 U.S. at 228. Compelled subsidization of a union's efforts to have public officials enshrine union-preferred policies in a binding contract is thus just as impermissible as the compelled subsidization of a union's efforts to have public officials enshrine those policies in a binding statute. This is particularly obvious in California because the Respondent Unions speak to the government about the *same* topics in both contexts. Numerous statutes that the Respondent Unions lobbied to obtain address topics within the scope of collective bargaining, including teacher tenure, seniority pref-

erences in layoffs, and termination procedures. *See, e.g.*, CAL. EDUC. CODE §§ 44929.21(b); 44934; 44938(b)(1), (2); 44944; 44955. Indeed, California itself recognized that there is no meaningful distinction between speech in the "collective bargaining" or "lobbying" contexts because, at least prior to *Knox*, "California state law explicitly permit[ted] the union to classify some lobbying expenses as chargeable." *Knox*, 132 S. Ct. at 2304 (Breyer, J., dissenting).

In short, there is no material difference between "collective bargaining" and "lobbying" by public-sector unions. *Abood*'s exception for "collective bargaining" is thus irrational on its own terms and is not justifiable on the alternative ground that public-sector collective bargaining does not involve matters of public concern.

B. The Interests In Avoiding Free-Riding And Maintaining Labor Peace Cannot Justify Compelled Subsidization Of Political Speech.

As this Court appears to have unanimously recognized in *Harris*, the interests in "avoiding free-riding" and promoting "labor peace" cannot justify compelled subsidization of union speech on matters of public concern.

1. At the threshold, *Abood* itself held that a public employer cannot require employees to fund unions' ideological speech about public affairs, even though nonmembers "free ride" on the public benefits such speech produces (and thus undermine "labor peace"). Such government interests therefore cannot support subsidizing public-sector collective bargaining, since it also constitutes speech on matters of

public concern. *Supra* at 17-20; *see also Harris*, 134 S. Ct. at 2654 (Kagan, J., dissenting) ("[S]peech in political campaigns relates to matters of public concern …; thus, compelled fees for those activities are forbidden.").

2. This Court's post-*Abood* decisions confirm that the Government cannot compel dissenters to subsidize collective bargaining in order to prevent "free-riding" on that speech.

Foremost, this Court held in *Knox* that "free-rider arguments" are "generally insufficient to overcome First Amendment objections." 132 S. Ct. at 2289. Relying principally on *United Foods*, *Knox* noted that countless other organizations—such as "university professors" seeking "tenure" and "medical associations" lobbying about "fees"—advocate for policies that directly benefit other employees or beneficiaries, but that does not justify mandating contributions from noncontributing "free-riders." *Id.* (citing Summers, *Book Review, Sheldon Leader, Freedom of Association*, 16 COMP. LAB. L.J. 262, 268 (1995)). This Court reiterated that holding in *Harris*. Although accepting that the union "ha[d] been an effective advocate for personal assistants in the State of Illinois"—procuring "substantially improved" wages and benefits as well as nonfinancial gains, such as "orientation and training programs"—the Court struck down Illinois' compelled subsidization regime because "the mere fact that nonunion members benefit from union speech is not enough to justify an agency fee." 134 S. Ct. at 2640-41, 2636.

The *Harris* dissent disagreed, on the ground that there is an "essential distinction between unions and

special-interest organizations" like the entity in *United Foods* and the other examples in *Knox*. 134 S. Ct. at 2656 (Kagan, J., dissenting). Those groups are different because the "law compels unions to represent—and represent fairly—every worker in a bargaining unit, regardless whether they join or contribute to the union." *Id.*

But the unions' nondiscrimination obligation neither distinguishes the unions from other advocacy groups nor materially alters what the unions say and do. To the contrary, all the nondiscrimination mandate means is that the unions cannot bargain for their members to receive better treatment than nonmembers, which is both inherent in the notion of *collective* bargaining and the *norm* for advocacy groups. In *United Foods*, for example, the "Mushroom Council" that was statutorily empowered to collect funds for mushroom promotion used those funds to promote all mushrooms alike. It did not promote particular brands (such as those of Council members) or differentiate among them. "[A]lmost all of the funds collected under the mandatory assessments [were] for one purpose: generic advertising." 533 U.S. at 412. That is how virtually every general advocacy organization operates. The American Medical Association, for example, does not lobby to get better Medicare reimbursement rates for dues-paying members than for nonmembers.

Nor does the nondiscrimination mandate alter the union's collective-bargaining speech or make it more palatable to nonmembers. Nondiscrimination does not require unions to give nonmembers' policy preferences equal—or even any—consideration. It just means that the union cannot exempt nonmem-

bers from union-preferred policies obtained through collective bargaining. Thus, as *Harris* noted, the union's nondiscrimination obligation is irrelevant to the free-rider question because there is no "claim" or reason to suppose that "the union's approach to negotiations on wages or benefits would be any different if it were not required to negotiate on behalf of the nonmembers as well as members." 134 S. Ct. at 2637 n.18. And the deprivation imposed on an employee who objects to the union's collectivist policies is hardly ameliorated by *including* him in the policies he dislikes.

Moreover, it is doubtful that such collectivist advocacy by unions actually does benefit, rather than harm, objecting nonmembers. Just like the generic advertisements in *United Foods* harmed the mushroom producer who believed his mushrooms were superior, union-obtained policies that *forbid* merit-based pay and assignments (as discussed in *Vergara*) harm those who believe they are better teachers and would thus thrive in a merit-based regime. This harm is worse than the harm in *United Foods*—or with any other advocacy group—given the unions' unique power, as the exclusive representative, to effectively preclude dissenting employees from advancing contrary views to the relevant decision-maker. Mushroom growers are free to advertise their "superior" mushrooms separately, and doctors are free to ask the government for different Medicaid reimbursement rates than those the AMA prefers. Public employees, by contrast, cannot make different demands of their public employer, since they have no seat at the bargaining table and cannot individually bargain. Compelled subsidization in the union con-

text is thus *more* of a deprivation because only unions can *both* effectively foreclose contrary advocacy *and* demand financial support for their conflicting policies from the silenced dissenters.[1]

Similarly, the unions' choice to bargain for extraordinary retirement benefits often harms current nonmembers because such efforts inevitably—and as California's recent experience demonstrates, often drastically—reduce the funds available for current wages or for improving the educational environment in which current nonmembers work. Nonmembers are also affirmatively harmed because unions can and do use their exclusive bargaining status to withhold certain benefits from being provided by the *employer*, so that the *union* can offer the benefit to nonmembers as an inducement to join the union (and therefore pay chargeable and nonchargeable fees). For example, California teachers cannot obtain disability insurance as part of their collectively bargained employment package, because this valuable benefit is available only as a perk of membership in the CTA. Pet.App.101a-102a.

---

[1] Moreover, just as Illinois covered most of the typical collective bargaining "benefits" in its statutory Service Plans in *Harris*, California has already enshrined many of these "benefits" in state statutes. 134 S. Ct. at 2637; *supra* at 19-20. That enshrinement reduces both the benefits of collective bargaining and the value of unions' commitment to not "sacrifice" nonmembers' interests (which are statutorily guaranteed) to achieve advantages for members. *Id.* at 2636.

3. The interest in labor peace fares no better. *Abood* uses "labor peace" as shorthand for the prevention of "[t]he confusion and conflict that could arise if rival teachers' unions, holding quite different views … sought to obtain the employer's agreement." 431 U.S. at 224. But the fact that public employers have an interest in dealing with one union rather than many is an argument for having just one union. It does not justify the *additional* and quite different proposition that the state can force all employees to support that one union. As *Harris* recognized, a "union's status as exclusive bargaining agent and the right to collect an agency fee from non-members are not inextricably linked." 134 S. Ct. at 2640. Rather, those concepts can become connected only if "free riding" would cause the extinction of the exclusive union (harming "labor peace"). That is why, as *Knox* noted, the "anomaly" of accepting "free-rider arguments" in the union context was purportedly justified previously "by the interest in furthering [the] 'labor peace'" that was advanced by a solvent exclusive representative. 132 S. Ct. at 2290 (quoting *Chi. Teachers Union v. Hudson*, 475 U.S. 292, 303 (1986)). Thus, as *Harris* held, "the agency-fee provision cannot be sustained" on grounds of "labor peace" or "free riding," unless the collective-bargaining "benefits for [nonmembers] could not have been achieved if the union had been required to depend for funding on the dues paid by those personal assistants who chose to join [the union]." 134 S. Ct. at 2641.

Respondents have not made that allegation and cannot make that demanding showing, since "[a] host of organizations advocate on behalf of the interests of persons falling within an occupational group, and

many of these groups are quite successful even though they are dependent on voluntary contributions." *Harris*, 134 S. Ct. at 2641. For example, public-employee unions actively represent federal employees, even though "no employee is required to join the union or to pay any union fee." *Id.* at 2640. Similarly, only "20 States have enacted statutes authorizing fair-share provisions," *id.* at 2652 (Kagan, J., dissenting), yet Respondent NEA and its local affiliates ably serve as the exclusive representative for public teachers in all fifty states, including those without agency-fee requirements. *See* NEA, State Affiliates, http://goo.gl/klzR55.

C. Public-Sector Collective Bargaining Would Be Unconstitutional Even If It Were Not Core Political Speech.

Finally, even if collective bargaining were not political speech about public concerns and even if it were not subject to strict scrutiny, this Court's decisions *still* foreclose its compelled subsidization. *Knox* and *Harris* held that such subsidization cannot satisfy even the more "permissive" standard applied to the "mundane commercial" speech in *United Foods*, since the purpose of compelled subsidization of collective bargaining is speech itself. *Knox*, 132 S. Ct. at 2289; *Harris*, 134 S. Ct. at 2639. Moreover, the governmental interests supporting agency fees are not strong enough to satisfy even the balancing test adopted in *Pickering* for workplace speech by public employees on matters of public concern. After all, *Pickering* itself invalidated the termination of a public-school teacher who wrote a letter to the editor "that was critical of the way in which the Board and the district superintendent of schools had handled

past proposals to *raise new revenue* for the schools." 391 U.S. at 564 (emphasis added). That is, no doubt, why this Court held in *Harris* that, "[e]ven if the permissibility of the agency-shop provision in the collective-bargaining agreement now at issue were analyzed under *Pickering,* that provision could not be upheld." 134 S. Ct. at 2643. Specifically, the governmental interests "relating to the promotion of labor peace and the problem of free-riders" do not outweigh the "heavy burden on the First Amendment interests of objecting employees." *Id.* *Abood* is thus unjustifiable under any plausibly applicable level of First Amendment review.

II. Because *Abood* Cannot Be Reconciled With Established Precedent, It Should Be Overturned.

Because *Abood* is irreconcilable with this Court's other First Amendment decisions, the issue is not *whether* to overturn precedent; rather, it is *which* precedents the Court will uphold—*Abood*, or the litany of decisions with which it conflicts. The correct answer is clear: the Court should jettison the *Abood* "anomaly" and thus affirm the integrity of its other decisions. That is true both because *Abood* incorrectly denies a fundamental right and because preserving such an outlier would defeat the purpose of stare decisis, which is to "promot[e] the evenhanded, predictable, and consistent development of legal principles." *Payne v. Tennessee*, 501 U.S. 808, 827 (1991).

A. First, if a later decision establishes a First Amendment right that some prior decision denied—such as the right to engage in truthful commercial speech—discarding the prior decision is necessary to

preserve the fundamental right. *Compare, e.g.*, *Valentine v. Chrestensen*, 316 U.S. 52, 54 (1942) ("[T]he Constitution imposes no [] restraint on government as respects purely commercial advertising."), *with Cent. Hudson Gas & Elec. Corp. v. Pub. Serv. Comm'n of New York*, 447 U.S. 557, 561 (1980) ("The First Amendment … protects commercial speech from unwarranted governmental regulation."). The prudential values of stare decisis obviously cannot "outweigh the countervailing interest that all individuals share in having their constitutional rights fully protected." *Arizona v. Gant*, 556 U.S. 332, 349 (2009). If "a practice is unlawful, individuals' interest in its discontinuance clearly outweighs any [] 'entitlement' to its persistence." *Id.*; *see also, e.g.*, *Alleyne v. United State*s, 133 S. Ct. 2151, 2163 n.5 (2013) ("The force of stare decisis is at its nadir in cases concerning procedural rules that implicate fundamental constitutional protections."). That is why "[t]his Court has not hesitated to overrule decisions offensive to the First Amendment." *Citizens United*, 558 U.S. at 363 (quoting *F.E.C. v. Wisconsin Right to Life, Inc.*, 551 U.S. 449, 500 (Scalia, J., dissenting)); *see also, e.g.*, *W.Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624, 642 (1943) (overturning *Minersville Sch. Dist. v. Gobitis*, 310 U.S. 586 (1940)).

Even if *Abood*'s destruction of a fundamental First Amendment freedom were not sufficient, the Court should reconsider *Abood* because preserving it conflicts with the basic purpose of stare decisis—namely, engendering "the respect accorded to the judgments of the Court and to the stability of the law." *Lawrence v. Texas*, 539 U.S. 558, 577 (2003). As demonstrated above, *Abood* is at war with both of

those prudential values, since its rationale and result are contrary to clear principles established in other cases. That is why nobody defends *Abood*'s original rationale, and why its current supporters reject its candid recognition that collective bargaining is "ideological" speech. Where, as here, nobody "defends the reasoning of a precedent, the principle of adhering to that precedent through stare decisis is diminished." *Citizens United,* 558 U.S. at 363.

Moreover, as noted, seeking to justify *Abood*'s result on the alternative ground that collective bargaining does not involve matters of public concern also directly conflicts with this Court's precedent. This Court's jurisprudence is not served by sustaining a precedent that can only be "preserved" by rejecting its rationale and replacing it with one that also conflicts with this Court's other decisions.

This is particularly true because preserving *Abood* renders this Court's First Amendment jurisprudence not only inconsistent, but topsy-turvy. If *Abood*'s result survives, this Court's decisions will provide greater protection against the compelled subsidization of "mundane commercial speech" than against the compelled subsidization of core political speech. Sustaining *Abood* would also require holding that, even though compelled subsidization of speech on matters of public concern flunks the *Pickering* balancing test, it somehow survives the exacting scrutiny the Court gives political speech. *Abood* thus falls squarely within the "traditional justification for overruling a prior case"—that the challenged "precedent may be a positive detriment to coherence and consistency in the law." *Patterson v. McClean Credit Union*, 491 U.S. 164, 173 (1989).

This Court's decision in *Hudgens v. NLRB*, 424 U.S. 507 (1976), illustrates the point. Previously, the Court had held, in *Amalgamated Food Employees Union Local 590 v. Logan Valley Plaza, Inc.*, that the First Amendment protected protesters' right to picket at a private shopping center. 391 U.S. 308, 319 (1968). But four years later in *Lloyd Corp. v. Tanner*, a case involving very similar facts, the Court went to great lengths to distinguish *Logan Valley* in the course of holding that the First Amendment did not apply to the protestors picketing on the private property at issue there. 407 U.S. 551, 563 (1972). The *Lloyd* Court did not overrule *Logan Valley*, but the Court later did so in *Hudgens* because "the reasoning of the Court's opinion in *Lloyd* cannot be squared with the reasoning of the Court's opinion in *Logan Valley*." 424 U.S. at 517-18. Here, neither the reasoning nor result of *Abood* can be squared with (at the very least) *Knox* and *Harris*, and so the Court should do as it did there. That is particularly true given that *Logan Valley* erroneously *expanded* First Amendment rights while *Abood* erroneously *eliminates* them.

B. All of this Court's other established criteria for reconsidering precedent likewise support reconsidering *Abood*. This Court has long recognized that "stare decisis is not an inexorable command," and "is at its weakest when [the Court] interpret[s] the Constitution." *Agostini*, 521 U.S. at 235 (citation omitted). Especially in such constitutional cases, stare decisis must yield when a prior decision proves "unworkable," *Payne*, 501 U.S. at 827; was not "well reasoned," *Montejo v. Louisiana*, 556 U.S. 778, 792-93 (2009); creates a "critical" anomaly in this Court's

decisions, *John R. Sand & Gravel Co. v. United States*, 552 U.S. 130, 139 (2008); has failed to garner valid reliance interests, *Lawrence*, 539 U.S. at 577; or has been undermined by subsequent factual developments, *Planned Parenthood of Se. Pa. v. Casey*, 505 U.S. 833, 855 (1992). *Abood* satisfies each of these criteria.

1. First, the line *Abood* drew between collective bargaining and other lobbying is not only constitutionally meaningless, but has proven to be entirely "unworkable."

This Court noted as much in *Harris*, citing a long line of subsequent decisions which demonstrated that the *Abood* Court "failed to appreciate the conceptual difficulty of distinguishing in public-sector cases between union expenditures that are made for collective-bargaining purposes and those that are made to achieve political ends." 134 S. Ct. at 2632. Particularly since *Abood* "does not seem to have anticipated the magnitude of the practical administrative problems" such line-drawing creates, the "Court has struggled repeatedly with this issue" in subsequent cases. *Id.* at 2633.

Justice Marshall's partial dissent in *Lehnert v. Ferris Faculty Ass'n* made a similar point, persuasively showing why supposed "free-riding" on union lobbying for a statute is indistinguishable from collective-bargaining "free-riding." 500 U.S. 507, 537 (1991) (Marshall, J., dissenting in part). As Justice Marshall explained, the *Lehnert* opinion "would permit lobbying for an education appropriations bill that is necessary to fund an existing collective-bargaining agreement, but it would not permit lobbying for the

same level of funding in advance of the agreement, even though securing such funding often might be necessary to persuade the relevant administrators to enter into the agreement." *Id.* This makes no sense, given that the interest in preventing "free-riding" applies with equal force to lobbying the legislature to "increase[] funding for education" (nonchargeable) and lobbying the legislature for "ratification of a public sector labor contract" (chargeable). *Id.* at 538 (emphasis omitted). In both instances, dissenting employees might "disagree with the trade-off the legislature has chosen," but are identically situated in their potential obligation to "shar[e] the union's cost of obtaining benefits for them." *Id.* Justice Scalia also noted in *Lehnert* that the plurality's test for drawing the *Abood* line "provides little if any guidance to parties contemplating litigation or to lower courts," and "does not eliminate [the] past confusion" that *Abood* created, because it is a vague set of subjective "judgment call[s]." *Id.* at 551 (Scalia, J., concurring in judgment in part and dissenting in part).

2. As established above, *Abood* is so poorly "reasoned" that no one defends its rationale, and it is an "anomaly" in both reasoning and result. Stare decisis must yield where, as here, it is necessary to "erase [an] anomaly," *Alleyne*, 133 S. Ct. at 2167 (Breyer, J., concurring in part and in judgment), or jettison "an outlier," *id.* at 2165 (Sotomayor, J., concurring).

3. Nor does any individual or entity have a valid reliance interest in *Abood*. "[T]he union has no constitutional right to receive any payment from" nonmembers. *Knox*, 132 S. Ct. at 2295. And, of course, the unions' desire to perpetuate this uncon-

stitutional windfall cannot somehow create a "reliance interest that could outweigh the countervailing" First Amendment right to not pay such tribute. *Gant*, 556 U.S. at 349. Nor would overturning *Abood* somehow interfere with the "thousands of [collective-bargaining] contracts" already entered. *Harris*, 134 S. Ct. at 2652 (Kagan, J., dissenting). It would, rather, simply enable nonmembers to refuse to fund future collective-bargaining efforts they do not support.

4. Finally, factual developments "have robbed the old rule of significant application or justification." *Casey*, 505 U.S. at 855. As *Harris* explained, *Abood* failed to "foresee the practical problems that would face objecting nonmembers." 134 S. Ct. at 2633. Employees who dispute a public-sector union's chargeability determinations "must bear a heavy burden if they wish to challenge the union's actions." *Id.* Such employees must "mount the legal challenge in a timely fashion," *id.* (quoting *Knox*, 132 S. Ct. at 2294), and "litigating such cases is expensive," *id.* Not only that, but the chargeability decisions being challenged are themselves bedeviled by "administrative problems" caused by the conceptual difficulties in "attempting to classify public-sector union expenditures as either 'chargeable' … or nonchargeable." *Id.* This problem is further compounded by the fact that the auditors who review each union's books "do not themselves review the correctness of a union's categorization." *Id.* For that reason, too, this Court should reconsider *Abood*.

III. At The Least, Respondents' "Opt-Out" Regime Imposes An Unconstitutional Burden On Petitioners' Established First Amendment Rights.

This Court's decisions in *Knox* and *Harris* further establish that—at the very least—Respondents must minimize the First Amendment burden they impose on teachers' right to refrain from subsidizing the Respondent Unions' nonchargeable activities. Minimizing that burden requires Respondents to obtain every public-school teacher's affirmative consent before spending part of that teacher's salary on any nonchargeable expenses. Courts do not, after all, typically "presume acquiescence in the loss of fundamental rights." *Knox*, 132 S. Ct. at 2290 (quoting *College Savings Bank v. Florida Prepaid Postsecondary Ed. Expense Bd.*, 527 U.S. 666, 682 (1999)).

This Court's opinion in *Knox* makes clear that California's practice of requiring teachers to register their dissent from subsidizing nonchargeable expenses is unconstitutional. As the Court explained: "Once it is recognized, as our cases have, that a nonmember cannot be forced to fund a union's political or ideological activities, what is the justification for putting the burden on the nonmember to opt out of making such a payment?" *Knox*, 132 S. Ct. at 2290. Defaulting every public-school teacher into subsidizing nonchargeable expenses "creates a risk that the fees paid by nonmembers will be used to further political and ideological ends with which they do not agree." *Id.* It also enables public-sector unions to capitalize on confusion about the mechanics of opting out in order to maximize their collection of nonchargeable fees from teachers who do not actual-

ly support the unions' political agenda. Those risks conflict with the longstanding rule that "a 'union should not be permitted to exact a service fee from nonmembers without first establishing a procedure which will avoid the risk that their funds will be used, even temporarily, to finance ideological activities unrelated to collective bargaining.'" *Id.* (quoting *Hudson*, 475 U.S. at 305).

Review of this issue is also warranted to resolve widespread disagreement and confusion in the circuits about the constitutionality of requiring dissenting employees to annually re-register their dissent. Respondents require Petitioners to register their refusal to subsidize nonchargeable expenditures in writing every year. Pet.App.43a-44a. The circuits disagree about whether it is constitutional to require dissenters to express their dissent anew each year, rather than permitting them to opt out once and have it last forever. *Compare Seidemann v. Bowen*, 499 F.3d 119, 125 (2d Cir. 2007) ("The fact that employees have the responsibility of making an initial objection does not absolve unions of their obligation to ensure that objectors' First Amendment rights are not burdened."), *and Shea v. Int'l Ass'n of Machinists & Aerospace Workers*, 154 F.3d 508, 515 (5th Cir. 1998) ("[T]he annual written objection procedure is an unnecessary and arbitrary interference with the employees' exercise of their First Amendment rights."), *with Tierney v. City of Toledo*, 824 F.2d 1497, 1506 (6th Cir. 1987) ("[W]e do not consider unreasonable the plan's provision that each member be required to object each year …."), *and Mitchell*, 963 F.2d at 262-63 ("[T]he burdensome 'opt in' requirement … would unduly impede the union in order to

protect 'the relatively rare species' of employee who is unwilling to respond to the union's notifications but nevertheless has serious disagreements with the union's support of its political and ideological causes."). Resolving that division provides another reason for the Court to review this issue.

It is true that the Court has previously given implicit approval to opt-out regimes like California's. But as this Court explained in *Knox*, those "prior cases have given surprisingly little attention to this distinction." 132 S. Ct. at 2290. Rather, "acceptance of the opt-out approach appears to have come about more as a historical accident than through the careful application of First Amendment principles." *Id.* This Court has thus never directly decided whether the First Amendment requires that public employees opt into subsidizing nonchargeable speech, and would be free to vindicate the important First Amendment interests at stake in the second Question Presented without reconsidering any prior decisions. *See, e.g.*, *Cooper Indus., Inc. v. Aviall Servs., Inc.*, 543 U.S. 157, 170 (2004) (questions which are "'neither brought to the attention of the court nor ruled upon, are not to be considered as having been so decided as to constitute precedents'") (quoting *Webster v. Fall*, 266 U.S. 507, 511 (1925)).

IV. This Case Is An Excellent Vehicle For Reconsidering *Abood*.

This case is an excellent vehicle for addressing whether *Abood* should be substantially modified or overruled. The district court (properly) dismissed Petitioners' complaint on the pleadings. It recognized that, even accepting all factual allegations in

the Complaint as true, *Abood* forecloses any argument that agency-fee provisions are unconstitutional. *See Agostini*, 521 U.S. at 237. Moreover, the Respondent Unions have provided their comprehensive view of the facts in a detailed Amended Answer. Pet.App.113a-156a. That pleading makes clear that none of the factual disputes between the parties are material under *Abood* and that none of them *should* matter under the First Amendment as properly construed. This case thus provides the Court with a clean platform of undisputed material facts to decide these purely legal questions, and no means of distinguishing *Abood* that could dispose of the case without determining whether and in what form its holding should be maintained. And should the Court's decision make any of the factual disputes between the parties relevant, those issues can be fully litigated on remand under whatever test this Court adopts. (For similar reasons, this case is an excellent vehicle for deciding the legal question whether California's opt-out regime, or any opt-out regime, is constitutional—with any potentially relevant facts to be litigated on remand.)

Moreover, challenges like this one, that directly contest *Abood*'s vitality, are not likely to recur. Should the Court decline to take this case, it is unlikely that future litigants will file suits that are doomed in the lower courts in hopes of obtaining certiorari review. To the contrary, litigants will interpret the Court's denial of certiorari here as dispositive on the issue and will assume that, whatever this Court may have said in *Knox* and *Harris*, the rule announced in *Abood*—and the millions of dollars it permits coercing from public employees every year—

is here to stay. There is thus nothing to be gained, and much to lose, from adopting a wait-and-see approach on this critically important issue.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

MICHAEL E. ROSMAN
CENTER FOR
INDIVIDUAL RIGHTS
1233 20th St., N.W.
Suite 300
Washington, DC 20036

MICHAEL A. CARVIN
Counsel of Record
JAMES M. BURNHAM
WILLIAM D. COGLIANESE
JONES DAY
51 Louisiana Ave., NW
Washington, DC 20001
(202) 879-3939
macarvin@jonesday.com

Counsel for Petitioners

JANUARY 26, 2015

APPENDIX

APPENDIX A

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

REBECCA FRIEDRICHS; et al., Plaintiffs - Appellants, v. CALIFORNIA TEACHERS ASSOCIATION; et al., Defendants - Appellees, KAMALA D. HARRIS, Attorney General, Defendant - Intervenor.	No. 13-57095 D.C. No. 8:13-cv-00676-JLS-CW Central District of California, Santa Ana ORDER

Before: CANBY, CLIFTON, and OWENS, Circuit Judges.

The court has reviewed appellants' motion for summary affirmance and appellees' opposition thereto, the record, and the briefing filed in this appeal. Upon review, the court finds that the questions presented in this appeal are so insubstantial as not to require further argument, because they are governed by controlling Supreme Court and Ninth Circuit precedent. *See United States v. Hooton*, 693 F.2d 857, 858 (9th Cir. 1982)

(per curiam) (stating standard for summary affirmance); *Abood v. Detroit Bd. Of Ed.*, 431 U.S. 209, 232 (1977) (allowing public-sector agency shop); *Mitchell v. L.A. Unified Sch. Dist.*, 963 F.2d 258, 263 (9th Cir. 1992) (allowing opt-out regime).

Accordingly, we summarily affirm the district court's judgment.

AFFIRMED.

APPENDIX B

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No. SACV 13-676-JLS (CWx) Date: December 5, 2013
Title: Rebecca Friedrichs, et al. v. California Teachers Ass'n, et al.

Present: **Honorable JOSEPHINE L. STATON, UNITED STATES DISTRICT JUDGE**

Terry Guerrero	N/A
Deputy Clerk	Court Reporter
ATTORNEYS PRESENT FOR PLAINTIFF:	ATTORNEYS PRESENT FOR DEFENDANT:
Not Present	Not Present

PROCEEDINGS: **(IN CHAMBERS) ORDER GRANTING MOTION FOR JUDGMENT ON THE PLEADINGS (DOC. 81) AND VACATING MOTION FOR PRELIMINARY INJUNCTION (DOC. 71)**

Before the Court is Plaintiffs' Motion for Judgment on the Pleadings, requesting that judgment be entered in favor of Defendants. (Mot., Doc. 81, "Motion".) Defendants filed an opposition, and Plaintiffs replied. (Def. Opp'n, Doc. 90; Reply, Doc. 91.) Following an order of certification made pursuant to Federal Rule of Civil Procedure 5.1(b) and 28 U.S.C. § 2403(b), the Government intervened and, on November 25, 2013, filed a response to the Motion. (Docs. 94, 102; Gov't Opp'n., Doc. 104.) Having reviewed the papers and taken the matter under submission, the Court GRANTS Plaintiffs' Motion and enters judgment on the pleadings in favor of Defendants. Plaintiffs' pending Motion for Preliminary Injunction is VACATED as moot. (Doc. 71.)[1]

I. Background

Under California law, a union is allowed to become the exclusive bargaining representative for public school employees in a bargaining unit such as a public school district by submitting proof that a majority of employees in the unit wish to be represented by the union. Cal. Gov't. Code § 3544(a). Once a union becomes the exclusive bargaining representative within a district, it may establish an "agency-shop" arrangement with that district, whereby all employees "shall, as a condition of continued employment, be required either to join the recognized employee organization or pay the fair share service fee." *Id.* § 3546(a). This "agency fee" is

---

[1] Plaintiffs and Defendants stipulated that the Motion for Preliminary Injunction "should be vacated if the Court enters judgment on the pleadings." (Doc. 88 at 1-2.)

usually the same amount as the union dues. (Compl., Doc. 1 ¶ 52.)[2]

California law limits the use of agency fees to activities "germane" to collective bargaining. *Id.* § 3546(b). Each year, unions must estimate the portion of expenses that do not fall into this category for the coming year, based on the non-chargeable portion of a recent year's fee. Regs. of Cal. Pub. Emp't. Relations Bd. § 32992(b)(1). After the union has made this determination, it must send a notice to all non-members setting forth both the agency fee and the non-chargeable portions of the fee. Cal. Gov't. Code § 3546(a); Regs. of Cal. Pub. Emp't Relations Bd. § 32992(a). If non-members do not wish to pay the non-chargeable portions of the fee—i.e., the portions of the fee going to activities not "germane" to collective bargaining—they must notify the union after receipt of the notice. Regs. of Cal. Pub. Emp't. Relations Bd. § 32993. Non-members who provide this notification receive a rebate or fee-reduction for that year. Cal. Gov't Code § 3546(a).

Plaintiffs are (1) public school teachers who have resigned their union membership and object to paying the non-chargeable portion of their agency fee each year, and (2) the Christian Educators Association International, a non-profit religious organization "specifically serving Christians working in public schools." (Compl. ¶¶ 11-20.) Defendants are (1) local unions for the districts in which the individual plaintiffs are employed as teachers and

---

[2] When ruling on a motion for judgment on the pleadings, the Court accepts as true the factual allegations in the complaint. *Fleming v. Pickard*, 581 F.3d 922, 925 (9th Cir. 2009).

the superintendents of those local unions, (2) the National Education Association, and (3) the California Teachers Association. (*Id.* ¶¶ 22-23, 34-44.)

Plaintiffs claim that "[b]y requiring Plaintiffs to make any financial contributions in support of any union, California's agency shop arrangement violates their rights to free speech and association under the First and Fourteenth Amendments to the United States Constitution," and that "[b]y requiring Plaintiffs to undergo 'opt out' procedures to avoid making financial contributions in support of 'non-chargeable' union expenditures, California's agency-shop arrangement violates their rights to free speech and association under the First and Fourteenth Amendments to the United States Constitution." (*Id.* ¶¶ 89, 92.)

Plaintiffs move for judgment on the pleadings, but in Defendants' favor. Although Plaintiffs are not clear on whether they are asking the Court to grant or deny their Motion, Plaintiffs are clear that they are asking the Court to enter judgment in favor of Defendants. (*Compare* Mot. at 1 ("Plaintiffs concede that this Court should deny their Motion and, instead, grant judgment on the pleadings to Defendants" (emphasis removed)) *with* Proposed Order, Doc. 81-1 at 1 (requesting that the Motion be "GRANTED in favor of Defendants.").) Accordingly, the Court construes the Motion such that granting the Motion would allow judgment to be entered in favor of Defendants.

II. Legal *Standard*

"After the pleadings are closed—but early enough not to delay trial—a party may move for judgment on

the pleadings." Fed. R. Civ. P. 12(c). Motions for judgment on the pleadings are governed by the same standards applicable to Rule 12(b)(6) motions to dismiss. *Cafasso v. General Dynamics C4 Systems*, 637 F.3d 1047, 1054, n. 4 (9th Cir. 2011). The Court "must accept all factual allegations in the complaint as true and construe them in the light most favorable to the non-moving party." *Fleming v. Pickard*, 581 F.3d 922, 925 (9th Cir. 2009). "Judgment on the pleadings is proper when the moving party clearly establishes on the face of the pleadings that no material issue of fact remains to be resolved and that it is entitled to judgment as a matter of law." *Hal Roach Studios v. Richard Feiner & Co.*, 896 F.2d 1542, 1550 (9th Cir. 1989).

III. Discussion

Plaintiffs urge the Court to enter judgment on the pleadings in favor of Defendants, contending that Plaintiffs' claims are "presently foreclosed by" *Abood v. Detroit Board of Education*, 431 U.S. 209 (1977) and *Mitchell v. Los Angeles Unified School District*, 963 F.2d 258 (9th Cir. 1992). (Mot. at 2.)[3] In *Abood*, the Supreme Court upheld the constitutional validity of compelling employees to support a particular collective bargaining representative and rejected the notion that the only funds from nonunion members that a union constitutionally could use for political or ideological causes were those funds that the nonunion members affirmatively consented to pay. 431 U.S. at 222, 225, 235-36. The *Mitchell* court,

---

[3] Plaintiffs' ultimate aim—and thus their request for judgment on the pleadings in favor of Defendants—is to have these precedents overturned on appeal. (*See* Mot. at 9; *see also* Motion for Preliminary Injunction, Doc. 71 at 1.)

following *Abood*, held that the First Amendment did not require an "opt in" procedure for nonunion members to pay fees equal to the full amount of union dues under an agency shop arrangement. *See* 963 F.2d at 260-62 (citing and discussing the "long line of Supreme Court cases" that support the constitutional validity of an opt-out system based on a nonmember's expressed objection). The parties do not dispute that *Abood* and *Mitchell* foreclose Plaintiffs' claims, and the Court agrees that these decisions are controlling. (*See* Mot. at 2; Def. Opp'n at 14; Gov't Opp'n at 4-5, 9.)

Accordingly, the Court grants Plaintiffs' Motion and enters judgment on the pleadings in favor of Defendants.

IV. Conclusion

For the foregoing reasons, Plaintiffs' Motion for Judgment on the Pleadings is GRANTED. Judgment is entered in favor of Defendants. Plaintiffs' Motion for Preliminary Injunction is VACATED as moot.

Initials of Preparer: tg

APPENDIX C

CALIFORNIA EDUCATION CODE

CAL. EDUC. CODE § 35160—Authority of Governing Boards Commencing January 1, 1976

On and after January 1, 1976, the governing board of any school district may initiate and carry on any program, activity, or may otherwise act in any manner which is not in conflict with or inconsistent with, or preempted by, any law and which is not in conflict with the purposes for which school districts are established.

CAL. EDUC. CODE § 44929.21—Districts with Daily Attendance of 250 or More; Permanent Employee Classification; Notice of Reelection

(b) Every employee of a school district of any type or class having an average daily attendance of 250 or more who, after having been employed by the district for two complete consecutive school years in a position or positions requiring certification qualifications, is reelected for the next succeeding school year to a position requiring certification qualifications shall, at the commencement of the succeeding school year be classified as and become a permanent employee of the district.

The governing board shall notify the employee, on or before March 15 of the employee's second complete consecutive school year of employment by the district in a position or positions requiring certification qualifications, of the decision to

reelect or not reelect the employee for the next succeeding school year to the position. In the event that the governing board does not give notice pursuant to this section on or before March 15, the employee shall be deemed reelected for the next succeeding school year.

This subdivision shall apply only to probationary employees whose probationary period commenced during the 1983-84 fiscal year or any fiscal year thereafter.

CAL. EDUC. CODE § 44934—Charges and Notice of Intention to Dismiss or Suspend; Additional Application of Section

Upon the filing of written charges, duly signed and verified by the person filing them, with the governing board of the school district, or upon a written statement of charges formulated by the governing board, charging that there exists cause, as specified in Section 44932 or 44933, for the dismissal or suspension of a permanent employee of the district, the governing board may, upon majority vote, except as provided in this article if it deems the action necessary, give notice to the permanent employee of its intention to dismiss or suspend him or her at the expiration of 30 days from the date of service of the notice, unless the employee demands a hearing as provided in this article. Suspension proceedings may be initiated pursuant to this section only if the governing board has not adopted a collective bargaining agreement pursuant to subdivision (b) of Section 3543.2 of the Government Code.

Any written statement of charges of unprofessional conduct or unsatisfactory performance shall specify

instances of behavior and the acts or omissions constituting the charge so that the teacher will be able to prepare his or her defense. It shall, where applicable, state the statutes and rules which the teacher is alleged to have violated, but it shall also set forth the facts relevant to each occasion of alleged unprofessional conduct or unsatisfactory performance.

This section shall also apply to the suspension of probationary employees in a school district with an average daily attendance of less than 250 pupils which has not adopted a collective bargaining agreement pursuant to subdivision (b) of Section 3542.2 of the Government Code.

CAL. EDUC. CODE § 44938—Unprofessional Conduct or Unsatisfactory Performance; Notice of Charges

(b) The governing board of any school district shall not act upon any charges of unsatisfactory performance unless it acts in accordance with the provisions of paragraph (1) or (2):

(1) At least 90 calendar days prior to the date of the filing, the board or its authorized representative has given the employee against whom the charge is filed, written notice of the unsatisfactory performance, specifying the nature thereof with such specific instances of behavior and with such particularity as to furnish the employee an opportunity to correct his or her faults and overcome the grounds for the charge. The written notice shall include the evaluation made pursuant to Article 11 (commencing with Section 44660) of Chapter 3, if applicable to the employee.

(2) The governing board may act during the time period composed of the last one-fourth of the

schooldays it has scheduled for purposes of computing apportionments in any fiscal year if, prior to the beginning of that time period, the board or its authorized representative has given the employee against whom the charge is filed, written notice of the unsatisfactory performance, specifying the nature thereof with such specific instances of behavior and with such particularity as to furnish the employee an opportunity to correct his or her faults and overcome the grounds for the charge. The written notice shall include the evaluation made pursuant to Article 11 (commencing with Section 44660) of Chapter 3, if applicable to the employee.

CAL. EDUC. CODE § 44944—Conduct of Hearing; Decision; Expenses and Costs

(a)(1) In a dismissal or suspension proceeding initiated pursuant to Section 44934, if a hearing is requested by the employee, the hearing shall be commenced within 60 days from the date of the employee's demand for a hearing. The hearing shall be initiated, conducted, and a decision made in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code. However, the hearing date shall be established after consultation with the employee and the governing board, or their representatives, and the Commission on Professional Competence shall have all of the power granted to an agency in that chapter, except that the right of discovery of the parties shall not be limited to those matters set forth in Section 11507.6 of the Government Code but shall include the rights and duties of any party in a civil action

brought in a superior court under Title 4 (commencing with Section 2016.010) of Part 4 of the Code of Civil Procedure. Notwithstanding any provision to the contrary, and except for the taking of oral depositions, no discovery shall occur later than 30 calendar days after the employee is served with a copy of the accusation pursuant to Section 11505 of the Government Code. In all cases, discovery shall be completed prior to seven calendar days before the date upon which the hearing commences. If any continuance is granted pursuant to Section 11524 of the Government Code, the time limitation for commencement of the hearing as provided in this subdivision shall be extended for a period of time equal to the continuance. However, the extension shall not include that period of time attributable to an unlawful refusal by either party to allow the discovery provided for in this section.

(2) If the right of discovery granted under paragraph (1) is denied by either the employee or the governing board, all of the remedies in Chapter 7 (commencing with Section 2023.010) of Title 4 of Part 4 of the Code of Civil Procedure shall be available to the party seeking discovery and the court of proper jurisdiction, to entertain his or her motion, shall be the superior court of the county in which the hearing will be held.

(3) The time periods in this section and of Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code and of Title 4 (commencing with Section 2016.010) of Part 4 of the Code of Civil Procedure shall not be

applied so as to deny discovery in a hearing conducted pursuant to this section.

(4) The superior court of the county in which the hearing will be held may, upon motion of the party seeking discovery, suspend the hearing so as to comply with the requirement of the preceding paragraph.

(5) No witness shall be permitted to testify at the hearing except upon oath or affirmation. No testimony shall be given or evidence introduced relating to matters that occurred more than four years prior to the date of the filing of the notice. Evidence of records regularly kept by the governing board concerning the employee may be introduced, but no decision relating to the dismissal or suspension of any employee shall be made based on charges or evidence of any nature relating to matters occurring more than four years prior to the filing of the notice.

(b)(1) The hearing provided for in this section shall be conducted by a Commission on Professional Competence. One member of the commission shall be selected by the employee, one member shall be selected by the governing board, and one member shall be an administrative law judge of the Office of Administrative Hearings who shall be chairperson and a voting member of the commission and shall be responsible for assuring that the legal rights of the parties are protected at the hearing. If either the governing board or the employee for any reason fails to select a commission member at least seven calendar days prior to the date of the hearing, the failure shall constitute a waiver of the right to selection, and

the county board of education or its specific designee shall immediately make the selection. If the county board of education is also the governing board of the school district or has by statute been granted the powers of a governing board, the selection shall be made by the Superintendent, who shall be reimbursed by the school district for all costs incident to the selection.

(2) The member selected by the governing board and the member selected by the employee shall not be related to the employee and shall not be employees of the district initiating the dismissal or suspension and shall hold a currently valid credential and have at least five years' experience within the past 10 years in the discipline of the employee.

(c)(1) The decision of the Commission on Professional Competence shall be made by a majority vote, and the commission shall prepare a written decision containing findings of fact, determinations of issues, and a disposition that shall be, solely, one of the following:

(A) That the employee should be dismissed.

(B) That the employee should be suspended for a specific period of time without pay.

(C) That the employee should not be dismissed or suspended.

(2) The decision of the Commission on Professional Competence that the employee should not be dismissed or suspended shall not be based on nonsubstantive procedural errors committed by the school district or governing board unless the errors are prejudicial errors.

(3) The commission shall not have the power to dispose of the charge of dismissal by imposing probation or other alternative sanctions. The imposition of suspension pursuant to subparagraph (B) of paragraph (1) shall be available only in a suspension proceeding authorized pursuant to subdivision (b) of Section 44932 or Section 44933.

(4) The decision of the Commission on Professional Competence shall be deemed to be the final decision of the governing board.

(5) The board may adopt from time to time rules and procedures not inconsistent with this section as may be necessary to effectuate this section.

(6) The governing board and the employee shall have the right to be represented by counsel.

(d)(1) If the member selected by the governing board or the member selected by the employee is employed by any school district in this state, the member shall, during any service on a Commission on Professional Competence, continue to receive salary, fringe benefits, accumulated sick leave, and other leaves and benefits from the district in which the member is employed, but shall receive no additional compensation or honorariums for service on the commission.

(2) If service on a Commission on Professional Competence occurs during summer recess or vacation periods, the member shall receive compensation proportionate to that received during the current or immediately preceding contract period from the member's employing district, whichever amount is greater.

(e)(1) If the Commission on Professional Competence determines that the employee should be dismissed or suspended, the governing board and the employee shall share equally the expenses of the hearing, including the cost of the administrative law judge. The state shall pay any costs incurred under paragraph (2) of subdivision (d), the reasonable expenses, as determined by the administrative law judge, of the member selected by the governing board and the member selected by the employee, including, but not limited to, payments or obligations incurred for travel, meals, and lodging, and the cost of the substitute or substitutes, if any, for the member selected by the governing board and the member selected by the employee. The Controller shall pay all claims submitted pursuant to this paragraph from the General Fund, and may prescribe reasonable rules, regulations, and forms for the submission of the claims. The employee and the governing board shall pay their own attorney's fees.

(2) If the Commission on Professional Competence determines that the employee should not be dismissed or suspended, the governing board shall pay the expenses of the hearing, including the cost of the administrative law judge, any costs incurred under paragraph (2) of subdivision (d), the reasonable expenses, as determined by the administrative law judge, of the member selected by the governing board and the member selected by the employee, including, but not limited to, payments or obligations incurred for travel, meals, and lodging, the cost of the substitute or substitutes, if any, for the member selected by the governing board and the member selected by the

employee, and reasonable attorney's fees incurred by the employee.

(3) As used in this section, "reasonable expenses" shall not be deemed "compensation" within the meaning of subdivision (d).

(4) If either the governing board or the employee petitions a court of competent jurisdiction for review of the decision of the commission, the payment of expenses to members of the commission required by this subdivision shall not be stayed.

(5)(A) If the decision of the commission is finally reversed or vacated by a court of competent jurisdiction, either the state, having paid the commission members' expenses, shall be entitled to reimbursement from the governing board for those expenses, or the governing board, having paid the expenses, shall be entitled to reimbursement from the state.

(B) Additionally, either the employee, having paid a portion of the expenses of the hearing, including the cost of the administrative law judge, shall be entitled to reimbursement from the governing board for the expenses, or the governing board, having paid its portion and the employee's portion of the expenses of the hearing, including the cost of the administrative law judge, shall be entitled to reimbursement from the employee for that portion of the expenses.

(f) The hearing provided for in this section shall be conducted in a place selected by agreement among the members of the commission. In the absence of agreement, the place shall be selected by the administrative law judge.

CAL. EDUC. CODE § 44955—Reduction in Number of Employees

(a) No permanent employee shall be deprived of his or her position for causes other than those specified in Sections 44907 and 44923, and Sections 44932 to 44947, inclusive, and no probationary employee shall be deprived of his or her position for cause other than as specified in Sections 44948 to 44949, inclusive.

(b) Whenever in any school year the average daily attendance in all of the schools of a district for the first six months in which school is in session shall have declined below the corresponding period of either of the previous two school years, whenever the governing board determines that attendance in a district will decline in the following year as a result of the termination of an interdistrict tuition agreement as defined in Section 46304, whenever a particular kind of service is to be reduced or discontinued not later than the beginning of the following school year, or whenever the amendment of state law requires the modification of curriculum, and when in the opinion of the governing board of the district it shall have become necessary by reason of any of these conditions to decrease the number of permanent employees in the district, the governing board may terminate the services of not more than a corresponding percentage of the certificated employees of the district, permanent as well as probationary, at the close of the school year. Except as otherwise provided by statute, the services of no permanent employee may be terminated under the provisions of this section while any probationary employee, or any other

employee with less seniority, is retained to render a service which said permanent employee is certificated and competent to render.

In computing a decline in average daily attendance for purposes of this section for a newly formed or reorganized school district, each school of the district shall be deemed to have been a school of the newly formed or reorganized district for both of the two previous school years.

As between employees who first rendered paid service to the district on the same date, the governing board shall determine the order of termination solely on the basis of needs of the district and the students thereof. Upon the request of any employee whose order of termination is so determined, the governing board shall furnish in writing no later than five days prior to the commencement of the hearing held in accordance with Section 44949, a statement of the specific criteria used in determining the order of termination and the application of the criteria in ranking each employee relative to the other employees in the group. This requirement that the governing board provide, on request, a written statement of reasons for determining the order of termination shall not be interpreted to give affected employees any legal right or interest that would not exist without such a requirement.

(c) Notice of such termination of services shall be given before the 15th of May in the manner prescribed in Section 44949, and services of such employees shall be terminated in the inverse of the order in which they were employed, as determined by the board in accordance with the provisions of

Sections 44844 and 44845. In the event that a permanent or probationary employee is not given the notices and a right to a hearing as provided for in Section 44949, he or she shall be deemed reemployed for the ensuing school year.

The governing board shall make assignments and reassignments in such a manner that employees shall be retained to render any service which their seniority and qualifications entitle them to render. However, prior to assigning or reassigning any certificated employee to teach a subject which he or she has not previously taught, and for which he or she does not have a teaching credential or which is not within the employee's major area of postsecondary study or the equivalent thereof, the governing board shall require the employee to pass a subject matter competency test in the appropriate subject.

(d) Notwithstanding subdivision (b), a school district may deviate from terminating a certificated employee in order of seniority for either of the following reasons:

(1) The district demonstrates a specific need for personnel to teach a specific course or course of study, or to provide services authorized by a services credential with a specialization in either pupil personnel services or health for a school nurse, and that the certificated employee has special training and experience necessary to teach that course or course of study or to provide those services, which others with more seniority do not possess.

(2) For purposes of maintaining or achieving compliance with constitutional requirements related to equal protection of the laws.

CAL. EDUC. CODE § 45060—Deductions for Organization Dues

Except as provided in Section 45061, the governing board of each school district, when drawing an order for the salary payment due to a certificated employee of the district, shall with or without charge reduce the order by the amount which it has been requested in a revocable written authorization by the employee to deduct for the purpose of paying the dues of the employee for membership in any local professional organization or in any statewide professional organization, or in any other professional organization affiliated or otherwise connected with a statewide professional organization which authorizes the statewide organization to receive membership dues on its behalf and for the purpose of paying his or her pro rata share of the costs incurred by the district in making the deduction. No charge shall exceed the actual cost to the district of the dues deduction. Any revocation of a written authorization shall be in writing and shall be effective commencing with the next pay period.

Unless otherwise provided in an agreement negotiated pursuant to Chapter 10.7 (commencing with Section 3540) of Division 4 of Title 1 of the Government Code, the governing board shall, no later than the 10th day of each pay period for certificated employees, draw its order upon the funds of the district in favor of the organization designated by the employee for an amount equal to

the total of the dues deductions made with respect to that organization for the previous pay period and shall transmit the total amount to that organization no later than the 15th day of each pay period for certificated employees. When timely transmittal of dues payments by a county is necessary for a school district to comply with the provisions of this section, the county shall act in a timely manner. If the employees of a district do not authorize the board to make a deduction to pay their pro rata share of the costs of making deductions for the payment of dues, the board shall deduct from the amount transmitted to the organization on whose account the dues payments were deducted the actual costs of making the deduction.

The revocable written authorization shall remain in effect until expressly revoked in writing by the employee. Whenever there is a change in the amount required for the payment to the organization, the employee organization shall provide the employee with adequate and necessary data on the change at a time sufficiently prior to the effective date of the change to allow the employee an opportunity to revoke the written authorization, if desired. The employee organization shall provide the public school employer with notification of the change at a time sufficiently prior to the effective date of the change to allow the employer an opportunity to make the necessary adjustments and with a copy of the notification of the change which has been sent to all concerned employees.

The governing board shall not require the completion of a new deduction authorization when a dues change has been effected or at any other time without the express approval of the concerned employee organization.

CAL. EDUC. CODE § 45061—Deductions for Organization Service Fees

The governing board of each school district when drawing an order for the salary or wage payment due to a certificated employee of the district shall, with or without charge, reduce the order for the payment of service fees to the certified or recognized organization as required by an organizational security arrangement between the exclusive representative and a public school employer as provided under Chapter 10.7 (commencing with Section 3540) of Division 4 of Title 1 of the Government Code. However, the organizational security arrangement shall provide that any employee may pay service fees directly to the certified or recognized employee organization in lieu of having such service fees deducted from the salary or wage order.

If the employees of a district do not authorize the board to make a deduction to pay their pro rata share of the costs of making deductions for the payment of service fees to the certificated or recognized organization, the board shall deduct from the amount transmitted to the organization on whose account the payments were deducted the actual costs, if any, of making the deduction. No charge shall exceed the actual cost to the district of the deduction. These actual costs shall be

determined by the board and shall include startup and ongoing costs.

CAL. EDUC. CODE § 45061.5—Transmittal to Employee Organization of Dues or Fees Collected or Deducted from Salary of Certificated Employee; Time Frame; Cause of Action for Failure to Transmit Dues or Fees; Attorney Fees; Waiver

(a) Notwithstanding any other law, the governing board of a school district that collects or deducts dues, agency fees, fair share fees, or any other fee or amount of money from the salary of a certificated employee for the purpose of transmitting the money to an employee organization shall transmit the money to the employee organization within 15 days of issuing the paycheck containing the deduction to the employee.

(b)(1) This section does not limit the right of an employee organization or affected employee to sue for a failure of the employer to transmit dues or fees pursuant to this section.

(2) In an action brought for a violation of subdivision (a), the court may award reasonable attorney fees and costs to the prevailing party if any party to the action requests attorney fees and costs.

(c) A school district or county office of education may not request, and the State Board of Education may not grant, a waiver of compliance with this section.

CAL. EDUC. CODE § 45168—Deductions for Dues of Employee Organization; Direct Payment of Service Fees

(a) Except as provided in subdivision (b), the governing board of each school district when drawing an order for the salary or wage payment due to a classified employee of the district may, without charge, reduce the order by the amount which it has been requested in a revocable written authorization by the employee to deduct for the payment of dues in, or for any other service provided by, any bona fide organization, of which he is a member, whose membership consists, in whole or in part, of employees of such district, and which has as one of its objectives improvements in the terms or conditions of employment for the advancement of the welfare of such employees.

The revocable written authorization shall remain in effect until expressly revoked in writing by the employee. Whenever there is an increase in the amount required for such payment to the organization, the employee organization shall provide the employee with adequate and necessary data on such increase at a time sufficiently prior to the effective date of the increase to allow the employee an opportunity to revoke the written authorization, if desired. The employee organization shall provide the public school employer with notification of the increase at a time sufficiently prior to the effective date of the increase to allow the employer an opportunity to make the necessary changes and with a copy of the notification of the increase which has been sent to all concerned employees.

Upon receipt of a properly signed authorization for payroll deductions by a classified employee pursuant to this section, the governing board shall reduce such employee's pay warrant by the designated amount in the next pay period following the closing date for receipt of changes in pay warrants.

The governing board shall, on the same designated date of each month, draw its order upon the funds of the district in favor of the organization designated by the employee for an amount equal to the total of the respective deductions made with respect to such organization during the pay period.

The governing board shall not require the completion of a new deduction authorization when a dues increase has been effected or at any other time without the express approval of the concerned employee organization.

(b) The governing board of each school district when drawing an order for the salary or wage payment due to a classified employee of the district may, without charge, reduce the order for the payment of dues to, or for any other service provided by, the certified or recognized organization of which the classified employee is a member, or for the payment of service fees to the certified or recognized organization as required by an organizational security arrangement between the exclusive representative and a public school employer as provided under Chapter 10.7 (commencing with Section 3540) Division 4 of Title 1 of the Government Code. However, the organizational security arrangement shall provide that any employee may pay service fees directly to

the certified or recognized employee organization in lieu of having such service fees deducted from the salary or wage order.

(c) This section shall apply to districts that have adopted the merit system in the same manner and effect as if it were a part of Article 6 (commencing with Section 45240) of this chapter.

CALIFORNIA GOVERNMENT CODE

CAL. GOV'T CODE § 3540.1—Definitions

(j) "Public school employee" or "employee" means a person employed by a public school employer except persons elected by popular vote, persons appointed by the Governor of this state, management employees, and confidential employees.

CAL. GOV'T CODE § 3543.1—Rights of Employee Organizations

(a) Employee organizations shall have the right to represent their members in their employment relations with public school employers, except that once an employee organization is recognized or certified as the exclusive representative of an appropriate unit pursuant to Section 3544.1 or 3544.7, respectively, only that employee organization may represent that unit in their employment relations with the public school employer. Employee organizations may establish reasonable restrictions regarding who may join and may make reasonable provisions for the dismissal of individuals from membership.

(b) Employee organizations shall have the right of access at reasonable times to areas in which employees work, the right to use institutional bulletin boards, mailboxes, and other means of communication, subject to reasonable regulation, and the right to use institutional facilities at reasonable times for the purpose of meetings concerned with the exercise of the rights guaranteed by this chapter.

(c) A reasonable number of representatives of an exclusive representative shall have the right to receive reasonable periods of released time without loss of compensation when meeting and negotiating and for the processing of grievances.

(d) All employee organizations shall have the right to have membership dues deducted pursuant to Sections 45060 and 45168 of the Education Code, until an employee organization is recognized as the exclusive representative for any of the employees in an appropriate unit, and then the deduction as to any employee in the negotiating unit shall not be permissible except to the exclusive representative.

CAL. GOV'T CODE § 3543.2—Scope of Representation; Requests to Meet and Negotiate

(a) The scope of representation shall be limited to matters relating to wages, hours of employment, and other terms and conditions of employment. "Terms and conditions of employment" mean health and welfare benefits as defined by Section 53200, leave, transfer and reassignment policies, safety conditions of employment, class size, procedures to be used for the evaluation of employees, organizational security pursuant to Section 3546, procedures for processing grievances pursuant to Sections 3548.5, 3548.6, 3548.7, and 3548.8, the layoff of probationary certificated school district employees, pursuant to Section 44959.5 of the Education Code, and alternative compensation or benefits for employees adversely affected by pension limitations pursuant to Section 22316 of the Education Code, to the extent deemed reasonable and without violating the intent and

purposes of Section 415 of the Internal Revenue Code. In addition, the exclusive representative of certificated personnel has the right to consult on the definition of educational objectives, the determination of the content of courses and curriculum, and the selection of textbooks to the extent such matters are within the discretion of the public school employer under the law. All matters not specifically enumerated are reserved to the public school employer and may not be a subject of meeting and negotiating, provided that nothing herein may be construed to limit the right of the public school employer to consult with any employees or employee organization on any matter outside the scope of representation.

CAL. GOV'T CODE § 3544—Request for Recognition; Proof of Majority Support; Notice

(a) An employee organization may become the exclusive representative for the employees of an appropriate unit for purposes of meeting and negotiating by filing a request with a public school employer alleging that a majority of the employees in an appropriate unit wish to be represented by such organization and asking the public school employer to recognize it as the exclusive representative. The request shall describe the grouping of jobs or positions which constitute the unit claimed to be appropriate and shall be based upon majority support on the basis of current dues deduction authorizations or other evidence such as notarized membership lists, or membership cards, or petitions designating the organization as the exclusive representative of the employees. Notice of any such request shall immediately be posted

conspicuously on all employee bulletin boards in each facility of the public school employer in which members of the unit claimed to be appropriate are employed.

(b) The employee organization shall submit proof of majority support to the board. The information submitted to the board shall remain confidential and not be disclosed by the board. The board shall obtain from the employer the information necessary for it to carry out its responsibilities pursuant to this section and shall report to the employee organization and the public school employer as to whether the proof of majority support is adequate.

CAL. GOV'T CODE § 3544.1—Grant of Request for Recognition; Exceptions

The public school employer shall grant a request for recognition filed pursuant to Section 3544, unless any of the following apply:

(a) The public school employer doubts the appropriateness of a unit.

(b) Another employee organization either files with the public school employer a challenge to the appropriateness of the unit or submits a competing claim of representation within 15 workdays of the posting of notice of the written request. The claim shall be evidenced by current dues deductions authorizations or other evidence such as notarized membership lists, or membership cards, or petitions signed by employees in the unit indicating their desire to be represented by the organization. The evidence shall be submitted to the board, and shall remain confidential and not be disclosed by the board. The board shall obtain

from the employer the information necessary for it to carry out its responsibilities pursuant to this section and shall report to the employee organizations seeking recognition and to the public school employer as to the adequacy of the evidence. If the claim is evidenced by the support of at least 30 percent of the members of an appropriate unit, a question of representation exists and the board shall conduct a representation election pursuant to Section 3544.7, unless subdivision (c) or (d) of this section applies.

(c) There is currently in effect a lawful written agreement negotiated by the public school employer and another employee organization covering any employees included in the unit described in the request for recognition, unless the request for recognition is filed less than 120 days, but more than 90 days, prior to the expiration date of the agreement.

(d) The public school employer has, within the previous 12 months, lawfully recognized another employee organization as the exclusive representative of any employees included in the unit described in the request for recognition.

CAL. GOV'T CODE § 3546—Member of Recognized Employee Organization or Payment of Fair Share Service Fee; Condition of Employment

(a) Notwithstanding any other provision of law, upon receiving notice from the exclusive representative of a public school employee who is in a unit for which an exclusive representative has been selected pursuant to this chapter, the employer shall deduct the amount of the fair share service fee authorized by this section from the

wages and salary of the employee and pay that amount to the employee organization. Thereafter, the employee shall, as a condition of continued employment, be required either to join the recognized employee organization or pay the fair share service fee. The amount of the fee shall not exceed the dues that are payable by members of the employee organization, and shall cover the cost of negotiation, contract administration, and other activities of the employee organization that are germane to its functions as the exclusive bargaining representative. Agency fee payers shall have the right, pursuant to regulations adopted by the Public Employment Relations Board, to receive a rebate or fee reduction upon request, of that portion of their fee that is not devoted to the cost of negotiations, contract administration, and other activities of the employee organization that are germane to its function as the exclusive bargaining representative.

(b) The costs covered by the fee under this section may include, but shall not necessarily be limited to, the cost of lobbying activities designed to foster collective bargaining negotiations and contract administration, or to secure for the represented employees advantages in wages, hours, and other conditions of employment in addition to those secured through meeting and negotiating with the employer.

CAL. GOV'T CODE § 3546.3—Religious Objections to Employee Organizations; Membership Exception; Alternative Fees

Notwithstanding subdivision (i) of Section 3540.1, Section 3546, or any other provision of this

chapter, any employee who is a member of a religious body whose traditional tenets or teachings include objections to joining or financially supporting employee organizations shall not be required to join, maintain membership in, or financially support any employee organization as a condition of employment; except that such employee may be required, in lieu of a service fee, to pay sums equal to such service fee either to a nonreligious, nonlabor organization, charitable fund exempt from taxation under Section 501(c) (3) of Title 26 of the Internal Revenue Code, chosen by such employee from a list of at least three such funds, designated in the organizational security arrangement, or if the arrangement fails to designate such funds, then to any such fund chosen by the employee. Either the employee organization or the public school employer may require that proof of such payments be made on an annual basis to the public school employer as a condition of continued exemption from the requirement of financial support to the recognized employee organization. If such employee who holds conscientious objections pursuant to this section requests the employee organization to use the grievance procedure or arbitration procedure on the employee's behalf, the employee organization is authorized to charge the employee for the reasonable cost of using such procedure.

REGULATIONS OF THE CALIFORNIA PUBLIC EMPLOYMENT RELATIONS BOARD

REGS. OF CAL. PERB § 32992—Notification of Nonmember

(a) The exclusive representative shall provide annual written notice to each nonmember who will be required to pay an agency fee. The notice shall include:

(1) The amount of the exclusive representative's dues and the agency fee;

(2) The percentage of the agency fee amount that is attributable to chargeable expenditures and the basis for this calculation;

(3) The amount of the agency fee to be paid by a nonmember who objects to the payment of an agency fee amount that includes nonchargeable expenditures (hereinafter referred to as an "agency fee objector"); and

(4) Procedures for (A) objecting to the payment of an agency fee amount that includes nonchargeable expenditures and (B) challenging the calculation of the nonchargeable expenditures.

(b)(1) The calculation of the chargeable and nonchargeable expenditures will be based on an audited financial report, and the notice will include either a copy of the audited financial report used to calculate the chargeable and nonchargeable expenditures or a certification from the independent auditor that the summarized chargeable and nonchargeable expenditures contained in the notice have been

audited and correctly reproduced from the audited report, or

(2) the calculation of the chargeable and nonchargeable expenditures may be based on an unaudited financial report if the exclusive representative's annual revenues are less than $50,000 and a nonmember is afforded a procedure sufficiently reliable to ensure that a nonmember can independently verify that the employee organization spent its money as stated in the notice.

(c) Such written notice shall be sent/distributed to the nonmember either:

(1) At least 30 days prior to collection of the agency fee; or

(2) Concurrent with the initial agency fee collection provided escrow requirements in Section 32995 are met; or

(3) In the case of public school employees, where the agency fee year covers the traditional school year, on or before October 15 of the school year, provided escrow requirements in Section 32995 are met.

REGS. OF CAL. PERB § 32993—Exclusive Representative's Objection Procedure

Each exclusive representative that has an agency fee provision shall administer an Objection Procedure in accordance with the following:

(a) An agency fee objection shall be filed in writing with the designated representative of the exclusive representative.

(b) The procedure shall allow at least 30 days following distribution of the notice required under Section 32992 of these regulations for the filing of an agency fee objection.

REGS. OF CAL. PERB § 32994—Exclusive Representative's Challenge Procedure

(a) An agency fee payer who disagrees with the exclusive representative's determination of the chargeable expenditures contained in the agency fee amount and who files a timely agency fee challenge with the exclusive representative shall be hereafter known as an "agency fee challenger." An agency fee challenger may file an unfair practice charge that challenges the determination of the chargeable expenditures contained in the agency fee amount; however, no complaint shall issue until the agency fee challenger has first exhausted the Exclusive Representative's Challenge Procedure. No agency fee challenger shall be required to exhaust the Exclusive Representative's Challenge Procedure where it is insufficient on its face.

(b) Each exclusive representative that has an agency fee provision shall administer a Challenge Procedure in accordance with the following:

(1) An agency fee challenge shall be filed in writing with the official designated by the exclusive representative in the annual notice.

(2) The procedure shall allow at least 30 days following distribution of the notice required under Section 32992 of these regulations for the filing of an agency fee challenge.

(3) Upon receipt of an agency fee challenge, the exclusive representative shall within 45 days of the last day for filing a challenge request a prompt hearing regarding the agency fee before an impartial decisionmaker.

(4) The impartial decisionmaker shall be selected by the American Arbitration Association or the California State Mediation Service. The selection between these entities shall be made by the exclusive representative.

(5) Any party may make a request for a consolidated hearing of multiple agency fee challenges based on case similarities, including but not limited to, hearing location. At any time prior to the start of the hearing, any party may make a motion to the impartial decisionmaker challenging any consolidation of the hearing.

(6) The exclusive representative bears the burden of establishing the reasonableness of the amount of the chargeable expenditures.

(7) Agency fee challenge hearings shall be fair, informal proceedings conducted in conformance with basic precepts of due process.

(8) All decisions of the impartial decisionmaker shall be in writing, and shall be rendered no later than 30 days after the close of the hearing.

(9) All hearing costs shall be borne by the exclusive representative, unless the exclusive representative and the agency fee challenger agree otherwise.

APPENDIX D

John A. Vogt (State Bar No. 198677)
javogt@jonesday.com
Edward S. Chang (State Bar No. 241682)
JONES DAY
3161 Michelson Drive
Suite 800
Irvine, CA 92612.4408
Telephone: +1.949.851.3939
Facsimile: +1.949.553.7539

Michael A. Carvin (*Pro Hac Vice To Be Filed*)
macarvin@JonesDay.com
James M. Burnham (*Pro Hac Vice To Be Filed*)
JONES DAY
51 Louisiana Avenue, N.W.
Washington, D.C. 20001.2113
Telephone: +1.202.879.3939
Facsimile: +1.202.626.1700

Michael E. Rosman (*Pro Hac Vice To Be Filed*)
rosman@cir-usa.org
Center for Individual Rights
1233 20th St. NW, Suite 300
Washington, DC 20036
Telephone: +1.202.833.8400

ATTORNEYS FOR PLAINTIFFS

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

REBECCA FRIEDRICHS; SCOTT WILFORD; JELENA FIGUEROA; GEORGE W. WHITE, JR.; KEVIN ROUGHTON; PEGGY SEARCY; JOSE MANSO; HARLAN ELRICH; KAREN CUEN; IRENE ZAVALA; CHRISTIAN EDUCATORS ASSOCIATION INTERNATIONAL, Plaintiffs, v. CALIFORNIA TEACHERS ASSOCIATION; NATIONAL EDUCATION ASSOCIATION; SAVANNA DISTRICT TEACHERS ASSOCIATION, CTA/NEA; SADDLEBACK VALLEY EDUCATORS ASSOCIATION; ORANGE UNIFIED EDUCATION ASSOCIATION, INC.; KERN HIGH SCHOOL TEACHERS	Case No. **SACV13-676 JST (CWx)** **COMPLAINT**

ASSOCIATION; NATIONAL EDUCATION ASSOCIATION-JURUPA; SANTA ANA EDUCATORS ASSOCIATION, INC.; TEACHERS ASSOCIATION OF NORWALK-LA MIRADA AREA; SANGER UNIFIED TEACHERS ASSOCIATION; ASSOCIATED CHINO TEACHERS; SAN LUIS OBISPO COUNTY EDUCATION ASSOCIATION; SUE JOHNSON; CLINT HARWICK; MICHAEL L. CHRISTENSEN; DONALD E. CARTER; ELLIOTT DUCHON; THELMA MELENDEZ DE SANTA ANA; RUTH PEREZ; MARCUS P. JOHNSON; WAYNE JOSEPH; JULIAN D. CROCKER,

Defendants.

Plaintiffs Rebecca Friedrichs, Scott Wilford, Jelena Figueroa, George W. White, Jr., Kevin Roughton, Peggy Searcy, Jose Manso, Harlan Elrich, Karen Cuen, Irene Zavala, and Christian Educators

Association International ("CEAI"), by and through their undersigned counsel, allege as follows:

INTRODUCTION

1. The First Amendment to the United States Constitution protects the individual rights of free speech and free association, including the right to withhold support from political causes and activities that conflict with one's beliefs. "When a State establishes an 'agency shop' that exacts compulsory union fees as a condition of public employment, the dissenting employee is forced to support financially an organization with whose principles and demands he may disagree. Because a public-sector union takes many positions during collective bargaining that have powerful political and civic consequences, the compulsory fees constitute a form of compelled speech and association that imposes a significant impingement on First Amendment rights." *Knox v. Serv. Emps. Int'l Union*, *Local 1000*, 132 S. Ct. 2277, 2289 (2012) (citations and alterations omitted).

2. The State of California (the "State") and its public school districts, in cooperation with the California Teachers Association ("CTA") and the other named Defendants, maintain an "agency shop" arrangement that injures public school teachers, including Plaintiffs, by forcing them to make financial contributions to teachers' unions as a condition of public employment. This agency-shop arrangement is established and maintained under color of State law, the California Educational Employment Relations Act ("EERA"), Cal. Gov't Code § 3540 *et seq.* Each year, the unions estimate a breakdown of expenditures that will be "chargeable" (*i.e.*, germane to collective bargaining) and "non-

chargeable" (*i.e.*, political or ideological and not germane to collective bargaining). Teachers are required to contribute to the union's "chargeable" expenditures. Teachers who wish to avoid contributing to a union's "non-chargeable" expenditures are annually forced to affirmatively express that they do not wish to contribute. Each year they must send the union a new notice indicating their objection.

3. This "opt out" process is unnecessarily burdensome and time consuming and is susceptible to resistance and pressure from the unions and their members.

4. Even if a teacher successfully completes the "opt out" process, he or she is still forced to pay the "chargeable" portion of fees to support the union's collective-bargaining activities. Any teacher who objects to the union's classification of certain expenditures as "chargeable" must bear the additional burden and expense of filing a legal challenge.

5. California's "agency shop" arrangement violates Plaintiffs' First Amendment rights in two distinct ways. First, the agency-shop arrangement violates their rights of free speech and association by forcing them to contribute to so-called "chargeable" union expenditures germane to collective bargaining, even though those contributions provide economic support to "non-chargeable" union activities and even though many of the "chargeable" expenditures and collective-bargaining activities are contrary to Plaintiffs' personal interests and political beliefs. Second, the agency-shop arrangement violates Plaintiffs' rights of free speech and association by

forcing them to undergo an "opt out" process each year to avoid contributing to political and ideological expenditures that the unions concede are not germane to collective bargaining.

6. These severe infringements on Plaintiffs' rights to free speech and association cannot withstand First Amendment scrutiny. Laws mandating compulsory speech and association must be narrowly tailored to serve a compelling government interest. California's "agency shop" arrangement cannot meet that standard. Requiring forced contributions of non-members for collective bargaining efforts in the public sector serves no compelling state interest and is not narrowly tailored. Requiring non-members to contribute to "non-chargeable" union expenditures unless they go through an annual opt-out process also serves no compelling state interest and is not narrowly tailored.

7. It is clear that the California's "agency shop" does not serve the interests of all public school teachers. In the course of collective bargaining, unions frequently take politically controversial positions that contradict the deeply held beliefs of some teachers, who do not believe the policies advocated by unions to be in their best interest, or in the best interest of society at large. For example, unions consistently "bargain" for provisions requiring increased State spending, and against important educational reforms which some teachers believe would benefit teachers, students, and taxpayers. Even in purely material terms, "seniority" protections and other employment protections advocated by unions benefit some teachers at the expense of other

teachers who would fare better under an alternative system.

8. Recognizing that compulsory agency fees violate the First Amendment will not undermine the unions' authority or entitlement to engage in collective bargaining. The unions will remain the exclusive collective-bargaining agents in each school district as long as they retain the support of a majority of teachers in those districts. Public school teachers will, therefore, remain fully entitled to join together and collectively bargain through the unions for any and all desired labor protections.

9. Given the severe and ongoing infringement of Plaintiffs' rights to free speech and free association, Plaintiffs respectfully request that this Court declare that California's practice of forcing non-union members to contribute funds to unions, including funds to support their collective-bargaining activities, violates the First Amendment, and enjoin Defendants from enforcing this unconstitutional arrangement.

10. Plaintiffs additionally request that this Court declare that the Defendants' practice of requiring an annual affirmative "opt out" to avoid contributing to "non-chargeable" union expenditures violates the First Amendment, and enjoin Defendants from imposing this unconstitutional burden.

PARTIES

11. Plaintiff Rebecca Friedrichs has been a public school teacher in the Savanna School District for 25 years. She resigned her union membership in 2012 and opted out of paying the non-chargeable portion of the agency fees. But for California's "agency shop" arrangement, Ms. Friedrichs would not pay fees to or otherwise subsidize the teachers' union, and she

objects to the State's forced subsidization policy. She objects to many of the unions' public policy positions, including positions taken in collective bargaining.

12. Plaintiff Scott Wilford has been a public school teacher in California for 20 years. He has been a teacher in the Saddleback Valley School District for 14 years. He resigned his union membership in 2009. Every year since, he has opted out of paying the non-chargeable portion of the agency fees. But for California's "agency shop" arrangement, Mr. Wilford would not pay fees to or otherwise subsidize the teachers' union, and he objects to the State's forced subsidization policy. He objects to many of the unions' public policy positions, including positions taken in collective bargaining.

13. Plaintiff Jelena Figueroa has been a public school teacher in the Orange Unified School District for ten years. She resigned her union membership in 2008. Every year since, she has opted out of paying the non-chargeable portion of the agency fees. But for California's "agency shop" arrangement, Ms. Figueroa would not pay fees to or otherwise subsidize the teachers' union, and she objects to the State's forced subsidization policy. She objects to many of the unions' public policy positions, including positions taken in collective bargaining.

14. Plaintiff George W. White, Jr., has been a public school teacher in the Kern High School District for 28 years. He resigned his union membership in 2000. Every year since, he has opted out of paying the non-chargeable portion of the agency fees. But for California's "agency shop" arrangement, Mr. White would not pay fees to or otherwise subsidize the teachers' union, and he

objects to the State's forced subsidization policy. He objects to many of the unions' public policy positions, including positions taken in collective bargaining.

15. Plaintiff Kevin Roughton has been a public school teacher in the Jurupa Unified School District for eleven years. He resigned his union membership in 2008. Every year since, he has opted out of paying the non-chargeable portion of the agency fees. But for California's "agency shop" arrangement, Mr. Roughton would not pay fees to or otherwise subsidize the teachers' union, and he objects to the State's forced subsidization policy. He objects to many of the unions' public policy positions, including positions taken in collective bargaining.

16. Plaintiff Peggy Searcy has been a public school teacher in the Santa Ana Unified School District for 23 years. She resigned her union membership in or about 2010. Every year since, she has opted out of paying the non-chargeable portion of the agency fees. But for California's "agency shop" arrangement, Ms. Searcy would not pay fees to or otherwise subsidize the teachers' union, and she objects to the State's forced subsidization policy. She objects to many of the unions' public policy positions, including positions taken in collective bargaining.

17. Plaintiff Jose Manso began teaching in 1979. He left the profession for a 23-year period and returned to teaching fulltime in the Norwalk-La Mirada Unified School District in 2002. He resigned his union membership in 2010. Every year since, he has opted out of paying the non-chargeable portion of the agency fees. But for California's "agency shop" arrangement, Mr. Manso would not pay fees to or otherwise subsidize the teachers' union, and he

objects to the State's forced subsidization policy. He objects to many of the unions' public policy positions, including positions taken in collective bargaining.

18. Plaintiff Harlan Elrich has been a public school teacher for over 26 years and has been a public school teacher in California for over 20 years. He has been a teacher in the Sanger Unified School District for 8 years. He resigned his union membership in 2012 and opted out of paying the non-chargeable portion of the agency fees. But for California's "agency shop" arrangement, Mr. Elrich would not pay fees to or otherwise subsidize the teachers' union, and he objects to the State's forced subsidization policy. He objects to many of the unions' public policy positions, including positions taken in collective bargaining.

19. Plaintiff Karen Cuen has been a public school teacher in California for 25 years. She has been a teacher in the Chino Valley Unified School District for 20 years. She resigned her union membership in 1997. Every year since, she has opted out of paying the non-chargeable portion of the agency fees. But for California's "agency shop" arrangement, Ms. Cuen would not pay fees to or otherwise subsidize the teachers' union, and she objects to the State's forced subsidization policy. She objects to many of the unions' public policy positions, including positions taken in collective bargaining.

20. Plaintiff Irene Zavala has been a public school teacher in California for 13 years. She began teaching in San Luis Obispo County in 2012. She resigned her union membership in 2001. Because of her religious principles, Mrs. Zavala is a religious objector under Cal. Gov't Code § 3546.3 (providing

that "any employee who is a member of a religious body whose traditional tenets or teachings include objections to joining or financially supporting employee organizations shall not be required to join, maintain membership in, or financially support any employee organization as a condition of employment; except that such employee may be required, in lieu of a service fee, to pay sums equal to such service fee either to a nonreligious, nonlabor organization, charitable fund . . . chosen by such employee from a list of at least three such funds, designated in the organizational security arrangement"). To qualify as a religious objector under her union's collective bargaining agreement and California law, *id.*, Mrs. Zavala had to send a letter confirming her religious objections to making contributions to the union. She then had to engage in protracted e-mail correspondence with union and district officials to ensure that her objections were processed. In accordance with State law, once Mrs. Zavala's objection was properly processed, she was required to donate the full amount of the agency fee—not merely the chargeable portion—to one of three State approved charities specified in the collective-bargaining agreement. *See* San Luis Obispo County Collective Bargaining Agreement, Art. 12.4.2 (attached as Ex. A). But for California's "agency shop" arrangement, Mrs. Zavala would not pay fees to or otherwise subsidize the teachers' union, would decide for herself how much to donate in charitable contributions every year, and would not have her charitable contributions constrained by a collective-bargaining agreement. She objects to the State's agency-shop law, and to many of the unions' public

policy positions, including positions taken in collective bargaining.

21. Plaintiff CEAI is a non-profit religious organization that is the only professional association specifically serving Christians working in public schools. Founded and incorporated in the state of California, CEAI's membership consists of teachers, administrators, and para-professionals, and many other public and private school employees. In addition, CEAI offers associate membership to parents, pastors, school-board members, youth leaders, and others concerned or interested in the education of the nation's children. CEAI has approximately 600 members in the State of California, most of whom are subject to the unconstitutional arrangements outlined herein. Some of the individual Plaintiffs here—Kevin Roughton, Irene Zavala, Peggy Searcy, Jose Manso, Rebecca Friedrichs, and Harlan Elrich—are CEAI members. CEAI and its members object on policy grounds to the positions taken by teachers' unions in the collective bargaining process and outside of that process. The interests that CEAI seeks to protect in this lawsuit are germane to the organization's purpose, and neither the claims asserted nor the relief requested require the participation in this lawsuit of CEAI's individual members. In addition, Defendants' conduct pursuant to the State's agency-shop laws has the effect of creating a drain on CEAI's resources. There is a direct conflict between CEAI's mission and the challenged agency-shop arrangements, and CEAI engages in counseling, referral, advocacy, and educational services relating to California's agency-shop arrangements, independently of this litigation.

22. Defendant National Education Association ("NEA") is the largest teachers' union in the United States and one of the largest public-sector unions. It receives a share of the agency fees that are extracted from Plaintiffs and other public-school teachers under California's agency-shop laws. It has annual revenues of over $400 million per year. NEA is a major participant in political activities at the national, state, and local levels.

23. Defendant California Teachers Association ("CTA") is the state affiliate of NEA. It is the largest teachers' union in California and one of the largest public-employee unions in the United States. It receives a share of the agency fees that are extracted from Plaintiffs and other public-school teachers under California's agency-shop laws. It has annual revenues of over $175 million per year. CTA is a major participant in California politics and is heavily active at all levels of state and local government.

24. Defendant Savanna District Teachers Association, CTA/NEA is the local union that is recognized as the exclusive bargaining representative in the Savanna School District. Its state affiliate is CTA and its national affiliate is NEA.

25. Defendant Saddleback Valley Educators Association is the local union that is recognized as the exclusive bargaining representative in the Saddleback Valley Unified School District. Its state affiliate is CTA and its national affiliate is NEA.

26. Defendant Orange Unified Education Association, Inc. is the local union that is recognized as the exclusive bargaining representative in the Orange Unified School District. Its state affiliate is CTA and its national affiliate is NEA.

27. Defendant Kern High School Teachers Association is the local union that is recognized as the exclusive bargaining representative in the Kern High School District. Its state affiliate is CTA and its national affiliate is NEA.

28. Defendant National Education Association-Jurupa is the local union that is recognized as the exclusive bargaining representative in the Jurupa Unified School District. Its state affiliate is CTA and its national affiliate is NEA.

29. Defendant Santa Ana Educators Association, Inc. is the local union that is recognized as the exclusive bargaining representative in the Santa Ana Unified School District. Its state affiliate is CTA and its national affiliate is NEA.

30. Defendant Teachers Association of Norwalk-La Mirada Area is the local union that is recognized as the exclusive bargaining representative in the Norwalk-La Mirada Unified School District. Its state affiliate is CTA and its national affiliate is NEA.

31. Defendant Sanger Unified Teachers Association is the local union that is recognized as the exclusive bargaining representative in the Sanger Unified School District. Its state affiliate is CTA and its national affiliate is NEA.

32. Defendant Associated Chino Teachers is the local union that is recognized as the exclusive bargaining representative in the Chino Valley Unified School District. Its state affiliate is CTA and its national affiliate is NEA.

33. The San Luis Obispo County Education Association is the local union that is recognized as the exclusive bargaining representative in the San

Luis Obispo County Office of Education. Its state affiliate is CTA and its national affiliate is NEA.

34. Defendant school superintendents are the executive officers in charge of the school districts that employ Plaintiff teachers, pay Plaintiff teachers' wages, and process all deductions therefrom, including for union dues and "agency fees" pursuant to "agency shop" arrangements authorized by State law. Cal. Gov't Code § 3540 *et. seq.*, Cal. Educ. Code § 45061. Defendant school superintendents are sued in their official capacity.

35. Defendant Sue Johnson is the superintendent of Savanna School District, and is the executive officer who implements the deduction of agency fees from the paychecks of Plaintiff Rebecca Friedrichs.

36. Defendant Clint Harwick is the superintendent of the Saddleback Valley Unified School District, and is the executive officer who implements the deduction of agency fees from the paychecks of Plaintiff Scott Wilford.

37. Defendant Michael L. Christensen is the superintendent of the Orange Unified School District, and is the executive officer who implements the deduction of agency fees from the paychecks of Plaintiff Jelena Figueroa.

38. Defendant Donald E. Carter is the superintendent of the Kern High School District, and is the executive officer who implements the deduction of agency fees from the paychecks of Plaintiff George W. White, Jr.

39. Defendant Elliott Duchon is the superintendent of the Jurupa Unified School District, and is the executive officer who implements the

deduction of agency fees from the paychecks of Plaintiff Kevin Roughton.

40. Defendant Thelma Meléndez de Santa Ana is the superintendent of the Santa Ana Unified School District, and is the executive officer who implements the deduction of agency fees from the paychecks of Plaintiff Peggy Searcy.

41. Defendant Ruth Pérez is the superintendent of the Norwalk-La Mirada Unified School District, and is the executive officer who implements the deduction of agency fees from the paychecks of Plaintiff Jose Manso.

42. Defendant Marcus P. Johnson is the superintendent of the Sanger Unified School District, and is the executive officer who implements the deduction of agency fees from the paychecks of Plaintiff Harlan Elrich.

43. Defendant Wayne Joseph is the superintendent of the Chino Valley Unified School District, and is the executive officer who implements the deduction of agency fees from the paychecks of Plaintiff Karen Cuen.

44. Defendant Julian D. Crocker is the superintendent of the San Luis Obispo County Office of Education, and is the executive officer who implements the deduction of agency fees from the paychecks of Plaintiff Irene Zavala.

JURISDICTION AND VENUE

45. This is an action under the Federal Civil Rights Act of 1871, 42 U.S.C. § 1983, to redress the deprivation, under color of state law, of rights, privileges and immunities secured to Plaintiffs by the

Constitution of the United States, particularly the First and Fourteenth Amendments.

46. This Court has subject-matter jurisdiction over this action under 28 U.S.C. §§ 1331 and 1343(a)(3)-(4). Declaratory relief is authorized by 28 U.S.C. §§ 2201 and 2202 and Federal Rule of Civil Procedure 57.

47. Venue is proper in this district under 28 U.S.C. § 1391(b).

48. An actual controversy currently exists between the parties concerning the constitutionality of California's "agency shop" arrangement. That controversy is justiciable in character, and relief is necessary to preserve Plaintiffs' rights and prevent future harm to Plaintiffs.

49. California's "agency shop" arrangement imposes a cognizable injury on Plaintiffs by forcing them or their members to contribute money in support of union activities, and by forcing them to bear a substantial burden in order to "opt out" of supporting union activities that the unions themselves classify as political and unrelated to collective bargaining.

FACTUAL ALLEGATIONS

I. California's "Agency Shop" Law for Public-School Teachers

50. Under California law, a union may become the exclusive bargaining representative for "public school employees" in a bargaining unit (usually a public school district) by submitting adequate proof that a majority of such employees in the unit wish to be represented exclusively by the union. Cal. Gov't Code §§ 3544, 3544.1. "Public school employee" for these purposes is statutorily defined as "a person employed

by a public school employer except persons elected by popular vote, persons appointed by the Governor of this state, management employees, and confidential employees [who facilitate employee relations on behalf of management]." *Id.* § 3540.1(j). When a union is designated as the exclusive representative, all the "public school employees" in that district are represented exclusively by the union for purposes of bargaining with the district. *Id.* § 3543.1(a).

51. California law defines the "terms and conditions of employment," concerning which the unions may collectively bargain, to include a wide range of issues at the heart of education policy. *Id.* § 3543.2(a). These topics of collective bargaining include wages, hours of employment, and other terms and conditions of employment, such as "health and welfare benefits," "leave," "transfer and reassignment policies," "safety conditions of employment," "class size," and "procedures to be used for the evaluation of employees." *Id.*

52. Under State law, a union that has been recognized as the exclusive bargaining representative for a school district can enter into an agency-shop arrangement (also known as an "organizational security agreement") with that district. While teachers in the district are not required to become members of the union, they are required to pay fees to the union as a condition of their employment. *Id.* § 3546(a). State law authorizes the union to collect these "agency fees" from all teachers in the district to fund the union's operations and expenditures. *Id.* Under California law, the category of expenses covered by agency fees "may include, but shall not necessarily be limited to, the cost of lobbying

activities designed to foster collective bargaining negotiations and contract administration, or to secure for the represented employees advantages in wages, hours, and other conditions of employment in addition to those secured through meeting and negotiating with the employer." *Id.* § 3546(b). Under the statute, the full amount of the "agency fee" charged to non-members is determined by the union and "shall not exceed the dues that are payable by members" of the union. *Id.* § 3546(a). In practice, the amount of agency fees is typically equivalent to the amount of union dues.

53. If a teacher chooses to be a member of the union that is the exclusive representative in his or her district, the school district collects the full amount of union dues from that teacher and forwards them to the union. *Id.* § 3543.1(d). *See also* Cal. Educ. Code §§ 45060, 45061, 45061.5, 45168. Non-union teachers are required to pay the above-described "agency fees" to the union. Each year, the union must send out a "*Hudson*" notice indicating the percentage of the agency fees that will be "non-chargeable," *i.e.*, "not devoted to the cost of negotiations, contract administration, and other activities of the employee organization that are germane to its function as the exclusive bargaining representative." Cal. Gov't Code § 3546(a). If a teacher who is not a member of the union affirmatively responds to the notice by indicating he or she would like to "opt out" of paying the "non-chargeable" portion of the fee, he or she is entitled to a rebate or fee reduction for that year. *Id.*; *see also* Regs. of Cal. Pub. Emp't Relations Bd. § 32992. Absent such an affirmative "opt out," the non-member pays the full amount of the fee.

54. Under State law, each school district may deduct agency fees from teachers' paychecks and pay the fees to the union recognized for that district. Cal. Gov't Code § 3546(a). Alternatively, "any employee may pay service fees directly to the [union] in lieu of having such service fees deducted from the salary or wage order." Cal. Educ. Code § 45061. The amount of the total agency fee is determined by the union based on an estimate of its expenditures in the coming year. The "chargeable" and "non-chargeable" portions of the fee are calculated by the union based on an audited financial report for a recent year of the union's expenditures. The union is required to include the audited financial report along with the breakdown of "chargeable" and "non-chargeable" expenditures in the annual "*Hudson*" notice sent out to teachers. *See* Regs. of Cal. Pub. Emp't Relations Bd. § 32992(b)(1).

55. An agency fee payer who disagrees with the union's determination of the chargeable portion of the agency fee may file a challenge with the union after receiving the "*Hudson*" notice. Upon receipt of an agency fee challenge, the union must request a prompt hearing regarding the agency-fee breakdown before an impartial decision maker selected by either the American Arbitration Association or the California State Mediation Service. *Id.* § 32994.

II. The "Agency Shop" Arrangements in California's Public School Districts

56. Under color of state law, Cal. Gov't Code § 3540 *et seq.*, Defendant local unions have been designated the exclusive bargaining agents for the school districts in which Plaintiffs are employed as teachers.

57. Under color of State law, *id.*, Defendant local unions have entered into agency-shop agreements with the school districts where Plaintiffs are employed as teachers. These agreements include provisions requiring that all teachers in these districts either join the unions, or else pay agency fees to the unions. The agreements also provide that teachers must contribute to "non-chargeable" union expenditures unless they go through an opt-out process.

58. For each school district in which Plaintiffs are employed, the total agency-fee amount is determined by the local union that is recognized as the exclusive bargaining representative for that district, often in collaboration with CTA. After the local union or CTA informs the school district of the annual agency-fee amount, the school district automatically deducts that amount in pro rata shares from the teacher's regular paychecks (or, in some cases, the "chargeable" portions of the fee for teachers who "opted out" of "non-chargeable" fees) unless the teacher informs the district that he or she will pay the union directly. The school district sends the deducted amounts directly to the local union, which then distributes part of the fees to CTA and NEA.

59. For each school district in which Plaintiffs are employed, the local union's agency fee includes "affiliate fees" for both CTA and NEA, which are the state and national affiliates of the local union. The amount of the affiliate fees are uniform in every school district because they are determined on a statewide and nationwide basis by CTA and NEA, respectively.

60. For each school district in which Plaintiffs are employed, CTA and NEA "affiliate fees" are treated as partially "chargeable." The "chargeable" portion of the "affiliate fees" is based on the "chargeable" portion of all statewide and nationwide expenditures by CTA and NEA. Thus, the portions of CTA and NEA "affiliate fees" deemed "chargeable" to teachers in local school districts are not designed to correspond to actual collective-bargaining expenditures made by CTA and NEA within those districts. Rather, they are based on the overall breakdown of CTA and NEA "chargeable" expenditures in California and the United States, respectively.

61. For each school district in which plaintiffs are employed, the "chargeable" and "non-chargeable" portions of the agency fees are calculated based on an audit of the union expenditures in a recent year. The auditors confirm that the union expenditures were made as indicated, but do not confirm that the union has properly classified the expenditures as "chargeable" or "non-chargeable."

62. Teachers who are not union members receive an annual "*Hudson*" notice each fall, giving them a breakdown of the "chargeable" and "non-chargeable" portion of the agency fee. Upon receiving this notice, teachers who are not union members have the option of undergoing the "opt out" process, which requires them to object to the "non-chargeable" portion of the agency fee within approximately six weeks. If a teacher succeeds in making a timely objection, the union either refrains from collecting the non-chargeable portion of the agency fee or sends a "rebate" check to the teacher equal to the non-

chargeable portion of the annual agency fee. Teachers who receive the "*Hudson*" notice also have the option to file a legal challenge to the union's calculation of the "chargeable" and "non-chargeable" portions of the agency fee.

63. Annual dues (or agency fees for non-members) typically consume roughly two percent of a new teacher's salary, and sometimes increase regardless of whether there is an increase in teacher pay. The total amount of annual dues generally exceeds $1,000 per teacher, while the amount of the refund received by nonmembers who successfully opt out of the non-chargeable portion of their agency fees is generally around $350 to $400.

64. In order to participate in this "opt out" process, the teacher cannot be a member of the union. This means that teachers who "opt out" must forgo the ability to obtain direct benefits through the union, some of which benefits are typically (and would likely otherwise be) obtainable through one's employer. For example, teachers who "opt out" are unable to obtain disability insurance as part of their employment package. *See*, *e.g.*, CTA, *Member Benefits*, http://archive.cta.org/MemberBenefits/Disability.html ("Most school districts do not provide disability insurance coverage for their employees."); *id.* ("The CTA Voluntary Disability Plan provides benefits to members when they become totally disabled for any reason."). Such insurance is necessary to, among other things, provide teachers on maternity leave with monies approximating their regular salary. Most school districts provide only differential pay during maternity leave (that is, "the amount remaining of your salary after the district pays a

substitute to fill your position," CTA, Pregnancy and Parental Leave Rights, http://ctainvest.org/home/insurance-estate-planning/disability-long-term/pregnancy-and-parental-leave-rights.aspx), leaving disability insurance to make up the difference). *See* CTA, *Member Benefits;* CTA*, How is CTA saving you money?*, http://www.cta.org/Professional-Development/Publications/2012/12/December-2012-Educator-Magazine/How-CTA-is-saving-you-money.aspx.

65. The defendant unions invoke teachers' inability to obtain disability insurance through their school district employers when encouraging non-members to join the union. *See*, *e.g.*, Kern High Teachers Association Letter (undated) ("If you join CTA, you are eligible for income protection [in the event of a disability] through the insurance provider The Standard.") (attached as Ex. B).

66. Plaintiffs or their members are subject to these "agency shop" arrangements in the school districts where they teach.

67. In recent years, NEA has deemed approximately 40 percent of its expenditures to be "chargeable." CTA has deemed approximately 65 percent of its expenditures to be "chargeable." Local unions often use the same chargeability percentage as CTA. This practice is apparently based on a "local union presumption," which presumes that local unions tend to spend as much or more of their budgets on collective bargaining as do their state affiliates.

68. Dues and agency fees yield significant revenues for the unions. For example, CTA's revenue in 2009 was $186 million, primarily from

membership dues and fees. In 2011, it was over $191 million, over $178 million of which came from membership dues and fees.

69. CTA spent over $211 million in political expenditures from 2000 through 2009. CTA's largest single expenditure, of over $26 million, was made to successfully oppose Proposition 38 on the 2000 ballot, which would have enacted a school-voucher system in California and thereby increased the potential employment pool for teachers. CTA also spent over $50 million to oppose three ballot initiatives in 2005, including Proposition 74, which sought to make changes in the probationary period for California school teachers; Proposition 75, which sought to prohibit the use of public employee agency fees for political contributions without individual employees' prior consent; and Proposition 76, concerning state spending and minimum school-funding requirements. *See* California Fair Political Practices Commission, *Big Money Talks*, at 11-12 (Mar. 2010), http://www.fppc.ca.gov/reports/Report38104.pdf. CTA also takes public positions on a wide range of issues both related and unrelated to the educational system. For example, CTA opposes school vouchers (CTA, *Issues & Action: Vouchers*, http://www.cta.org/Issues-and-Action/Education-Reform/Vouchers.aspx) and supports immigration reform that provides "timely legalization without regard to national origin" (CTA, *Issues in Action: Immigration*, http://www.cta.org/en/Issues-and-Action/Ongoing-Issues/Immigration.aspx).

70. CTA is a major donor to the California Democratic Party. From 2003 to 2012, CTA spent nearly $102 million on political contributions, with

only 0.08 percent of that money going to Republicans. *See* Troy Senik, *The Worst Union in America*, City Journal (Spring 2012). CTA also spends money on direct political advocacy, much of which is on issues with no connection to education. For example, the California Teachers Association spent over $1 million in opposition to Proposition 8 (the gay marriage initiative). *See*, *e.g.*, Evelyn Larrubia, *$1 million from teachers' union to oppose Prop. 8*, L.A. Times (Oct. 17, 2008), http://articles.latimes.com/2008/oct/17/local/me-teachers17.

71. CTA also encourages its members to engage in extensive political activism in the public schools where they work. For example, as part of a recent campaign to lobby the State Legislature on school funding issues, *see* State of Emergency, *About* (explaining the reasons for CTA's lobbying campaign), http://castateofemergency.com/?page_id =158, CTA distributed a list of practices that it suggested to its teacher-members as ways to further CTA's campaign in their classrooms. For example, CTA suggested that teachers:

- "Take ½ photo of Assembly members and have kids draw the other half with a message stating what they want for their teachers," State of Emergency, *State Council Ideas for Potential Activities*, at 1, http://www.eiaonline.com/CTAStateofEmergencyIdeas.pdf,
- Have their "students create a BIG poster on a school bus that is sent to Sacramento," *id.* at 5,
- Organize a "Student Video Contest" in which those teachers would conduct a

"contest for youth to create a video about what education costs would mean to them," *id.* at 10.

72. In coordination with their express political advocacy, California's teachers' unions routinely take positions in the collective-bargaining process that have profound political and budgeting consequences.

73. NEA likewise engages in widespread political advocacy on a wide range of issues. This includes support for firearm restrictions (NEA, *Sign the petition to keep students safe from gun violence*, http://educationvotes.nea.org/gun-violence-petition/) and support for the Affordable Care Act (NEA, *Affordable Health Care for America*, http://www.nea.org/home/16326.htm).

74. CTA classifies expenditures as being "chargeable"—and thus germane to collective bargaining—even when those expenditures appear to have little to do with collective bargaining. For example, in 2010-2011:

- CTA classified its expenditures on "Human Rights Programs," including a "Gay/Lesbian Program," as being 100% chargeable. *See* CTA Combined Financial Statement, at 21 (Aug. 31, 2011) (attached as Ex. C),
- CTA classified a "GLBT Conference" as being 71.3% chargeable, *id.* at 23, and
- CTA also deems publication and dissemination of its internal magazine, *The California Educator*, to be 78.4% chargeable, *id.* at 20.

Further, while the documents that CTA gives to teachers do not provide much detail on the activities underlying the listed charges, those documents do further reflect that CTA deems "Regional Services" to be 93.1% chargeable, *id.* at 17, despite "Regional Services" appearing to contain expenditures on numerous activities of a non-bargaining-related nature. *See id.* at 28-29 (listing as several targets of "emphasis" in 2010-2011, "[e]xpanding the CTA membership base"; "[a]ssistance with chapter organization"; "identification and development of local issues"; "[o]rganizing and training for political action and community outreach").

75. CTA maintains that "[c]hargeable expenses generally include those related to" policy strategizing or public polling. *Id* at 34. ("[s]trategic planning and polling on priorities for association activities").

76. NEA likewise classifies expenditures as "chargeable" even when those expenditures appear to have little to do with collective bargaining. For example, in 2010-2011, NEA deemed "[p]rovide technical and financial support to affiliates engaged in or preparing to engage in comprehensive salary campaigns" to be 76% chargeable. *See* NEA Combined Financial Statements at 28 (Aug. 31, 2011) (attached as Ex. D). NEA likewise deemed:

- "Provide resources to assist affiliates build capacity to support their initiatives designed to advance pro-public education policies for student learning and workforce quality," to be 91.5% chargeable, *id.*,
- "Affiliate programs and services that increase membership," to be 73.38% chargeable, *id.*,

- "[B]uild[ing] affiliate capacity for membership growth through project funding and constituency group assistance," to be 81% chargeable, *id.* at 35,
- "Facilitate[ ] the development of NEA strategy and operations," "[i]mplement[ ] workplace culture initiative," and "[m]aintain[ ] NEA records archives," to be 80.9% chargeable, NEA Letter, *Chargeable & Nonchargeable Audited Expenditures for the 2010-2011 Fiscal Year*, at 15 (Aug. 9, 2012) (attached as Ex. E), and
- Conferences for NEA staff to be 100% chargeable, *id.* at 16 ("Provided learning opportunities through the Leadership Institute that enhance NEA staff's professional skills and contribute to high performance.").

NEA also deems to be partially chargeable spending such as "[c]ommunicate the NEA beliefs, qualities, and services to engage members and improve target audiences' recognition of NEA through print and electronic media" (13.36% chargeable), NEA Combined Financial Statements, at 36 (Ex. D), "[i]ncrease efficient use of campaign tools, technology, and resources in all NEA targeted campaigns" (14.09% chargeable), *id.*, and "[p]artner with ethnic minority, civil rights, and other organizations to advance NEA's commitment to social justice" (36.76% chargeable), NEA Letter, *Chargeable & Nonchargeable Audited Expenditures for the 2010-2011 Fiscal Year*, at 11 (Ex. E).

77. NEA has "determined that *chargeable* activities and expenditures were related to" expenditures that are devoted to setting employment terms in public schools that affect core education policy, NEA Combined Financial Statement, at 41 (Ex. D) ("specific terms and conditions of employment that may be negotiable, such as," for example, "promotions," "discharge," and "performance evaluation"), as well as NEA-sponsored award programs, *id.* at 42 ("NEA award programs").

III. California's "Agency Shop" Law Violates the First Amendment

78. California's agency-shop arrangement violates the First Amendment rights of Plaintiffs and other public-school teachers who are not voluntary union members. There is no justification—much less a compelling one—for mandating that Plaintiffs make contributions to support collective bargaining and the other activities of California's teachers' unions, which are among the most powerful and politically controversial organizations in the State. Particularly given the inherently political nature of collective bargaining and its profound economic consequences, the First Amendment forbids coercing any money from Plaintiffs to fund so-called "chargeable" union expenditures. Moreover, even if the First Amendment did somehow tolerate conditioning public employment on subsidizing the unions, there is still no justification for forcing Plaintiffs and other teachers to pay for political and ideological activities—expenditures that the unions themselves admit are "non-chargeable" under the First Amendment—unless they affirmatively "opt out" of making payments each year.

A. Conditioning Public Employment on the Payment of Mandatory Fees to Support Collective Bargaining is Unconstitutional.

79. As the Supreme Court has explained, "compulsory subsidies for private speech are subject to exacting First Amendment scrutiny and cannot be sustained unless two criteria are met. First, there must be a comprehensive regulatory scheme involving a 'mandated association' among those who are required to pay the subsidy." *Knox*, 132 S. Ct. at 2289 (citing *United States v. United Foods, Inc.*, 533 U.S. 405, 414 (2001)). "Such situations are exceedingly rare because . . . mandatory associations are permissible only when they serve a compelling state interest. . . that cannot be achieved through means significantly less restrictive of associational freedoms." *Id.* (citation omitted). "Second, even in the rare case where a mandatory association can be justified, compulsory fees can be levied only insofar as they are a 'necessary incident' of the 'larger regulatory purpose which justified the required association.'" *Id.* (quoting *United Foods*, 533 U.S. at 414).

80. Agency-shop arrangements impose a "significant impingement on First Amendment rights" because "[t]he dissenting employee is forced to support financially an organization with whose principles and demands he may disagree." *Ellis v. Bhd of Ry., Airline & S.S. Clerks*, 466 U.S. 435, 455 (1984)). This "impingement" is quite severe because "public-sector union[s] take[ ] many positions during collective bargaining that have powerful political and civic consequences." *Knox*, 132 S. Ct. at 2289.

81. Moreover, "any procedure for exacting [union] fees from unwilling contributors must be carefully tailored to minimize the infringement of free speech rights." *Id.* at 2291 (citation omitted). By contrast, "unions have no constitutional entitlement to the fees of nonmember-employees." *Id.* (citation omitted). Rather, their "collection of fees from nonmembers is authorized by an act of legislative grace." *Id.* (citation omitted).

82. California's agency-shop arrangement does not serve any compelling state interest, nor is it narrowly tailored to serve whatever interest the State may have. There is no compelling or even persuasive evidence that compulsory agency fees are needed to achieve "labor peace" in California or its public schools, or that such a compulsory policy is the least restrictive means of securing equitable policies in public employment.

B. The "Opt Out" Requirement for Non-Chargeable Expenditures is Unconstitutional.

83. Under the State's agency-shop provisions, any public school teacher who wishes to withhold contributions to unions' non-chargeable expenditures must write a letter each year expressing that wish. CTA must receive this letter by a hard deadline or the request to opt out will be denied and the teacher will be required to pay full dues for the subsequent year. No matter how many years in a row a non-member has opted out of paying the political portion of agency fees, that non-member must still send a letter each year to CTA in order to successfully opt out.

84. This requirement to pay for political and ideological activities absent annual, affirmative

disapproval constitutes a serious burden on the First Amendment rights of public employees. It also creates an environment susceptible to contrary pressure by union personnel. Finally, given the strong likelihood that individuals who choose not to join the union prefer not to subsidize the union's explicitly political expenditures by paying full agency fees, nonmembers should be presumed to be non-contributors unless they affirmatively "opt in." In short, the Constitution requires unions seeking political donations to solicit those donations from non-members through the ordinary process of voluntary, affirmative consent.

85. *Abood v. Detroit Board of Education*, 431 U.S. 209 (1977), upheld the constitutionality of compelling payment of agency fees by public employees and *Mitchell v. Los Angeles Unified School District*, 963 F.2d 258 (9th Cir. 1992), upheld requiring non-members to "opt out" of paying the "non-chargeable" share of dues. Consequently, stare decisis may restrict the ability of lower federal courts to grant Plaintiffs the relief they seek.

FIRST COUNT

Exacting Compulsory Fees to Support Collective Bargaining Violates the First Amendment

86. Plaintiffs incorporate and reallege each and every allegation contained in the foregoing paragraphs of this Complaint, as though fully set forth herein.

87. The First Amendment to the United States Constitution provides: "Congress shall make no law … abridging the freedom of speech."

88. The Fourteenth Amendment to the United States Constitution incorporates the 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 any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

89. By requiring Plaintiffs to make any financial contributions in support of any union, California's agency-shop arrangement violates their rights to free speech and association under the First and Fourteenth Amendments to the United States Constitution.

90. Plaintiffs have no adequate remedy at law.

SECOND COUNT

Requiring "Opt Out" for Non-Chargeable Expenses Violates the First Amendment

91. Plaintiffs incorporate and reallege each and every allegation contained in the foregoing paragraphs of this Complaint, as though fully set forth herein.

92. By requiring Plaintiffs to undergo "opt out" procedures to avoid making financial contributions in support of "non-chargeable" union expenditures, California's agency-shop arrangement violates their rights to free speech and association under the First and Fourteenth Amendments to the United States Constitution.

93. Plaintiffs have no adequate remedy at law.

COSTS AND ATTORNEYS' FEES

94. Pursuant to 42 U.S.C. § 1988, Plaintiffs further seek an award of their costs, including reasonable attorneys' fees, incurred in the litigation of this case.

PRAYER FOR RELIEF

An actual controversy has arisen between the parties entitling Plaintiffs to declaratory and injunctive relief.

WHEREFORE, Plaintiffs pray that this Court:

(A) Enter a judgment declaring that California's agency-shop law, codified in Cal. Gov't Code § 3540 *et seq.*, impermissibly abridges Plaintiffs' First Amendment free speech rights by requiring payment of any fees to any union as a condition of public employment;

(B) Enter a judgment declaring that California's agency shop arrangement, codified in Cal. Gov't Code § 3540 *et seq.*, impermissibly abridges Plaintiffs' First Amendment free speech rights by requiring payments in support of "non-chargeable" union expenditures unless they affirmatively opt out of such payments;

(C) Enter an injunction barring Defendants from seeking to require non-union employees to pay any monies that support any union or, at a minimum, barring Defendants from seeking to require payments for "non-chargeable" expenditures from any employee who has not affirmatively stated a willingness to financially support such expenditures;

(D) Grant Plaintiffs such additional or different relief as it deems just and proper, including an award

of reasonable attorneys' fees and the costs of this action.

Dated: April 30, 2013 JONES DAY

By: /s/ John A. Vogt
John A. Vogt

ATTORNEYS FOR PLAINTIFFS

Michael A. Carvin, Esq. (*Pro Hoc Vice To Be Filed*)
James M. Burnham, Esq. (*Pro Hoc Vice To Be Filed*)
JONES DAY
51 Louisiana Avenue
Washington, DC 20001-2113

Michael E. Rosman (*Pro Hac Vice To Be Filed*)
Center for Individual Rights
1233 20th St. NW, Suite 300
Washington DC 20036

ATTORNEYS FOR PLAINTIFFS

APPENDIX E

John A. Vogt (State Bar No. 198677)
javogt@jonesday.com
Edward S. Chang (State Bar No. 241682)
JONES DAY
3161 Michelson Drive
Suite 800
Irvine, CA 92612.4408
Telephone: +1.949.851.3939
Facsimile: +1.949.553.7539

Michael A. Carvin (*Pro Hac Vice*)
macarvin@JonesDay.com
James M. Burnham (*Pro Hac Vice*)
JONES DAY
51 Louisiana Avenue, N.W.
Washington, D.C. 20001.2113
Telephone: +1.202.879.3939
Facsimile: +1.202.626.1700

Michael E. Rosman (*Pro Hac Vice*)
rosman@cir-usa.org
Center for Individual Rights
1233 20th St. NW, Suite 300
Washington, DC 20036
Telephone: +1.202.833.8400

ATTORNEYS FOR PLAINTIFFS

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

REBECCA FRIEDRICHS; SCOTT WILFORD; JELENA FIGUEROA; GEORGE W. WHITE, JR.; KEVIN ROUGHTON; PEGGY SEARCY; JOSE MANSO; HARLAN ELRICH; KAREN CUEN; IRENE ZAVALA; CHRISTIAN EDUCATORS ASSOCIATION INTERNATIONAL, Plaintiffs, v. CALIFORNIA TEACHERS ASSOCIATION; NATIONAL EDUCATION ASSOCIATION; SAVANNA DISTRICT TEACHERS ASSOCIATION, CTA/NEA; SADDLEBACK VALLEY EDUCATORS ASSOCIATION; ORANGE UNIFIED EDUCATION ASSOCIATION, INC.; KERN HIGH SCHOOL TEACHERS ASSOCIATION; NATIONAL EDUCATION ASSOCIATION-JURUPA; SANTA ANA EDUCATORS ASSOCIATION, INC.; TEACHERS ASSOCIATION OF NORWALK-LA MIRADA AREA; SANGER	Case No. 8:13-cv-00676-JST-CW **DECLARATION OF REBECCA FRIEDRICHS**

UNIFIED TEACHERS ASSOCIATION; ASSOCIATED CHINO TEACHERS; SAN LUIS OBISPO COUNTY EDUCATION ASSOCIATION; SUE JOHNSON; CLINT HARWICK; MICHAEL L. CHRISTENSEN; DONALD E. CARTER; ELLIOTT DUCHON; THELMA MELENDEZ DE SANTA ANA; RUTH PEREZ; MARCUS P. JOHNSON; WAYNE JOSEPH; JULIAN D. CROCKER, Defendants.	

DECLARATION OF REBECCA FRIEDRICHS

1. My name is Rebecca Friedrichs. I am a public-school teacher.

2. I have been a public-school teacher in the Savanna School District for 25 years.

3. The local union that is recognized as the exclusive bargaining representative in Savanna School District is the Savanna District Teachers Association, CTA/NEA ("SDTA"). The SDTA was already recognized as the exclusive bargaining representative in my School District when I began working there in 1988. I am not a member of SDTA, the California Teachers Association ("CTA"), or the National Educators Association ("NEA") (together, the "Unions"). I first resigned my union membership in 1988 and was not a member of the Unions until approximately 1998, when I joined. I again resigned my union membership in 2012.

4. Although I am not a member of the Unions, I am required by the Savanna School District's "agency shop" arrangement with the SDTA to pay an "agency fee" to the SDTA as a condition of my employment. This "agency fee" is typically equal to the amount of dues that members of the SDTA pay. The amount of this agency fee consumes roughly two percent of a new teacher's salary and sometimes increases regardless of whether a teacher's pay has similarly increased. In California, the total fee for full-time teachers generally exceeds $1,000. Because I am a part-time teacher, my agency fee is generally between $500 and $600. A true and correct copy of the Collective Bargaining Agreement in effect in my District is attached as Exhibit A.

5. I do not pay this "agency fee" directly to the SDTA. Rather, the Savanna School District automatically deducts this amount from each of my paychecks and pays the fee to the SDTA on my behalf.

6. Every fall that I have been a non-member, I have received a "Hudson notice" that states the percentage of the agency fees that will be non-chargeable – that is, the fees that are not related to the costs of the Unions' collective-bargaining activities. This *Hudson* notice is accompanied by a letter explaining that if I do not want to pay the non-chargeable portion of the agency fee, I must object in writing by a specified deadline. If I fail to object in writing by the specified deadline, then the Unions receive the full agency fee (including the non-chargeable portion) from my paycheck.

7. I resigned my union membership for the second time in 2012, at which point I went through the process of opting out of the non-chargeable portion of

the agency fee. Upon receiving my objection, the CTA sent a "rebate" check equal to the non-chargeable portion of the agency fee that it would deduct from my paycheck over the course of the year, along with a letter substantively identical to the one attached as Exhibit B. I intend to go through this same opt-out process every year going forward, so long as I am required to do so in order to protect my right not to subsidize the Unions' non-chargeable expenses. The "rebate" in my District, like most Districts in the State, typically totals approximately $350-$400 for full-time teachers and, for me as a part-time teacher, typically totals $150-$200.

8. In 2012, I requested documentation from my District's payroll clerk showing the total amount of membership dues for that year, and how those dues break down between dues to the SDTA and the required affiliate fees paid to the CTA and the NEA. Attached as Exhibits C and D to this affidavit are true and correct copies of documents I received providing this information, one of which shows the annual breakdown and the other of which shows the monthly breakdown.

9. Teachers like me receive very little information from their School Districts or the Unions about our legal rights and how the "opt out" process works. That lack of information is then compounded by the confusing nature of the Unions' membership-enrollment form, which seems to give the impression that teachers can be Union members without subsidizing the Unions' political activities. A true and correct copy of this form is attached as Exhibit E. As the form explains, CTA maintains a political-action committee ("PAC") for which it solicits member

donations. The enrollment form then invites members to check a box "if you choose not to allocate a portion of your dues to the [CTA's PAC] account and want all of your dues to remain in the General Fund." *Id.* The form's representation about the effect of checking this box gives many teachers the mistaken impression that opting out of CTA's PAC means opting out of subsidizing political expenditures altogether.

10. I object to many of the public-policy positions that the Unions advocate, including positions that they have taken and continue to take in collective-bargaining with the Savanna School District. I believe that many of the Unions' positions are not in the best interests of me or my community.

11. I do not believe that the Unions actually represent my interests or the interests of other public school teachers who have resigned their Union membership.

12. If it were not for Savanna School District's "agency shop" arrangement with the SDTA, and if it were not for California's law allowing these arrangements, I would not pay any fees to or otherwise subsidize the SDTA, CTA, or NEA. I object to California's forced union-subsidization policy.

I certify under penalty of perjury that the foregoing is true and correct.

/s/ Rebecca Friedrichs
Rebecca Friedrichs

Executed Date: June 19, 2013

APPENDIX F

CALIFORNIA TEACHERS ASSOCIATION CTA

Membership Enrollment Form

nea NATIONAL EDUCATION ASSOCIATION
Great Public Schools for Every Child

Membership Year | 2 | 0 | | | – | 2 | 0 | | |

PLEASE PRINT USING UPPER CASE ONLY - USE BLACK OR BLUE INK ONLY

_____
Local Association

Last four
digits SS# _____
If a member last year, please
provide your individual ID #
(From Membership Card) _____
First Name _____ MI __
Last Name _____
Address _____Apt. # _____
City _____ State CA Zip _____

E-Mail _____ Home Phone (___) ___-____

_____	_____	
School District	Bldg/Work Site	Work Phone (___) ___-____

Is this your primary place of employment?
○ Yes
○ No
If no, _____ Ext _____

_____ _____
District/College

Subject _____ Position/Job Title _____
Date of Hire __-__-____ Track (if applicable) __
(See Reverse Side For Subject and Position Codes)

A designated portion of CTA dues is normally allocated to the Association for Better Citizenship (CTA/ABC), a bipartisan political fund through which CTA provides financial support for educational issues and CTA-endorsed candidates for local and state offices.

O Please fill in if you choose not to allocate a portion of your dues to the CTA/ABC account and want all of your dues to remain in the General Fund.

Membership Category
Please fill in one, see back of form

O Category 1
O Category 2 A O B O
O Category 3 A O B O
O Category 4

The following information is optional and a failure to answer it will in no way affect your membership status, rights, or benefits in NEA, CTA, or any of their affiliates.

___ - ___ - 19___ Birthdate

Ethnicity

O Multi-Ethnic
O American Indian/Alaska Native
O Asian
O African American
O Hispanic

Gender

O Female
O Male

Marital Status

O Single
O Married

○ Caucasian ○ Native Hawaiian/Pacific Islander ○ Other	
<u>Registered Voter</u> ○ Yes ○ No	<u>Party Affiliation</u> ○ Democrat ○ Republican ○ Independent ○ Other

ASSOCIATION	AMOUNT				
NEA Dues					
CTA Dues					
LEA Dues					
CTA Issues PAC* Suggested Amount $20					
NEA-FUND** Suggested Amount $20					
CTA Disaster Relief Fund Suggested Amount $20					
Cesar Chavez Memorial Education Awards Program Martin Luther King Jr., Scholarship Fund Suggested Amount $20					
ANNUAL TOTAL					
MONTHLY DEDUCTION					
Pay Method ○ Check ○ Payroll Deduction					

For Local Use Only	Local ID						
Employer ID							

Building ID				
No. Deductions				
Prorate Percent				

I hereby designate and authorize the CTA/NEA/Chapter to act as my exclusive representative, pursuant to California Gov't. Sections 3540 et. Seq., for the purposes of meeting and negotiating on wages, hours, and other terms and conditions of employment.

You are hereby authorized and directed to deduct the above total sum or prorated sum where applicable in installments, including CTA Issues PAC*, NEA-FUND**, Disaster Relief Fund, Education Awards Program and Scholarship Fund contributions, from regular contract salary warrants due to me. The Chapter, State and/or NEA professional dues portions of said amount may be increased or decreased by any of said organizations without additional authorization from me. The total amount so deducted shall be transmitted to the California Teachers Association or its designated agent and upon remitting the deduction to the California Teachers Association, the school district has fulfilled its entire obligation and will be held harmless with regard thereto by the California Teachers Association. This authorization is to remain in force from year to year until revoked or revised by me in writing. Dues payments are not deductible as charitable contributions for federal income tax purposes. Dues payments (or a portion) may be deductible as a miscellaneous itemized deduction.

*The CTA Issues PAC supports or opposes issues only, not candidates. Contributions to the CTA

Issues PAC are not deductible as charitable contributions for federal or state income tax purposes. State law requires us to collect and report the name, mailing address, occupation, and name of employer of individuals whose contributions are equal to or exceed $100 in a calendar year.

**The National Education Association Fund for Children and Public Education (NEA-Fund) collects voluntary contributions from Association members and uses those contributions for political purposes, including, but not limited to, making contributions to and expenditures on behalf of friends of education who are candidates for federal office. Contributions to the NEA-Fund are voluntary; making a contribution is neither a condition of employment nor membership in the Association, and members have the right to refuse to contribute without suffering any reprisal. Although the NEA-Fund requests an annual contribution of $20, this is only a suggestion. A member may contribute more or less than the suggested amount, or may contribute nothing at all, without it affecting his or her membership status, rights, or benefits in NEA or any of its affiliates.

Contributions or gifts to NEA Fund for Children and Public Education are not deductible as charitable contributions for federal income tax purposes.

Federal law requires us to use our best efforts to collect and report the name, mailing address, occupation and name of employer of individuals whose contributions exceed $200 in a calendar year.

✖ | | |
|---|---|
| Association Representative Signature | Date |

		-			-	2	0		

Member Signature Date

MEMBERSHIP DEPARTMENT COPY

INSTRUCTIONS: Enrollment forms are for enrolling NEW MEMBERS (Check or P/R Deduction) or changing members' payroll deductions. Member completes enrollment form. Issue member the fourth copy of the form. Checks should be made payable to the local association. Distribute completed forms according to designations at the bottom of each copy. Do not distribute district copy if member pays dues by check.

ACTIVE MEMBERSHIP CATEGORIES

Those eligible for membership in more than one school district shall be enrolled in their primary place of employment.

ACTIVE FULL TIME:

(Category 1)

For those faculty whose teaching assignment is *more than 60%* of a normal assignment, except for faculty employed as pre-school, head start, child care, adult education, and substitute teachers whose salaries are less than the minimum teacher salary for the district in which they are employed.

ACTIVE PART TIME:

(Category 2 - A)

For those faculty whose teaching assignment *is greater than 1/3 but not more than 50%* of a normal assignment.

(Category 2 - B)

For those faculty whose teaching assignment is greater than 50% but not more than 60% of a normal assignment, or faculty employed as pre-school, head start, child care, adult education, and substitute teachers whose salary in the district in which they are employed is less than the minimum salary paid regular teachers in such district.

(Category 3 - A)

For those faculty or substitutes whose teaching assignment is *25% or less than* a normal assignment, including faculty on unpaid leave.

(Category 3 - B)

For those faculty whose teaching assignment is *greater than 25% but not more than 1/3* of a normal assignment or those faculty employed in private higher educational institutions or the University of California for whom no representation by the Association in employer-employee relations exists or is immediately contemplated.

(Category 4)

For those adult education and community college employees employed only on a part-time or hourly basis.

CTA dues include $5.84 for CALIFORNIA EDUCATOR, NEA dues include $4.65 for NEA TODAY, $2.60 for NEA-RETIRED and/or $19.00 for the Higher Education Publication(s). Publications received by members are based on membership type.

POSITIONS (K-12)	
Administrator	ADMN*
Adult Educator	ADED

Classroom Teacher	CLTR
Coach	COCH
Counselor	CNSL
Health/Therapist Asst/Tech	HTAT
Librarian/Media Spclist	LIBR
Licensed Prac Nurse	LPNU
Literacy Coach	LITC
Psychologist	PSYC
Reading Specialist	READ
Registered Nurse	RGNU
ROTC	ROTC
Social Worker	SCWR
Special/Develop Ed	SDSP
Speech/Hearing Therapist	SHTH
Other	OTHR

SUBJECTS
(K-12)

Adult Basic Ed	ADED
Agric. & Natural Resources	AGNR
Algebra	ALGE
Art	ARTS
Basic Ed Curriculum	BEDC
Basic Skills & Remed Ed	BSRE
Bilingual Ed	BIED
Biology	BIOL
Business Ed	BSED
Business Math	BSMA
Civics/Govern/Pol Sci	CGPS
Coaching	COCH
Communications	COMM
Computer & Info Sci	CICS
Data Processing	DAPR
Driver's Ed	DRED

Early Child Develop	ECDE
Earth Sci/Geology	ESCG
Economics	ECON
Eng/Lang Arts	ELAR
Foreign Lang & Lit	FLLI
General Subjects	GSUB
Geography	GEOG
Gifted & Talented	GTAL
Health & Phys Ed	HEPE
History	HIST
Home Economics	HOME
Industrial Arts	INAR
Journalism	JOUR
Mathematics	MATH
Music	MUSI
Physical Sciences	PHSC
Reading	READ
ROTC	ROTC
Social Stds/Social Sci	SSSS
Sociology	SOCI
Special/Develop Ed	SDED
Sp/Dev Ed Early Childhood	SDEC
Speech & Drama	SPDR
Speech & Hearing Impaired	SHIM
Trade & Industrial Ed	TIED
Work Experience	WEXP
Other	OTHR

POSITIONS (Higher Ed)	
Adjunct Faculty	ADJF
Administrator	ADMIN
Assoc Professor	ACPR
Counselor	COUN

Instructor	INST
Lecturer	LECT
Professor	PROF
Other	OTHR

SUBJECTS
(Higher Ed)

Area, Ethnic & Cui Stds	AECS
Agriculture	AGRI
Architecture	ARCH
Biological Science	BISC
Business	BUSN
Communications	COMM
Computer & Info Sci	CISC
Criminal Justice	CRJU
Education	EDUC
Engineering	ENGR
English Lang & Lit	ENLL
Environmental Studies	ENVS
Fine & Applied Arts	FAAA
Foreign Lang & Lit	FLLI
Forestry	FORE
Geography	GEOG
Health Science	HESC
History	HIST
Home Economics	HOME
Humanities	HUMA
Industrial Arts	INAR
Law Enforcement	LAEN
Law & Legal Studies	LALS
Liberal Arts & Science	LIAS
Library Science	LBSC
Marketing	MARK
Mathematics	MATH

Medical Science	MEDS
Military Sci/Tech	MIST
Natural Science	NATS
Parks & Recreation	PREC
Philosophy	PHIL
Physical Science	PHSC
Political Science	POLS
Psychology	PSYC
Public Admin & Srvcs	PADS
Religion & Theology	RETH
ROTC	ROTC
Science Technology	SCTE
Social Science	SOSC
Visual & Performing Arts	VPAR
Other	OTHR

* Directly hires, evaluates, transfers, disciplines or dismisses.

APPENDIX G

John A. Vogt (State Bar No. 198677)
javogt@jonesday.com
Edward S. Chang (State Bar No. 241682)
JONES DAY
3161 Michelson Drive
Suite 800
Irvine, CA 92612.4408
Telephone: +1.949.851.3939
Facsimile: +1.949.553.7539

Michael A. Carvin *(Pro Hac Vice)*
macarvin@JonesDay.com
James M. Burnham *(Pro Hac Vice)*
JONES DAY
1 Louisiana Avenue, N.W.
Washington, D.C. 20001.2113
Telephone: +1.202.879.3939
Facsimile: +1.202.626.1700

Michael E. Rosman *(Pro Hac Vice)*
rosman@cir-usa.org
Center for Individual Rights
1233 20th St. NW, Suite 300
Washington, DC 20036
Telephone: +1.202.833.8400

ATTORNEYS FOR PLAINTIFFS

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

REBECCA FRIEDRICHS; SCOTT WILFORD; JELENA FIGUEROA; GEORGE W. WHITE, JR.; KEVIN ROUGHTON; PEGGY SEARCY; JOSE MANSO; HARLAN ELRICH; KAREN CUEN; IRENE ZAVALA; CHRISTIAN EDUCATORS ASSOCIATION INTERNATIONAL, Plaintiffs, v. CALIFORNIA TEACHERS ASSOCIATION; NATIONAL EDUCATION ASSOCIATION; SAVANNA DISTRICT TEACHERS ASSOCIATION, CTA/NEA; SADDLEBACK VALLEY EDUCATORS ASSOCIATION; ORANGE UNIFIED EDUCATION ASSOCIATION, INC.; KERN HIGH SCHOOL TEACHERS ASSOCIATION;	Case No. 8:13-cv-00676-JST-CW **DECLARATION OF PLAINTIFF FINN LAURSEN**

NATIONAL EDUCATION ASSOCIATION-JURUPA; SANTA ANA EDUCATORS ASSOCIATION, INC.; TEACHERS ASSOCIATION OF NORWALK-LA MIRADA AREA; SANGER UNIFIED TEACHERS ASSOCIATION; ASSOCIATED CHINO TEACHERS; SAN LUIS OBISPO COUNTY EDUCATION ASSOCIATION; SUE JOHNSON; CLINT HARWICK; MICHAEL L. CHRISTENSEN; DONALD E. CARTER; ELLIOTT DUCHON; THELMA MELENDEZ DE SANTA ANA; RUTH PEREZ; MARCUS P. JOHNSON; WAYNE JOSEPH; JULIAN D. CROCKER,

Defendants.

DECLARATION OF FINN LAURSEN

1. My name is Finn Laursen. I am the Executive Director of Christian Educators Association International ("CEAI").

2. CEAI is a non-profit religious association that was founded and incorporated in California in 1954.

Our mission as an organization is to serve the needs of Christians working in public schools.

3. CEAI's membership primarily consists of teachers, administrators, and paraprofessionals working in public school districts. We also offer associate membership to parents, pastors, school-board members, youth leaders, and others with an interest in the public-education system.

4. CEAI has approximately 600 members in California.

5. CEAI and its members are fundamentally opposed to many of the positions taken by teachers' unions, both within the collective-bargaining process and outside of that process. For this reason, our members object to paying fees to teachers' unions, including the California Teachers Association ("CTA") and the National Educators Association ("NEA") (collectively, "the Unions").

6. It is my understanding that public school teachers in California who teach in agency shop districts but are not union members are required to pay an "agency fee" to their local union chapter in an amount equivalent to a union member's full annual dues. The amount of this agency fee consumes roughly two percent of a new teacher's salary and sometimes increases regardless of whether a teacher's pay has similarly increased.

7. Non-member teachers receive an annual "*Hudson* notice" providing a breakdown of CTA and NEA expenditures between chargeable expenditures and non-chargeable expenditures. This notice is accompanied by a letter explaining that if non-member teachers do not want to pay the non-chargeable portion of the agency fee, they must object

in writing by a specified deadline. If public school teachers fail to object in writing by the specified deadline, then the Unions deduct and retain the full agency fee (including the non-chargeable portion) from their paychecks. If teachers do object by the deadline, the Unions provide an advance rebate of the non-chargeable portion of the agency fee.

8. As an organization, CEAI opposes "agency shop" laws like California's, as these laws require CEAI members to subsidize the Unions' political activity, notwithstanding those members' fundamental disagreement with the Unions' political positions.

9. Similarly, many CEAI members oppose California's agency-shop law and similar laws in other states.

10. CEAI engages in counseling, referral, advocacy, and educational services relating to California's agency-shop law. This includes counseling CEAI members on their annual obligation to "opt out" of funding the Unions' non-chargeable expenditures, as well as counseling some CEAI members on invoking the "religious objector" provisions available in California law. The scheme operated by Defendants thus interferes with CEAI's function as an exclusive professional association and creates a drain on CEAI's resources, which would otherwise be spent on serving our members in other ways.

I certify under penalty of perjury that the foregoing is true and accurate.

/s/ Finn Laursen
Finn Laursen

Executed Date: 6/14/13

APPENDIX H

KERN HIGH TEACHERS ASSOCIATION
3409 CALLOWAY DR.
SUITE #202
BAKERSFIELD,
CALIFORNIA 93312

Dear KHSTA Non-Member:

I'd like you to know that I respect your decision to not join our Association, but I also feel compelled to share with you an opportunity that you may not be aware exists. Some of the most heart wrenching situations that I've dealt with since becoming the Association President occur when members are critically ill, and they use up all of their sick time. The double whammy of dealing with a health problem and a financial problem at the same time can be an emotional roller coaster that can bring the afflicted to the brink.

When you exhaust your sick leave, you go on what is known as "differential pay" for up to 100 days where the district deducts from your check the cost of a substitute teacher. Most people that find themselves in this situation require a long term sub that gets

paid the same as a new teacher. If you are extremely ill, you may exceed the 100 day max losing your job and all income.

If you join CTA, you are eligible for income protection through the insurance provider The Standard. The product they have offered is far superior to anything else I've come across. I've included information on the rates and a description of the benefits provided in this packet. Feel free to investigate and compare.

For the next month, all members of the Association will be able to get this insurance without having to state a pre-existing condition. Normally, if you do not sign up when you are first hired with the district, the insurance company can require that you fill out a medical questionnaire and will deny your coverage if you're sick or have a history of disease. We have gotten the company to agree to waive this requirement and you will be given a guarantee issue as long as we can get 80 people across the district to participate.

On the back of this letter is a letter written by one of our colleagues talking about how this income protection saved he and his family. It is both sad and inspiring. I encourage you to read it. It is a powerful testimonial. Additionally, we have provided you with a CTA membership form if you decide to reconsider your decision so that you can avail yourself to this great product.

If you would like to know more details, please talk to the site representative on your campus.

Regards,

Mitch Olson, President
Kern High School Teachers Association

CALIFORNIA TEACHERS ASSOCIATION
NATIONAL EDUCATION ASSOCIATION

APPENDIX I

Disability Insurance

Overview

The CTA Voluntary Disability Plan provides benefits to members when they become totally disabled for any reason. The Plan's benefits include:

- A waiting period of seven consecutive working days or 30 calendar days, whichever is less.
- $25 a day during fully paid sick leave.
- $35 a day for hospital stays, no waiting period (up to a maximum of 60 days).
- Up to 75% of your daily contract salary (coordinated with other income)
- Replaces 75% of extra duty pay (includes coaching pay and summer school pay) lost due to total disability.

Participants in the CTA Voluntary Disability Insurance Program are automatically eligible for the *CTA Health Information and Wellness Program* at no additional cost. This includes a free "Well Baby" program including a toll free nurse line.

This is not a complete description of the Plan and the Plan governs eligibility and benefits. For a complete description of the program, please refer to the CTA Voluntary Disability Insurance Summary Plan Description.

Why Do I Need this Benefit?

- Most school districts do not provide disability insurance coverage for their employees.
- Most new educators do not have disability coverage through the State Teacher's Retirement System (STRS) long-term disability plan.
- Disabilities include pregnancy, injuries that prevent you from working (such as a broken leg or back injury) and long-term illnesses (such as cancer).
- Most CTA Members who become disabled are away from their jobs almost six months.

How to Obtain this Benefit

Voluntary Disability Insurance is available to all eligible CTA members.

Become a member of CTA by:

- Requesting an Application at:

  (650) 552-5278

To enroll in the Voluntary Disability Insurance Plan:

- Request a CTA Disability Insurance Plan Brochure from the Member Benefits Order Form
- Call UnumProvident at:

  (800) 282-4049
- Visit *www.unumprovident.com/enroll/cta*

CTA members are encouraged to apply during Open Enrollment Periods. However, members can apply for coverage at any time.

- During an Open Enrollment, if you meet the eligibility requirements of the plan, your application will be automatically accepted, and you will not have to answer the health questions on the application.
- If you do not apply during open enrollment your application will be subject to health evidence underwriting and insurance company approval.

There are two Open Enrollment opportunities offered by the plan:

1. For new teachers, Open Enrollment is during the first 120 days of their employment.
2. For all chapter members, Open Enrollment occurs if your chapter conducts a successful enrollment campaign and the necessary participation requirements are met.

Once accepted into the Plan, premiums are automatically deducted from your paycheck. Premiums are calculated according to your Annual Contract Salary.

*Premiums are effective 9/1/03

Payroll Deduction Table

Annual Compensation Range			
From	To	Monthly Premium	Tenthly Premium
$ 0	$ 11,249	$ 4.60	$ 5.52
$ 11,250	$ 14,249	$ 6.01	$ 7.21
$ 14,250	$ 17,249	$ 7.41	$ 8.90
$ 17,250	$ 20,749	$ 8.95	$ 10.75
$ 20,750	$ 24,999	$ 10.77	$ 12.93
$ 25,000	$ 30,249	$ 13.01	$ 15.62

$ 30,250	$ 36,749	$ 15.79	$ 18.94
$ 36,750	$ 44,499	$ 19.14	$ 22.97
$ 44,500	$ 53,249	$ 23.02	$ 27.63
$ 53,250	$ 60,249	$ 27.20	$ 32.65
$ 60,250	$ 67,249	$ 30.75	$ 36.89
$ 67,250-+	+	$ 34.19	$ 41.03

How to Use this Benefit

In the event a member would like to participate in the CTA Voluntary Disability Plan, the member should contact:

- UnumProvident's CTA Customer Service Department at:

  (800) 282-4049

or

- Visit

  www.unumprovident.com/enroll/cta

Related Documents and Forms

Pamphlets

CTA Voluntary Disability Insurance

Plan Brochure

This brochure provides information regarding the voluntary disability insurance plan schedule of benefits, waiting period, and other important enrollment information. This brochure also includes an enrollment application.

CTA Life and Disability

Insurance New Teacher Kit

This kit provides an explanation of the new teacher 120-day open enrollment for the CTA Voluntary Life

& Disability Insurance plans. The kit includes an enrollment application.

Contact Information

- UnumProvident's CTA Customer Service at:
  (800) 282-4049
- CTA Member Benefits at:
  (650) 552-5200
- *www.unumprovident.com/enroll/cta*

For More Information

Visit the *CTA Health Information and Wellness page* for information on the BabyWise program.

Pregnancy and Parental Leave Rights

As a California public school employee, your rights to pregnancy and parental leave are governed by California state and federal law as well as by your collective bargaining agreement. The following describes the basic rights provided under state and federal law. You should consult your chapter about additional rights that may be provided to you by your collective bargaining agreement and confirm with your school district what paperwork you need to file when, and with whom, to qualify for the different leaves described below. For more information on these leave rights and on your rights as a California public school employee, visit the *Legal Services section of MyCTA* or contact your local CTA staff person.

Pregnancy-Related Disability Leave

Unpaid leave for the duration of any pregnancy-related disability – either before or after you have your baby. You will likely qualify for pregnancy disability leave, meaning unpaid leave from work for

the duration of any physical disability you experience as a result of pregnancy and/or childbirth. Your need for pregnancy disability leave must be verified by your physician and may not exceed four months' time. You can take pregnancy disability leave intermittently as needed. For example, you could take leave during the first trimester for severe morning sickness, in the last trimester for bed rest and following birth for recovery, so long as your physician verifies your need for each period of leave.

To receive pay during the period of your pregnancy-related disability leave, you can use any sick leave that you have accumulated:

- If you work full time for a school district as a certificated employee, you accrue 10 days of paid sick leave a year (Educ. Code 44978).
- If you work part-time, you accrue sick leave proportionate to the number of days per week that you work (Educ. Code 44978).

Unused sick leave accumulates from year to year with no cap and can be transferred (provided you have worked for a district for at least a year), if you subsequently accept a certified position with another school district or community college district (Educ. Code 44979).

Once you have exhausted your sick leave, if you still qualify for pregnancy disability leave, you can obtain extended sick leave, which is often referred to as differential leave pay, for the remainder of your pregnancy disability leave. Differential leave pay is the amount remaining of your salary after the district pays a substitute to fill your position, unless your district has opted to adopt the differential leave pay rate of 50% or more of your salary (Educ. Code

44983). Differential leave pay is available for up to five months for each illness (Educ. Code. 44977). You must exhaust your sick leave in order to qualify for differential leave pay.

Paid pregnancy disability leave if you participate in the State Disability Insurance Program. Although most districts do not participate in the State Disability Insurance ("SDI") program, if your district does and you have opted to make SDI contributions, you can receive paid pregnancy disability benefits of roughly half of your current salary through the SDI program. For a pregnancy without complications, the benefit period is generally from 4 weeks before your due date to 6 weeks after your delivery. If your pregnancy prevents you from working before or after that period, you may receive benefits for a longer period of time if your doctor verifies your need for additional leave.

Parental Leave

Up to 12 weeks of unpaid parental leave. So long as your school district employs more than 50 employees, and you have worked for the district full time for a full year, you have the right under the California Family Rights Act ("CFRA") and the federal Family & Medical Leave Act ("FMLA") to up to 12 weeks of unpaid leave to care for a new or adopted baby or foster child. The leave must be taken within a year of the baby's birth or the child's placement in your home. You must also provide your employer with 30 days advance notice of your need for parental leave when your need for the leave is foreseeable.

During the period of your parental leave, your employer must maintain your health insurance coverage and must continue to allow you to accrue

seniority and receive the other benefits you would ordinarily receive on other types of leave, such as life, short-term or long term disability or accident insurance coverage, and pension and retirement credit. Your right to unpaid leave under the CFRA and FMLA run concurrently, meaning you are only entitled to one 12-week unpaid leave, not to a 24-week leave. As long as you return to work at the conclusion of 12 weeks, the district must assign you to the same or an equivalent position. If you remain on leave longer than 12 weeks, you can continue to maintain your health insurance by paying the premiums yourself under COBRA, but the district is not obligated to hold your job for you until you choose to return.

If you were on pregnancy disability leave, you may take your 12 weeks of unpaid parental leave after your physician clears you to return to work. If you were not on pregnancy disability leave, you may take your 12 weeks of unpaid parental leave upon the birth or placement of your child or at any time during the subsequent year. The parental leave must generally be taken in one block of time, although your district may approve the use of the leave intermittently in some cases. You can receive pay during the period of your unpaid leave by using any vacation or sick leave that you have accumulated.

Paid parental leave if you participate in the State Disability Insurance Program. Although most districts do not participate in the State Disability Insurance ("SDI") program, if your district does and you have opted to make SDI contributions, you are eligible under the SDI Paid Family Leave program to receive 6 weeks of partial pay (approximately 55% of

your regular pay) for time off to bond with a new child within 12 months of birth, adoption or placement.

Other Pregnancy Related Protections You Should Know About

Both federal and state laws prohibit your district from discriminating against you based on your pregnancy. In addition, state law requires a school district that has a policy, practice or collective bargaining agreement requiring or authorizing the transfer of temporarily disabled employees to less strenuous or hazardous positions for the duration of the disability, to honor a request to transfer to such a position by a pregnant employee. Districts must also honor such a temporary transfer request if supported by your physician, so long as the district can reasonably accommodate your transfer request.

Upon your return to work, the district must provide you with a reasonable amount of break time for breast pumping purposes unless doing so would seriously disrupt the district's operations. The district must also make a reasonable effort to provide you with a room or other location (not a toilet stall) near or in your work area, in which you can express milk in private.

Your collective bargaining agreement may provide you with additional leave rights and other pregnancy-related protections. Check with your CTA chapter to find out what benefits your collective bargaining agreement provides.

I am planning to take a maternity leave in the future and have disability insurance to cover my maternity leave:

○ Yes
○ No
○ Don't know

Vote!

"Total voters : 223"

Volume 17 Issue 4

How is CTA saving you money?

By Diane Morte, CEBS

"We have a safety net."

"***I'm thankful that I signed up*** for the CTA-endorsed disability plan with The Standard when I was hired. We planned to start our family, and I knew I wouldn't receive income or state disability insurance during my medical leaves. I had to protect myself from my anticipated loss of salary. It was so nice during both of my maternity leaves, one lasting almost five months, to receive monthly checks, close to my regular paycheck amounts, from The Standard. We had a safety net in place when we needed it; we could devote energy to my pregnancy and our new babies rather than worrying about where to find money to cover our expenses when the paychecks stopped. I've maintained my disability insurance with The Standard because it provides me with the security of knowing how I'll cover my expenses if I am disabled and unable to work."

Megan De La Mater
John Swett Education Association

"I saved $900."

"***I'm a shopper*** - I'm always comparing insurance rates to ensure that I have the best deal. This year, I found that the CTA-endorsed auto and home insurance carrier, California Casualty, could beat my current carrier's cost substantially, so I purchased full coverage for my car and home. I saved $900 per year! Added bonuses were obtaining California Casualty's unique benefit provisions for educators and the assurance that CTA stands behind their program. I'm happy that CTA Member Benefits provides these benefits for us."

Christopher Davis
CTA of Berryessa

"Rental car discounts."

"***I often hear positive comments*** about how members save money with CTA Member Benefit programs like the auto rental discount with Enterprise. I use many of the programs myself — The Standard, California Casualty, and Provident Credit Union. I know that the CTA endorsement means that the product and vendor have been vetted; and I can recommend CTA-endorsed products to my fellow members with confidence."

Lynda Campfield
San Leandro Teachers Association

Use it, don't lose it.

Busy and cost-conscious members wish they had heard about them sooner. Whether it's obtaining better coverage, lowering insurance premiums, getting great discounts, or saving time shopping, there are many opportunities to save money.

So check out CTA's special website – it's full of information and tools to help members make wise

financial and investment decisions that will save money.

CTA Member Benefits –
www.CTAMemberBenefits.org

CTA Financial and Investment Information –
www.CTAInvest.org

How is CTA saving you money?

We're always happy to hear and share your stories. You can contact us at member_benefits@cta.org*, or call (650) 552-5430.*

APPENDIX J

JEREMIAH A. COLLINS, admitted *pro hac vice*
Bredhoff & Kaiser, P.L.L.C.
805 Fifteenth St. N.W., Tenth Floor
Washington, DC 20005
Telephone: (202) 842-2600
Facsimile: (202) 842-1888
jcollins@bredhoff.com

JEFFREY B. DEMAIN (#126715)
Altshuler Berzon LLP
177 Post Street, Suite 300
San Francisco, California 94108
Telephone: (415) 421-7151
Facsimile: (415) 362-8064
jdemain@altshulerberzon.com

JASON WALTA, admitted *pro hac vice*
National Education Association
Office of General Counsel
1201 16th Street, NW
Washington, DC 20036
Telephone: (202) 822-7041
Facsimile: (202) 822-7033
jwalta@nea.org

Counsel for Union Defendants

LAURA P. JURAN (#199978)
JACOB F. RUKEYSER (#233781)
California Teachers Association
Legal Department
1705 Murchison Drive
Burlingame, California 94010
Telephone: (650) 552-5425
Facsimile: (650) 552-5019
ljuran@cta.org
jrukeyser@cta.org

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

REBECCA FRIEDRICHS, *et al.*, Plaintiffs, vs. CALIFORNIA TEACHERS ASSOCIATION, *et al.*, Defendants.	Case No. SACV13-676 JST (CWx) **UNION DEFENDANTS' AMENDED ANSWER** Judge: Hon. Josephine S. Tucker Courtroom: 10-042/10A

FIRST DEFENSE

Defendants California Teachers Association ("CTA"), National Education Association ("NEA"), Savanna District Teachers Association, Saddleback Valley Educators Association, Orange Unified Education Association, Inc., Kern High School Teachers Association, National Education Association-Jurupa, Santa Ana Educators Association, Inc., Teachers Association of Norwalk-La Mirada Area, Sanger Unified Teachers Association, Associated Chino Teachers, and San Luis Obispo County Education Association (collectively, "the Unions") answer each respective paragraph of the Plaintiffs' Complaint as follows:

1. Paragraph 1 of the Complaint asserts only legal conclusions, which do not require a response. To the extent Paragraph 1 of the Complaint quotes the Supreme Court's decision in *Knox v. SEIU Local 1000*, 132 S. Ct. 2277 (2012), the Unions admit that the quoted language is contained in the decision, but the Unions aver that the quoted language is taken out of

a context that recognizes that "agency shop" arrangements have repeatedly been held to be constitutionally permissible. To the extent Paragraph 1 of the Complaint makes any factual allegations, they are denied.

2. In response to Paragraph 2 of the Complaint, the Unions admit that the State of California and its public school districts, in cooperation with the Defendants, maintain an "agency shop" arrangement that may require nonmember public school teachers to pay an agency fee as a condition of employment, but deny that such an arrangement injures public school teachers. The Unions admit that where implemented this agency-shop arrangement is established and maintained under color of State law, the California Educational Employment Relations Act ("EERA"), Cal. Gov't Code § 3540 et seq.; that each year the Unions allocate expenditures as chargeable and nonchargeable to objecting nonmember feepayers; and that nonmember teachers are required to contribute to the Unions' "chargeable" expenditures, unless they have a genuine religious belief that prohibits them from supporting a labor organization although the Unions aver that the percentage of the agency fee that is paid by objecting nonmembers is set lower than the actual proportion of chargeable expenditures. The Unions admit that nonmember teachers who wish to avoid contributing to a union's "non-chargeable" expenditures are generally required to complete and return a simple one-page form noting their objection, which form is provided by CTA annually to all non-members. Except as thus admitted, the allegations in Paragraph 2 of the Complaint are denied.

3. The Unions deny the allegations in Paragraph 3 of the Complaint and aver that, in order to "opt out," objecting nonmember feepayers need only complete and return a simple one-page form that CTA provides to them annually or, if they prefer, send in a letter or postcard expressing their intent to object to and/or challenge the Union's calculation of the chargeable amount. (A true copy of the Agency Fee Rebate/Arbitration Request Form for the 2012-13 School Year is attached to this Answer as Exhibit A.)

4. In response to Paragraph 4 of the Complaint, the Unions admit that union-security arrangements require objecting feepayers to pay the chargeable portion of the fee, but aver that the portion of the fee that is paid by objecting nonmembers is set lower than the actual proportion of chargeable expenditures. The Unions deny that "any teacher who objects to the Unions' classification of certain expenditures as 'chargeable' must bear the additional burden and expense of filing a legal challenge;" the Unions aver that such a teacher may simply check a box on the form attached hereto as Exhibit A to initiate the process of having an impartial decisionmaker determine whether the Unions have properly calculated their chargeable expenditures, and the Unions themselves bear the entire cost and burden of that proceeding, in which objecting feepayers are not required to adduce evidence, lodge particular objections, or even be present, and it is the Unions' burden in the proceeding to affirmatively establish the validity of the expenditures the Unions classified as chargeable. Except as thus admitted, the allegations in Paragraph 4 of the Complaint are denied.

5. Paragraph 5 of the Complaint asserts only legal conclusions, which do not require a response. To the extent Paragraph 5 of the Complaint makes any factual allegations, they are denied.

6. Paragraph 6 of the Complaint asserts only legal conclusions, which do not require a response. To the extent Paragraph 6 of the Complaint makes any factual allegations, they are denied.

7. In response to paragraph 7 of the Complaint, the Unions deny the allegation that California's agency shop "does not serve the interests of all public school teachers," and that "'seniority' protections and other employment protections advocated by unions benefit some teachers at the expense of other teachers who would fare better under an alternative system." The Unions admit that, in the course of collective bargaining, they sometimes take positions that may be viewed as politically controversial or may be inconsistent with the beliefs of some teachers, as may be the case with collectively-bargained provisions on teacher evaluations or collectively-bargained pay scales that accord with the requirements of the California Education Code. The Unions specifically deny that such positions include bargaining provisions that would require increased State spending or that are "against important educational reforms." The Unions aver that the principle of Education Code preemption under California law narrowly restricts their ability to bargain over the vast majority of the numerous comprehensive statutory provisions governing the organization, operation, and funding of the State's public schools for grades K-14. The Unions further aver that although they may take positions on such

matters from time to time, and some of those positions may be viewed by some persons as controversial, such positions are not advanced in the collective bargaining process, and all Union expenditures in support of them are classified as nonchargeable to objecting nonmembers. The Unions further aver that other positions they may take from time to time on social and "political" matters less directly related to public education likewise are not advanced in the collective bargaining process and all Union expenditures in support of them are classified as nonchargeable. The remaining allegations in Paragraph 7 of the Complaint are too vague to require a response, and to the extent those allegations require a response, they are denied.

8. In response to Paragraph 8 of the Complaint, the Unions deny that declaring agency fees unconstitutional would not undermine the Unions' authority or entitlement to engage in collective bargaining. The Unions further aver that, although they would remain the exclusive collective-bargaining agents in each school district so long as they retain the support of a majority of teachers in those districts, elimination of agency fees would mean that the costs of carrying out the Unions' duty as exclusive representative would no longer be "distribute[d] fairly . . . among those who benefit" and there would be an "incentive [for] employees . . . to become 'free riders'—to refuse to contribute to the union while obtaining benefits of union representation that necessarily accrue to all employees." *Abood v. Detroit Bd. of Educ.*, 431 U.S. 209, 222 (1977). The remaining allegations in Paragraph 8 of the Complaint are too vague to require a response, and to the extent those allegations require a response, they are denied.

9. Paragraph 9 of the Complaint asserts only legal conclusions, which do not require a response. To the extent Paragraph 9 of the Complaint makes any factual allegations, they are denied.

10. Paragraph 10 of the Complaint asserts only legal conclusions, which do not require a response. To the extent Paragraph 10 of the Complaint makes any factual allegations, they are denied.

11. In response to Paragraph 11 of the Complaint, the Unions admit that Plaintiff Friedrichs is a public school teacher in the Savanna School District, that she resigned her union membership, and that she has opted out of paying the non-chargeable portion of the agency fees. The Unions are without sufficient knowledge or information to form a belief as to the truth of the remaining allegations in Paragraph 11 of the Complaint and on that basis, deny them.

12. In response to Paragraph 12 of the Complaint, the Unions admit that Plaintiff Wilford is a public school teacher in California, that he is currently employed by the Saddleback Valley School District, that he resigned his union membership, and that he has opted out of paying the non-chargeable portion of the agency fees every year since 2009. The Unions are without sufficient knowledge or information to form a belief as to the truth of the remaining allegations in Paragraph 12 of the Complaint and on that basis, deny them.

13. In response to Paragraph 13 of the Complaint, the Unions admit that Plaintiff Figueroa is a public school teacher in the Orange Unified School District, that she resigned her union membership, and that she has opted out of paying the non-chargeable portion of the agency fees every year since 2008. The

Unions are without sufficient knowledge or information to form a belief as to the truth of the remaining allegations in Paragraph 13 of the Complaint and on that basis, deny them.

14. In response to Paragraph 14 of the Complaint, the Unions admit that Plaintiff White is a public school teacher in the Kern High School District, that he resigned his union membership, and that he has opted out of paying the non-chargeable portion of the agency fees. The Unions are without sufficient knowledge or information to form a belief as to the truth of the remaining allegations in Paragraph 14 of the Complaint and on that basis, deny them.

15. In response to Paragraph 15 of the Complaint, the Unions admit that Plaintiff Roughton is a public school teacher in the Jurupa Unified School District, that he resigned his union membership, and that he has opted out of paying the non-chargeable portion of the agency fees. The Unions are without sufficient knowledge or information to form a belief as to the truth of the remaining allegations in Paragraph 15 of the Complaint and on that basis, deny them.

16. In response to Paragraph 16 of the Complaint, the Unions admit that Plaintiff Searcy is a public school teacher in the Santa Ana Unified School District, that she resigned her union membership, and that she has opted out of paying the non-chargeable portion of the agency fees. The Unions are without sufficient knowledge or information to form a belief as to the truth of the remaining allegations in Paragraph 16 of the Complaint and on that basis, deny them.

17. In response to Paragraph 17 of the Complaint, the Unions admit that Plaintiff Manso has taught in

the Norwalk-La Mirada Unified School District, that he resigned his union membership, and that he has opted out of paying the non-chargeable portion of the agency fees. The Unions are without sufficient knowledge or information to form a belief as to the truth of the remaining allegations in Paragraph 17 of the Complaint and on that basis, deny them.

18. In response to Paragraph 18 of the Complaint, the Unions admit that Plaintiff Elrich is a public school teacher in California, that he is a teacher in the Sanger Unified School District, that he resigned his union membership, and that he opted out of paying the non-chargeable portion of the agency fees. The Unions are without sufficient knowledge or information to form a belief as to the truth of the remaining allegations in Paragraph 18 of the Complaint and on that basis, deny them.

19. In response to Paragraph 19 of the Complaint, the Unions admit that Plaintiff Cuen is a public school teacher in California, that she is a teacher in the Chino Valley Unified School District, that she resigned her union membership, and that she has opted out of paying the non-chargeable portion of the agency fees. The Unions are without sufficient knowledge or information to form a belief as to the truth of the remaining allegations in Paragraph 19 of the Complaint and on that basis, deny them.

20. In response to Paragraph 20 of the Complaint, the Unions admit that Plaintiff Zavala is a public school teacher in California, that she teaches in San Luis Obispo County, and that she resigned her union membership. The Unions further admit that Plaintiff Zavala is a religious objector under Cal. Gov't Code § 3546.3, and that she submitted a letter in order to

confirm her status as a religious objector. The Unions deny that Plaintiff Zavala "had to engage in protracted e-mail correspondence with union and district officials to ensure that her objections were processed." The Unions admit that Ms. Zavala was required to donate the full amount of the agency fee to a non-religious, non-labor organization charity, but deny that the three charities specified in the collective-bargaining agreement are "State-approved." The Unions deny that "[b]ut for California's 'agency shop' arrangement, Mrs. Zavala would not pay fees to or otherwise subsidize the teachers' union" because, pursuant to her religious objection, Mrs. Zavala does not "pay fees to or otherwise subsidize the teachers' union," even given the existence of "California's agency shop arrangement." The Unions are without sufficient knowledge or information to form a belief as to the truth of the remaining allegations in Paragraph 20 of the Complaint and on that basis, deny them.

21. In response to Paragraph 21 of the Complaint, the Unions deny that their "conduct pursuant to the State's agency-shop laws has the effect of creating a drain on CEAI's resources." The Unions are without sufficient knowledge or information to form a belief as to the truth of the remaining allegations in Paragraph 21 of the Complaint and on that basis, deny them.

22. In response to Paragraph 22 of the Complaint, the Unions admit that NEA is the largest teachers' union in the United States and one of the largest public-sector unions; that it receives a share of the agency fees from Plaintiffs (other than Plaintiffs Zavala and CEAI) and other public-school teachers

under California's agency-shop laws; that it has annual revenues of over $400 million per year; and that it participates in political activities at the national, state, and local levels. The Unions deny any remaining allegations in Paragraph 22 of the Complaint.

23. In response to Paragraph 23 of the Complaint, the Unions admit that CTA is a state affiliate of NEA; that it is the largest teachers' union in California and one of the largest public-employee unions in the United States; that it receives a share of the agency fees from Plaintiffs (other than Plaintiffs Zavala and CEAI) and other public-school teachers under California's agency-shop laws; that it has annual revenues of over $175 million per year; and that it is a participant in California politics. The Unions deny any remaining allegations in Paragraph 23 of the Complaint.

24. The Unions admit the allegations in Paragraph 24 of the Complaint.

25. The Unions admit the allegations in Paragraph 25 of the Complaint.

26. The Unions admit the allegations in Paragraph 26 of the Complaint.

27. The Unions admit the allegations in Paragraph 27 of the Complaint.

28. The Unions admit the allegations in Paragraph 28 of the Complaint.

29. The Unions admit the allegations in Paragraph 29 of the Complaint.

30. The Unions admit the allegations in Paragraph 30 of the Complaint.

31. The Unions admit the allegations in Paragraph 31 of the Complaint.

32. The Unions admit the allegations in Paragraph 32 of the Complaint.

33. The Unions admit the allegations in Paragraph 33 of the Complaint.

34. The Unions admit the allegations in Paragraph 34 of the Complaint.

35. The Unions admit the allegations in Paragraph 35 of the Complaint.

36. The Unions admit the allegations in Paragraph 36 of the Complaint.

37. The Unions admit the allegations in Paragraph 37 of the Complaint.

38. The Unions admit the allegations in Paragraph 38 of the Complaint.

39. The Unions admit the allegations in Paragraph 39 of the Complaint.

40. The Unions admit the allegations in Paragraph 40 of the Complaint.

41. The Unions admit the allegations in Paragraph 41 of the Complaint.

42. The Unions admit the allegations in Paragraph 42 of the Complaint.

43. The Unions admit the allegations in Paragraph 43 of the Complaint.

44. In response to Paragraph 44 of the Complaint, the Unions admit that Defendant Julian D. Crocker is the superintendent of the San Luis Obispo County Office of Education, but deny that he "is the executive officer that implements the deduction of agency fees

from the paychecks of Plaintiff Irene Zavala" because, by her own admission, Plaintiff Zavala does not have an agency fee deducted from her paychecks.

45. In response to Paragraph 45 of the Complaint, the Unions admit that this paragraph presents Plaintiffs' characterization of the claims in the Complaint. The Unions deny that they acted under color of state law to deprive any Plaintiffs of rights, privileges, or immunities secured by the United States Constitution. To the extent that Paragraph 45 of Complaint states legal conclusions, such conclusions do not require a response, and to the extent a response is required, any remaining allegations in Paragraph 45 of the Complaint are denied.

46. In response to Paragraph 46 of the Complaint, the Unions admit that this Court has subject-matter jurisdiction over this action under 28 U.S.C. §§ 1331 and 1343(a)(3)-(4) as to the First Count of the Complaint by Plaintiffs Friedrichs, Wilford, Figueroa, White, Roughton, Searcy, Manso, Elrich, Cuen, and Zavala, and as to the Second Count of the Complaint by Plaintiffs Friedrichs, Wilford, Figueroa, White, Roughton, Searcy, Manso, Elrich, and Cuen. The Unions deny that this Court has subject-matter jurisdiction over this action as to the First Count of the Complaint by Plaintiff CEAI and as to the Second Count of the Complaint by Plaintiffs Zavala and CEAI. The Unions deny that declaratory relief is authorized by 28 U.S.C. §§ 2201 and 2202 and Federal Rule of Civil Procedure 57 in this action.

47. The Unions admit the allegations in Paragraph 47 of the Complaint.

48. In response to Paragraph 48 of the Complaint, the Unions admit that there is an actual, justiciable controversy as to the First Count of the Complaint by Plaintiffs Friedrichs, Wilford, Figueroa, White, Roughton, Searcy, Manso, Elrich, Cuen, and Zavala, and as to the Second Count of the Complaint by Plaintiffs Friedrichs, Wilford, Figueroa, White, Roughton, Searcy, Manso, Elrich, and Cuen. The Unions deny that there is an actual, justiciable controversy as to the First Count of the Complaint by Plaintiff CEAI and as to the Second Count of the Complaint by Plaintiffs Zavala and CEAI. The Unions deny the remaining allegations in Paragraph 48.

49. Paragraph 49 of the Complaint asserts only legal conclusions, which do not require a response. To the extent Paragraph 49 of the Complaint makes any factual allegations, they are denied.

50. The Unions admit the allegations in Paragraph 50 of the Complaint.

51. In response to Paragraph 51 of the Complaint, the Unions admit that Cal. Gov't Code § 3543.2(a) defines the "terms and conditions of employment" for collective bargaining, and that certain of those terms and conditions are identified in the second sentence of Paragraph 51. The Unions deny that those terms and conditions of employment "include a wide range of issues at the heart of education policy." The remaining allegations in Paragraph 51 are too vague to require a response, and to the extent those allegations require a response, they are denied.

52. The Unions admit the allegations set forth in all but the final sentence of in Paragraph 52 of the Complaint, except to the extent that those allegations

fail to recognize the exception to the agency fee obligation for religious objectors. Further, the Unions aver that, notwithstanding any provision of California law that allows public-sector unions to charge objecting feepayers for certainly lobbying activities, CTA and its local affiliates do not charge objecting feepayers for "[l]obbying and political efforts before state legislatures and state administrative agencies," Dkt. #1, Ex. C to the Complaint at pp. 33-34, even where such efforts have a direct and positive impact on represented employees' terms and conditions of employment, as in the case of CTA's efforts in support of Proposition 30 in 2012, the passage of which greatly increased public school funding. NEA likewise does not charge objecting feepayers for "lobbying and political efforts before state legislatures, state administrative agencies, Congress, federal agencies or other executive branch officials, and ballot initiatives . . . unless any of [these activities] are specifically related to ratification or implementation of a collective bargaining agreement," *id.*, Ex. D. to the Complaint at p. 42. As to the final sentence of paragraph 52, the Unions admit that the agency fee paid by non-objectors "is typically equivalent to the amount of union dues," but deny that allegation as to the amount paid by objectors.

53. The Unions admit the allegations in Paragraph 53 of the Complaint, except to the extent that those allegations fail to recognize the exception to the agency fee obligation for religious objectors.

54. The Unions admit the allegations in Paragraph 54 of the Complaint, except to the extent that those allegations fail to recognize that in the

case of unions with annual revenues of less than $50,000, the calculation of agency fees need not be based on, and the "*Hudson*" notice need not include, an audit of the union's finances, *see* 8 Cal. Code Regs. § 32992(b)(2), and also to the extent that those allegations fail to recognize that in lieu of the audited financial report, a union may include in its "*Hudson*" notice "a certification from the independent auditor that the summarized chargeable and nonchargeable expenditures contained in the notice have been audited and correctly reproduced from the audited report." *Id.* at § 32992(b)(1).

55. In response to the allegations in Paragraph 55 of the Complaint, the Unions admit that an agency fee payer who disagrees with the original determination of the chargeable portion of the agency fee may, simply by checking a box on the form attached hereto as Exhibit A, initiate an impartial decisionmaker's prompt determination of whether the Unions have properly calculated their chargeable expenditures. The Unions further admit that such an impartial decisionmaker may be selected by either the American Arbitration Association or the California State Mediation and Conciliation Service, and the Unions aver that the Unions themselves bear the entire cost of the impartial decisionmaker proceeding; that objecting feepayers are not required to adduce evidence, lodge particular objections, or even be present for the proceeding; and that it is the Unions' burden in the proceeding to affirmatively establish the validity of the expenditures the Unions have classified as chargeable. The remaining allegations in Paragraph 55 of the Complaint are too vague to require a response, and to the extent those allegations require a response, they are denied.

56. In response to Paragraph 56 of the Complaint, the Unions admit that Defendant local unions have been designated the exclusive bargaining agents for the school districts in which Plaintiffs (other than CEAI) are employed. The remaining allegations in Paragraph 56 are legal conclusions to which no response is required. To the extent the remaining allegations in Paragraph 56 require a response, they are denied.

57. In response to Paragraph 57 of the Complaint, the Unions admit that Defendant local unions have entered into agency-shop agreements with the school districts where Plaintiffs (other than CEAI) are employed as teachers; that these agreements include provisions requiring that all teachers in these districts either join the unions, pay agency fees to the unions, or qualify as religious fee objectors; and that these agreements also provide that teachers must contribute to "non-chargeable" union expenditures unless they submit a timely objection or qualify as religious objectors. The remaining allegations in Paragraph 57 are legal conclusions to which no response is required. To the extent the remaining allegations in Paragraph 57 require a response, they are denied.

58. The Unions admit the allegations in Paragraph 58 of the Complaint, except to the extent that those allegations fail to recognize the exception to the agency fee obligation for religious objectors, and also to the extent that those allegations fail to recognize that in some cases, the school district sends deducted amounts to CTA, which then distributes part of the fees to the local Union and to NEA.

59. In response to Paragraph 59 of the Complaint, the Unions deny that the NEA affiliate fees are determined on a nationwide basis. The Unions aver that NEA makes a state-specific calculation of its affiliate fee for each state in which it collects agency fees. The Unions admit the remaining allegations in Paragraph 59.

60. In response to Paragraph 60 of the Complaint, the Unions deny that the NEA affiliate fees are determined on a nationwide basis. The Unions aver that NEA makes a state-specific calculation of its affiliate fee for each state in which it collects agency fees. The Unions admit the remaining allegations in Paragraph 60.

61. The Unions admit the allegations in Paragraph 61 of the Complaint.

62. In response to Paragraph 62 of the Complaint, the Unions admits that teachers who are not union members receive an annual "*Hudson*" notice each fall, giving them a breakdown of the "chargeable" and "non-chargeable" portion of the agency fee; that, upon receiving this notice, teachers who are not union members have the option of submitting a single-page form provided by CTA or other notice within approximately six weeks indicating that they request a rebate of the nonchargeable portion of the fee (*see* Ex. A); that teachers who receive the "*Hudson*" notice also have the option, by checking a box on the form, to initiate a proceeding before an independent decisionmaker in which the Union is required to establish the correctness of its calculation of the "chargeable" and "non-chargeable" portions of the agency fee (*id.*); and that, for each teacher who timely requests a rebate, the union either refrains from

collecting the non-chargeable portion of the agency fee or sends, in advance, a rebate check equal to the non-chargeable portion of the annual agency fee. To the extent that the allegations in the final sentence of Paragraph 62 regarding an "option to file a legal challenge" refer to a procedure other than the independent decisionmaker procedure noted above, the allegations assert only legal conclusions which do not require a response. The Unions deny any remaining allegations in Paragraph 62.

63. The Unions admit the allegations in Paragraph 63 of the Complaint, except the allegation that the total amount of annual dues generally exceeds $1,000 per teacher, which allegation the Unions deny.

64. In response to Paragraph 64 of the Complaint, the Unions admit that, in order to participate in the "opt out" process, the teacher by definition is not a member of the union and therefore is not eligible for certain benefits provided through the Unions for which only members are eligible. The Unions further admit that teachers who "opt out" are unable to obtain the disability insurance available to members, but deny that such benefits are "part of the[] employment package" for either members or nonmembers. The Unions further deny the allegation that benefits available to members through the Unions "are typically (and would likely otherwise be) obtainable through one's employer," and the Unions aver that they have never adopted as a members-only benefit a benefit they believed could feasibly be obtained from the employer. The Unions further aver that CTA provides its members with the option of disability insurance because, under California law,

school districts are not required to participate in the State's disability insurance program, and most school districts accordingly opt out of that program. The Unions admit that the CTA Voluntary Disability Plan provides teachers on maternity leave with monies approximating their regular salary, and that most school districts provide only any applicable differential pay during maternity leave. The Unions further aver that any bargaining unit members who choose not to join the Union remain free to purchase their own disability insurance or any other form of insurance on the private market. The Unions further aver that objecting feepayers are not charged for any expenses related to members-only benefits, such as CTA's Voluntary Disability Plan. *See* Dkt. #1, Ex. C to the Complaint at p. 34 (noting that CTA treats "[m]embers-only benefits" as nonchargeable); *id.*, Ex. D at p. 43 (same with regard to NEA). The Unions further aver that Union membership benefits are available to any member of the bargaining unit who exercises his or her free choice to join and maintain membership in the Union. Except as thus admitted, the Unions deny the allegations in Paragraph 64 of the Complaint.

65. In response to Paragraph 65 of the Complaint, the Unions admit that the language quoted in the allegation from Exhibit B of the Complaint does appear in the referenced letter, but aver that the quoted passage does not fully convey the letter's message. The Unions further admit that they sometimes encourage nonmembers to join by drawing attention to the fact that members "are eligible for income protection [in the event of a disability] through" CTA's Voluntary Disability Plan. The

Unions deny any remaining allegations in Paragraph 65.

66. In response to Paragraph 66 of the Complaint, the Unions state that the phrase "these 'agency shop' arrangements" is vague, and the Unions therefore deny the allegations in Paragraph 66 The Unions further deny that Plaintiff Zavala, who is a religious objector, is subject to any legal obligation to pay agency fees, as long as she maintains her status as a religious objector.

67. In response to Paragraph 67 of the Complaint, the Unions admit that, in recent years, NEA has determined approximately 40 percent of its expenditures to be "chargeable" and that CTA has determined approximately 65 percent of its expenditures to be "chargeable." The Unions further admit that CTA's local affiliates "often use the same chargeability percentage as CTA." In response to the allegations in the final sentence of Paragraph 67, the Unions aver that for the defendant local unions, the proportion of expenditures devoted to chargeable activities has consistently been at least as great as for CTA, that any local union that opts to use the same chargeability percentage as CTA is requested to devote no more than 20 percent of its expenditures to nonchargeable matters and that by adopting the CTA chargeability percentage even when their own chargeable percentage is often much greater CTA local chapters charge objecting nonmembers considerably less in agency fees than they lawfully may. Except as thus admitted, the Unions deny the allegations in Paragraph 67.

68. The Unions admit the allegations in Paragraph 68 of the Complaint.

69. In response to Paragraph 69 of the Complaint, the Unions deny that CTA spent over $211 million in "political expenditures" from 2000 through 2009. The Unions aver that the report cited by the Complaint misleadingly combines the spending of CTA, CTA/ Association for Better Citizenship (a political action committee), the California Teachers Association Issues PAC, and NEA, each of which is a separate legal entity. The Unions further aver that the totals put forward by the Complaint amalgamate contributions to candidates and other committees, independent expenditures, and lobbying expenditures. The Unions admit that CTA takes public positions on a wide range of issues, including school vouchers and immigration reform. The Unions aver that objecting feepayers do not subsidize any part of the political activities or expenditures referenced in Paragraph 69 of the Complaint. *See* Dkt. #1, Ex. C to the Complaint at 33-34 (explaining that CTA and its local affiliates do not charge objecting feepayers for "[p]olitical candidate donations or support, including endorsement process and donations to political parties"; "[c]ampaign donations or support on behalf of state or local ballot initiatives"; "[s]upport for political action committees"; "[v]oter registration, get-out-the-vote, and political action training"; or "[l]obbying and political efforts before state legislatures and state administrative agencies"). The Unions deny all remaining allegations in Paragraph 69.

70. The Unions deny the allegations in the first two sentences of Paragraph 70 of the Complaint and aver that CTA has not made contributions to the California Democratic Party or in support of individual candidates, or in support of or in

opposition to local measures. To the extent that the allegations in those sentences may refer to contributions made by the Association for Better Citizenship, the Unions deny that such contributions are made by CTA and aver that the Association for Better Citizenship is an entity legally separate from CTA. The Unions admit that CTA spends money advocating on issues related to improving public education— including legislation and ballot measures— but deny the allegation that "much" of that spending "is on issues with no connection to education." The Unions deny that CTA spent more than $1 million to oppose Proposition 8 in 2008, and aver that no money spent by CTA in connection with Proposition 8 consisted of direct contributions; contributions were made by the CTA Issues PAC, which is a separate legal entity. The Unions aver that objecting feepayers do not subsidize any part of the activities or expenditures referenced in Paragraph 70 of the Complaint. *See* Dkt. #1, Ex. C to the Complaint at 33-34 (explaining that CTA and its local affiliates do not charge objecting feepayers for "[p]olitical candidate donations or support, including endorsement process and donations to political parties"; "[c]ampaign donations or support on behalf of state or local ballot initiatives"; "[s]upport for political action committees"; "[v]oter registration, get-out-the-vote, and political action training"; or "[l]obbying and political efforts before state legislatures and state administrative agencies"). The Unions deny any remaining allegations in Paragraph 70.

71. In response to Paragraph 71, the Unions admit that CTA encourages its members to advocate on issues related to improving public education –

including the state budget for supporting public education – and that CTA recently distributed to its teacher-members a list of suggested practices that included:

- "Take ½ photo of Assembly members and have kids draw the other half with a message stating what they want for their teachers";
- Have "students create a BIG poster on a school bus that is sent to Sacramento"; and
- Organize a "Student Video Contest" in which those teachers would conduct a "contest for youth to create a video about what education costs would mean to them."

The Unions specifically deny the allegation that CTA "encourages its members to engage in extensive political activism in the public schools where they work," as well as the allegation that CTA encouraged teachers to "further CTA's campaign in their classrooms." The Unions further aver that objecting feepayers do not subsidize any part of the activities or expenditures referenced in Paragraph 71 of the Complaint. *See* Dkt. #1, Ex. C to the Complaint at 33-34 (explaining that CTA and its local affiliates do not charge objecting feepayers for "[p]olitical candidate donations or support, including endorsement process and donations to political parties"; "[c]ampaign donations or support on behalf of state or local ballot initiatives"; "[s]upport for political action committees"; "[v]oter registration, get-out-the-vote, and political action training"; or "[l]obbying and political efforts before state legislatures and state administrative agencies"). The Unions deny any remaining allegations in Paragraph 71 of the Complaint.

72. In response to Paragraph 72 of the Complaint, the Unions deny that they take collective bargaining positions "[i]n coordination with their express political advocacy." The remaining allegations in Paragraph 72 of the Complaint are too vague and/or argumentative to require a response, and to the extent those allegations require a response, they are denied.

73. In response to Paragraph 73 of the Complaint, the Unions admit that NEA engages in issue advocacy and grassroots lobbying on a wide range of issues, including support for firearm restrictions and support for the Affordable Care Act. The Unions further aver that objecting feepayers do not subsidize any part of the political activities or expenditures referenced in Paragraph 73 of the Complaint. *See* Dkt. #1, Ex. D to the Complaint at pp. 42-43 (explaining that NEA does not charge objecting feepayers for: "lobbying and political efforts before state legislatures, state administrative agencies, Congress, federal agencies or other executive branch officials, and ballot initiatives, as well as any grassroots lobbying activities related to the Great Public Schools Program, unless any of the preceding are specifically related to ratification or implementation of a collective bargaining agreement"; "supporting or contributing to charitable, religious or ideological causes"; "supporting political organizations or candidates for public office"; or "ideological issues unrelated to collective bargaining or organizational maintenance"). The remaining allegations in Paragraph 73 of the Complaint are too vague to require a response, and to the extent those allegations require a response, they are denied.

74. In response to Paragraph 74 of the Complaint, the Unions deny that CTA classifies as chargeable expenditures that "have little to do with collective bargaining," and that CTA classified its expenditures on "Human Rights Programs" as "being 100% chargeable." *See* Dkt. #1, Ex. C to Complaint at 21. The Unions admit that, based on a review of audited expenditures in the 2010-11 year, CTA classified its "Gay / Lesbian Program" expenditures to be fully chargeable, because, *inter alia*, expenditures under that line item are designed to strengthen the governance of CTA and its affiliated chapters by recruiting and training underrepresented groups to participate in Union leadership and serve as effective bargaining representatives. The Unions further admit that, based on a review of audited expenditures in the 2010-11 year, CTA classified its "GLBT Conference" expenditures to be 71.3% chargeable, because a like percentage of the conference content concerned properly chargeable matters including, *inter alia*, professional development, teaching strategies, educational equity, and creating a safe, bully-free school atmosphere for gay and lesbian students. The Unions further admit that, based on a review of audited expenditures in the 2010-11 year, CTA classified the publication and dissemination of *The California Educator*, its internal magazine provided to all represented employees, including fee payers, to be 78.4% chargeable because a like percentage of the publication's content concerned properly chargeable matters including, *inter alia*, collective bargaining, professional development, and teaching strategies. The Unions further admit that, based on a review of audited expenditures in the 2010-11 year, CTA classified

"Regional Service" expenditures to be 93.1% chargeable based on a detailed review of line item expenditures under this heading because they concerned, *inter alia*, internal Union governance and operations, collective bargaining and contract enforcement, professional development, and teaching strategies. The Unions further aver that, each year, CTA includes a substantial "cushion" by reducing its calculation of the percentage of dues that may be charged to objecting feepayers by approximately 3 percentage points, and that in the 2012-13 year, for example, CTA calculated the actual chargeable percentage of its expenditures to be 68.4 percent, but sought only 65.4 percent of the full fee from California objecting feepayers – a figure that represented a reduction of approximately $3,841,860 (or 3 percent) in chargeable CTA expenditures. The remaining allegations in Paragraph 74 of the Complaint are too vague to require a response, and to the extent that those allegations require a response, they are denied.

75. In response to Paragraph 75 of the Complaint, the Unions deny that CTA considers "public polling" to be chargeable. The Unions aver that the "polling" referenced in Exhibit C to the Complaint is polling of unit employees to ensure that CTA's strategies, policies, and positions are aligned with the needs and interests of the educators it represents. The remaining allegations in Paragraph 75 of the Complaint are too vague to require a response, and to the extent that those allegations require a response, they are denied.

76. In response to Paragraph 76 of the Complaint, the Unions deny that NEA classifies as chargeable

expenditures that "have little to do with collective bargaining." The Unions admit that NEA classified 76% of expenditures in the budget category of "Provide technical and financial support to affiliates engaged in or preparing to engage in comprehensive salary campaigns" as chargeable, because, *inter alia*, they supported NEA affiliates' efforts to obtain increased compensation through collective bargaining. The Unions further admit that NEA classified 91.5% of expenditures in the budget category of "Provide resources to assist affiliates build capacity to support their initiatives designed to advance pro-public education policies for student learning and workforce quality" as chargeable, because, *inter alia*, those expenditures supported NEA-represented educators' training and professional development, improvement of teaching and learning conditions, and development of leadership skills necessary to maintain affiliates' associational existence. The Unions further admit that NEA classified 73.38% of expenditures in the budget category of "Affiliate programs and services that increase membership" as chargeable, because, *inter alia*, those expenditures included:

- funding for NEA's "Uniserv Director" Program, which provides paid staff for direct representation of bargaining unit members in collective bargaining and contract administration;
- funding for the Local President Release Time Program, which enables local presidents to perform the core representation functions of collective bargaining and contract administration; and

- funding for the Unified Executive Director Program, which provides funding for full-time executive directors to manage the operations of affiliates.

The Unions further admit that NEA classified 81% of expenditures in the budget category of "Build[ing] affiliate capacity for membership growth through project funding and constituency group assistance" as chargeable, because, *inter alia*, that budget category is a sub-set of the category referenced above entitled "Affiliate programs and services that increase membership," and expenditures in this category fund NEA's Uniserv Director, Local President Release Time, and Unified Executive Director Programs. The Unions further admit that NEA classified 80.9% of expenditures for the budget activities of "[f]acilitate[] the development of NEA strategy and operations," "[i]mplement[] workplace culture initiative," and "[m]aintain[] NEA records archives," and all expenditures for staff professional-development training, as chargeable, because, *inter alia*, those expenditures cover overhead functions that are necessary to maintain NEA's organizational existence, that do not have any inherently expressive character of their own, and that do not "significantly add to the burdening of free speech that is inherent in the allowance of an agency or union shop," *Lehnert v. Ferris Faculty Ass'n*, 500 U.S. 507, 519 (1991). The Unions further admit that NEA classified 13.36% of expenditures in the budget category of "Communicate the NEA beliefs, qualities, and services to engage members and improve target audiences' recognition of NEA through print and electronic media" as chargeable, because, *inter alia*, such expenditures were incurred for the production of two higher-

education publications that relate to professional development and teaching and education generally, as well as for projects to enhance educators' online access to materials that relate to professional development and teaching and education generally. The Unions further admit that NEA classified 14.09% of expenditures in the budget category of "Increase efficient use of campaign tools, technology, and resources in all NEA targeted campaigns" as chargeable, because, *inter alia*, that budget category is a sub-set of the category referenced above entitled "Communicate the NEA beliefs, qualities, and services to engage members and improve target audiences' recognition of NEA through print and electronic media," and the expenditures were incurred for projects to enhance educators' online access to materials that relate to professional development and teaching and education generally. The Unions further admit that NEA classified 36.76% of expenditures in the budget category of "Partner with ethnic minority, civil rights, and other organizations to advance NEA's commitment to social justice" as chargeable, because, *inter alia*, these expenditures were incurred in the development and dissemination of teacher resources for engaging English-language learner students and training for teachers to foster a safe, bully-free school atmosphere for gay and lesbian students. The Unions further aver that, each year, NEA includes a substantial "cushion" by reducing its calculation of the percentage of dues that may be charged to objecting feepayers by five to six percentage points; in the 2012-13 school year, for example, NEA calculated the actual chargeable percentage of its expenditures to be 45.89%, but sought only 40% of the full fee from

California objecting feepayers—a figure that represented a reduction of $20,751,663.84 (or 5.89%) in chargeable NEA expenditures. The remaining allegations in Paragraph 76 of the Complaint are too vague to require a response, and to the extent those allegations require a response, they are denied.

77. In response to Paragraph 77 of the Complaint, the Unions admit that at pages 41-42 of Exhibit D to the Complaint, the NEA Combined Financial Statement states that "*chargeable* activities and expenditures were related to" fifteen listed matters, that one of those matters is "specific terms and conditions of employment that may be negotiable, such as wages, hours, benefits, working conditions, employment discrimination, promotions, discipline, discharge, retirement benefits, performance evaluation, overtime compensation, environmental issues in the workplace, etc.," and that another of the listed matters is "NEA award programs." Except as thus admitted, the Unions deny the allegations in Paragraph 77.

78. Paragraph 78 of the Complaint asserts only legal conclusions, which do not require a response. To the extent Paragraph 78 of the Complaint makes any factual allegations, they are denied.

79. Paragraph 79 of the Complaint asserts only legal conclusions, which do not require a response. To the extent Paragraph 79 of the Complaint makes any factual allegations, they are denied. Plaintiffs further aver that, although the language quoted in Paragraph 79 of the Complaint appears in the decisions referenced therein, Paragraph 79 does not completely and accurately state the applicable law.

80. Paragraph 80 of the Complaint asserts only legal conclusions, which do not require a response. Plaintiffs further aver that, although the language quoted in Paragraph 80 of the Complaint appears in the decisions referenced therein, Paragraph 80 does not completely and accurately state the applicable law.

81. Paragraph 81 of the Complaint asserts only legal conclusions, which do not require a response. To the extent Paragraph 81 of the Complaint makes any factual allegations, they are denied. Plaintiffs further aver that, although the language quoted in Paragraph 81 of the Complaint appears in the decisions referenced therein, Paragraph 81 does not completely and accurately state the applicable law.

82. Paragraph 82 of the Complaint asserts only legal conclusions, which do not require a response. To the extent Paragraph 82 of the Complaint makes any factual allegations, they are denied.

83. In response to Paragraph 83 of the Complaint, the Unions deny that teachers wishing to avoid contributing to nonchargeable expenditures "must write a letter each year expressing that wish." The Unions aver that objecting feepayers need only complete and return a simple form in order register the objection. (*See* Ex. A.) The remaining allegations in Paragraph 83 of the Complaint are too vague to require a response, and to the extent those allegations require a response, they are denied.

84. Paragraph 84 of the Complaint asserts only legal conclusions, which do not require a response. To the extent Paragraph 84 of the Complaint makes any factual allegations, they are denied.

85. In response to Paragraph 85 of the Complaint, the Unions admit that *Abood v. Detroit Board of Education*, 431 U.S. 209 (1977), upheld the constitutionality of compelling payment of agency fees by public employees and that *Mitchell v. Los Angeles Unified School District*, 963 F.2d 258 (9th Cir. 1992), upheld requiring non-members to "opt out" of paying the "non-chargeable" share of dues. The Unions deny that stare decisis "may" restrict the ability of lower federal courts to grant Plaintiffs the relief they seek, because those decisions, and other controlling precedent, *require* denial of the relief Plaintiffs seek.

86. In response to Paragraph 86 of the Complaint, the Unions incorporate their responses to Paragraphs 1 through 85 of the Complaint.

87. The Unions admit the allegations in Paragraph 87 of the Complaint.

88. The Unions admit the allegations in Paragraph 88 of the Complaint.

89. Paragraph 89 of the Complaint asserts only legal conclusions, which do not require a response. To the extent Paragraph 89 of the Complaint makes any factual allegations, they are denied.

90. In response to Paragraph 90, the Unions deny both that Plaintiffs are entitled to any remedy at all and that, even if Plaintiffs are entitled to a remedy, they have no adequate remedy at law.

91. In response to Paragraph 91 of the Complaint, the Unions incorporate their responses to Paragraphs 1 through 90 of the Complaint.

92. Paragraph 92 of the Complaint asserts only legal conclusions, which do not require a response. To

the extent Paragraph 92 of the Complaint makes any factual allegations, they are denied.

93. In response to Paragraph 93, the Unions deny both that Plaintiffs are entitled to any remedy at all and that, even if Plaintiffs are entitled to a remedy, they have no adequate remedy at law

94. In response to Paragraph 94 of the Complaint, the Unions deny that the Plaintiffs are entitled to an award of their costs, including reasonable attorneys' fees, incurred in the litigation of this case.

SECOND DEFENSE

95. Paragraphs 1-94 are incorporated herein by reference.

96. To the extent that the requirement of paying an agency fee implicates the rights of the individual Plaintiffs and other nonmembers to freedom of speech or association under the First Amendment, the speech or association is that of employees on matters of private concern, pursuant to their official duties, not of citizens on a matter of public concern. The First Amendment does not protect such speech or association. The Unions therefore are entitled to judgment on all of Plaintiffs' claims.

THIRD DEFENSE

In response to the First Count of Plaintiff's Complaint, the Unions further aver as follows:

97. Paragraphs 1-96 above are incorporated herein by reference.

98. In authorizing a union to serve as exclusive bargaining representative for a bargaining unit of public school employees, California imposes on the union a duty to represent fairly all employees in the

unit, regardless of whether they choose to join and remain members of the union or to exercise their right to refrain from union membership. All teachers in the bargaining units for which the Defendant local unions have been designated as exclusive bargaining representatives, including the individual Plaintiffs, have been and continue to be represented fairly by the Defendant local unions, with assistance from Defendants CTA and NEA.

99. For the fiscal year ended August 31, 2011, the Defendant local unions devoted the following proportions of their expenditures to matters for which the First Amendment permits objecting nonmembers to be charged a pro rata share ("chargeable" expenses or activities):

Savanna District Teachers Association	100%
Saddleback Valley Education Association	97%
Orange Unified Education Association, Inc.	96.0%
Kern High School Teachers Association	92.86%
National Education Association – Jurupa	92.2%
Santa Ana Educators Association, Inc.	94.53%
Teachers Association of Norwalk – LaMirada Area	89.1%
Sanger Unified Teachers Association	84.36%
Associated Chiro Teachers	99.1%
San Luis Obispo County Education Association	91%

Nevertheless, for the 2012-13 fee year, for which the fee percentages are based on the union's expenditures during the fiscal year ended August 31, 2011, each of the Defendant local unions charged objecting nonmembers, including the individual Plaintiffs, only 65.4% of the local union portion of the agency fee. So too, for the fiscal year ended August 31, 2011, 68.4% of CTA's expenditures, and 45.89% of NEA's expenditures, were for chargeable matters, but, for the 2012-13 fee year, objectors, including the individual Plaintiffs, were charged only 65.4% of CTA's portion of the agency fee and 40.0% of NEA's portion.

100. On information and belief, at all relevant times the proportion of the Unions' combined agency fee that has been charged to the individual Plaintiffs has been less than the proportion of the Unions' expenditures that has been devoted to matters that present no conflict with the Plaintiffs' beliefs on any matter of public concern, or on any other matter. For example, the great bulk of the time and expenses devoted by the Defendant local unions to collective bargaining, and the assistance provided by CTA and NEA in connection therewith, has been directed at achieving improvements in wages, benefits and other terms and conditions of employment which benefit the individual Plaintiffs; and on information and belief, those activities of the Unions do not involve messages that conflict with the beliefs of any of the individual Plaintiffs on matters of public concern or on any other matter. Nor, on information and belief, does the representation that the local unions, with assistance from CTA and NEA, provide to individual teachers in the grievance arbitration process involve messages that conflict

with the beliefs of the individual Plaintiffs on matters of public concern or on any other matter. Nor, on information and belief, do the Unions' professional development activities involve messages that conflict with the beliefs of the individual Plaintiffs on matters of public concern or on any other matter. On information and belief, the same is true with respect to virtually all of the Unions' chargeable expenses.

101. To the extent that some of the Unions' chargeable activities may on occasion have involved messages that conflict with certain beliefs of certain of the individual Plaintiffs, those Plaintiffs have not in any event been required to pay a full *pro rata* share of the Unions' chargeable expenses, because the required payments have been reduced as described in paragraph 99 above.

102. At all relevant times, the proportion of the Unions' agency fee that has been charged to the individual Plaintiffs has been less than the proportion of the Unions' expenditures that has been devoted to matters that have benefited those Plaintiffs.

103. The choice made by the California legislature to adopt a labor relations system under which public school employees may be represented by an exclusive bargaining agent selected by a majority of the employees in an appropriate bargaining unit serves a number of governmental purposes. Instead of a personnel system in which all terms and conditions of employment are imposed by fiat, risking discontent and disruption, the school district is able to establish terms and conditions by agreement, thereby obtaining the employees' "buy in" to the rules that govern their employment; and instead of being

confronted by competing demands from individual employees or organizations, the district is able to deal with a single entity. This process affords a district the best means of ascertaining and taking account of the interests, desires and expertise of its teachers as a group. Thus, for example, the district is able to direct its compensation dollars where they will accomplish the most benefit to the greatest number of its employees, and to develop employment practices and procedures that take into account the rights, interests and knowledge of the employees who will implement or be affected by them. In addition, the exclusive representation system enables school districts to deal with a negotiating partner that can function at a high level of competence, with access to CTA's and NEA's highly experienced staff members who are uniquely qualified to develop mutually agreeable solutions to issues and disputes, and whose knowledge and experience in analyzing economic data and other information not only enables the bargaining unit to understand the proposals that are made by management, and the bases for those proposals, more fully than would otherwise be possible but, by facilitating two-way communication of views and information between the employees and management, also contributes to a fuller understanding of the issues on management's part. The exclusive representation system also provides the best means for school officials to make use of the knowledge and experience of teachers in finding ways to improve the quality of education.

104. The exclusive representation system makes it possible for a school district to be party to a grievance arbitration system that offers advantages over other dispute resolution procedures. In most

cases, that system provides that a grievance will not proceed to arbitration if the union determines, consistent with its duty of fair representation, that the grievance lacks merit or otherwise should not be pursued. Such a system brings closure to such disputes more fairly and expeditiously than could otherwise be the case.

105. Exclusive representation makes it possible for a school district to obtain other beneficial collectively-bargained provisions as well. For example, many of the Defendant local unions have agreed to contractual provisions by which the union, in addition to agreeing that it will not call or participate in any strike or work stoppage, commits itself to taking appropriate steps to encourage a cessation of any such action on the part of bargaining unit members.

106. Because the Union expenses as to which the individual Plaintiffs are required to pay a *pro rata* share are incurred almost entirely in connection with matters that do not involve messages that conflict with the beliefs of the individual Plaintiffs on matters of public concern, the Plaintiffs have no interest protected by the First Amendment in avoiding such payments; and, to the extent that the required payments implicate any interest protected by the First Amendment, the requirement is justified by sufficient governmental interests as described above. The Unions therefore are entitled to judgment on the First Count of Plaintiffs' Complaint.

FOURTH DEFENSE

In response to the Second Count of Plaintiffs' Complaint, the Unions further aver as follows:

107. Paragraphs 1-106 above are incorporated herein by reference.

108. Requiring a nonmember to pay the full agency fee unless he or she opts out pursuant to the procedure established by the Unions presents no risk that the individual Plaintiffs or other nonmembers will be required to support activities or messages to which they are opposed. The Unions' opt-out procedure has not deterred any Plaintiff from opting out; nor, on information and belief, has it so deterred any other nonmember who wishes not to contribute to the Unions' nonchargeable activities. Nor has any Plaintiff failed to exercise the right to opt out due to a lack of awareness of the procedure by which to do so; and on information and belief, the same is true of all other nonmembers as well.

109. That a teacher has not become a member of the Unions does not suggest that he or she is generally opposed to the Unions' nonchargeable activities; there are numerous considerations that might lead a teacher not to become a member even though he or she has no objection to those activities. Some individuals simply are reluctant to join any organization. Some may refuse to join the Unions because they do not feel that they have a complete understanding of the Unions' activities, or because they wish to receive the annual notice that is sent to nonmembers so that they will be apprised of the Unions' expenditures in case they might wish to object at some future time. Some may choose not to become members of the Unions because members are required to comply with internal union rules and are subject to discipline if they violate them. Some may choose not to become members because they fear that

doing so might subject them to adverse consequences if their present or future employer were to harbor anti-union sentiments. Some may choose not to be members because they do not support the incumbent leadership of the union, either because they support rival unsuccessful candidates for union office or for other reasons. And some may choose not to join the Unions because they believe that the Unions have not done a good job at the bargaining table, or in dealing with a particular grievance or other matter. In each of these cases, such nonmembers may have no objection to the Unions' nonchargeable activities and may have no desire to opt out and thus to reduce the funds available to the Unions for those or other activities. To the contrary, notwithstanding their individual reasons for refraining from union membership, they may wish to be represented by a strong union that has sufficient financial resources to promote effectively the employment interests of the bargaining unit through collective bargaining, legislative activity and other efforts.

110. On information and belief, the great bulk of the Unions' nonchargeable activities, including, for example, legislative activities in support of improved wages and benefits, generally are viewed as beneficial by nonmembers as well as members. When a nonmember does not opt out of paying the full agency fee, the most likely reason is that the nonmember is not opposed to the Unions' nonchargeable activities.

111. If a nonmember chooses to opt out of paying the nonchargeable portion of the agency fee, the nonmember is not required to identify in any way the expenditures or activities to which he or she

objects, or otherwise to state the basis for the decision to opt out. Even if a nonmember were to declare that his or her objection should be considered to be permanent or continuing, which none of the individual Plaintiffs has done, there still would not be sufficient grounds to assume, in any and every subsequent year, that the individual continues to wish to opt out. The nonmember's views may change; or the Unions may cease to engage in the activities that caused the nonmember to opt out; or the nonmember may acquire a different understanding of the Unions' activities; or the nonmember may come to appreciate the benefits of union representation such that he or she no longer wishes to opt out even if there continue to be some union activities with which the individual may not agree. By sending a *Hudson* notice to each nonmember each year, providing the opportunity to opt out of paying the full agency fee for that year, the Unions recognize both that a nonmember who did *not* opt out in preceding years may choose to opt out in the current year, and that a nonmember who *did* opt out in some preceding year might not wish to opt out in the current year. This system ensures that the amounts paid by all nonmembers are based on their current preference as to whether to pay the full agency fee or instead to pay the reduced amount that is charged to those who choose to opt out.

112. The Unions therefore are entitled to judgment on the Second Count of Plaintiffs' Complaint.

FIFTH DEFENSE

113. Plaintiffs' Complaint fails to state a claim upon which relief can be granted.

SIXTH DEFENSE

114. Plaintiff CEAI lacks standing to sue and therefore this Court lacks subject-matter jurisdiction over CEAI's claims.

SEVENTH DEFENSE

115. Plaintiff Zavala lacks standing to assert the claim alleged in the Second Count of the Complaint.

EIGHTH DEFENSE

116. All Plaintiffs lack standing to assert the claims alleged in paragraph 83 of the Complaint, and those claims are not ripe for adjudication.

NINTH DEFENSE

117. To the extent that Paragraph 52 of the Complaint asserts a claim based on the provisions of Cal. Gov't Code § 3546(b) regarding lobbying, plaintiffs lack standing to assert such a claim.

TENTH DEFENSE

118. Claims in the Complaint are barred by the applicable statute of limitations.

ELEVENTH DEFENSE

119. Claims in the Complaint are barred by laches.

WHEREFORE, the Unions prays that judgment be entered their favor on the Plaintiffs' Complaint and that plaintiffs take nothing by it, and for such other and further relief as may be appropriate under the circumstances, including costs and attorney's fees.

Date: August 9, 2013 JEREMIAH A. COLLINS
Bredhoff & Kaiser, P.L.L.C.

JEFFREY B. DEMAIN
Altshuler Berzon LLP
JASON WALTA
National Education Association
LAURA P. JURAN
JACOB F. RUKEYSER
California Teachers Association
By: /s/ Jeremiah A. Collins
Jeremiah A. Collins
Attorneys for Union Defendants

APPENDIX K

EXHIBIT A

2012-13
AGENCY FEE REBATE /
ARBITRATION REQUEST FORM

Name _____

Address _____

City/State/Zip _____

Last 4 Digits of Social Security Number_____

School District_____

Local Association _____
(Full Local Name)

❑ I request a rebate of the nonchargeable portion of my fees.

I wish to challenge the following in an arbitration hearing (check only those calculations you actually wish to challenge):

- ❑ Local Association's calculation
- ❑ CTA's calculation
- ❑ NEA's calculation

❑ Initial here if you have no objection to providing your name and address to any other Fee Objector who seeks the identities of other Fee Objectors for purposes related to the upcoming arbitration case. Such a requesting Fee Objector is required to agree in writing in advance that no party or

representative of any party in this case shall use, or permit or enable the use of, the names and addresses of Fee Objectors in these proceedings for any purpose not immediately and directly related to this arbitration.

Send completed form to:

Agency Fee Rebate
CTA Membership
Accounting
P O Box 4178
Burlingame CA 94011-4178

FOR OFFICE USE ONLY	
Indiv ID#	
PR Ded	$
Category	
Date:	
Initial:	