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

21 Thomas Few,

22 Plaintiff.

23 v.

24 United Teachers of Los Angeles, et. al,

25 Defendants.

Case No. 2:18-cv-9531

**MEMORANDUM OF LAW IN
SUPPORT OF MOTION FOR
PRELIMINARY INJUNCTION**

1 **INTRODUCTION**

2 Public employees have a First Amendment right not join or pay any fees to a union
3 “unless the employee affirmatively consents” to do so. *Janus v. AFSCME*, 138 S. Ct.
4 2448, 2486 (2018). Plaintiff, Thomas Few, an employee of the Los Angeles Unified
5 School District (LAUSD), has repeatedly advised the United Teachers of Los Angeles
6 (UTLA) that they do not have his affirmative consent to withdraw their dues from his
7 paycheck or to represent him as a member of the union. These requests have been ignored
8 or denied. UTLA has insisted, instead, that Mr. Few must wait until an opt-out period that
9 it prefers for him to exercise his First Amendment right not to pay union dues.

10 Forcing Mr. Few to continue to pay union dues until an opt-out period is
11 unconstitutional because any authorization Mr. Few may have previously given was based
12 on what the Supreme Court in *Janus* recognized as an unconstitutional choice between
13 paying the union as a member or paying the union agency fees as a non-member. The
14 Supreme Court in *Janus* recognized that the First Amendment requires, instead, that a
15 government employee have a choice to not join or pay a union. The union authorization
16 card that Mr. Few signed prior to the Supreme Court’s decision in *Janus* is no longer valid
17 because it did not give Mr. Few the option to not pay money to the union. The burden is
18 on UTLA to prove by “clear and compelling” evidence that Mr. Few provided affirmative
19 consent to be a member of, and pay, the union, and it cannot meet this burden because of
20 the unconstitutional nature of the choice it gave him. *Id.*

21 It is also a violation of the First Amendment to force citizens to associate with
22 organizations or causes with which they do not wish to associate. Yet California law
23 grants public sector unions the power to speak on behalf of employees as their exclusive
24 representative. Pursuant to this law, UTLA purports to act as the exclusive representative
25 of Mr. Few. This compelled arrangement abridges his rights of speech and association.

26 In the face of the denials of his constitutional entitlements, Mr. Few has brought
27 this action to vindicate them. Given that the Supreme Court has recently spoken directly
28 on these issues, Mr. Few is more than likely to succeed on the merits of his case. Mr. Few

1 is a special education teacher for whom withholding over \$1,000 per year in union dues is
2 a significant amount. He is currently suffering irreparable harm by having union dues
3 deducted from his paycheck against his will to go towards union advocacy he does not
4 support. He is also suffering irreparable harm by having the union misrepresent his views
5 in its negotiations with LAUSD.

6 Mr. Few respectfully requests that the Court enter a preliminary injunction
7 preventing further injury as the case is litigated. The Court should enter a preliminary
8 injunction 1) ordering LAUSD and UTLA to halt the deduction of union dues from Mr.
9 Few's paycheck; 2) enjoining the Attorney General from enforcing Cal. Gov't Code §§
10 3543.1 and 3546 and Cal. Educ. Code §§ 45060 and 45168 authorizing Mr. Few's union
11 dues and fees deduction; 3) enjoining UTLA from acting as Mr. Few's exclusive
12 representative in his relationship with LAUSD; 4) and enjoining the Attorney General
13 from enforcing Cal. Gov't Code § 3543 authorizing UTLA to act as Mr. Few's exclusive
14 representative without his affirmative consent. The failure to enjoin these activities will
15 lead to further abridgments of First Amendment rights which cannot be remedied at the
16 conclusion of the litigation.

17 **FACTS**

18 Mr. Few, has been a special education teacher in the Los Angeles Unified School
19 District since August 2016. (Few Decl. ¶ 1, attached as Ex. A.) Mr. Few joined the United
20 Teachers of Los Angeles in August 2016 and was not informed by UTLA or LAUSD that
21 he had a right not to join the union. (Few Decl. ¶ 3.) On February 13, 2018, Mr. Few
22 signed a union membership card that did not give him the option to not join the union and
23 not pay fees to the union. (Few Decl. ¶ 4.)

24 On or about June 2, 2018, Mr. Few sent a letter to the union asking to resign his
25 membership and to become an agency fee payer. (Few Ltr. to UTLA, June 2, 2018,
26 attached as Ex. B; Few Decl. ¶ 5.) On July 13, 2018, UTLA responded to Mr. Few's
27 resignation letter by rejecting it. UTLA stated that Mr. Few could not resign from the
28 union until his resignation window, which was "not less than thirty (30) days and not

1 more than sixty (60) days before” the anniversary of his union membership on February
2 13. (UTLA Ltr. to Few, July 13, 2018, attached as Ex. C; Few Decl. ¶ 6.)

3 On August 3, 2018, Mr. Few submitted a letter to both UTLA and LAUSD again
4 resigning from the union and, this time, declining to pay agency fees. (Few Ltr. to UTLA,
5 August 3, 2018, attached as Ex. D; Few Decl. ¶¶ 7-8.) On or about October 10, 2018, Mr.
6 Few submitted a third letter to UTLA to resign from the union and stop having its dues
7 deducted from his paycheck. (Few Ltr. to UTLA, October 10, 2018, attached as Ex. E;
8 Few Decl. ¶ 9.) On October 19, 2018, UTLA responded to Mr. Few’s third resignation
9 letter by rejecting it because it did not fall within his resignation window. (UTLA Ltr. to
10 Few, Oct. 19, 2018, attached as Ex. F; Few Decl. ¶ 9.)

11 Since August 2016 LAUSD has withdrawn approximately eighty-six dollars (\$86)
12 per month from Mr. Few’s paycheck to pay his UTLA dues. (Few Decl. ¶ 10.) Mr. Few
13 does not wish LAUSD to be his representative, exclusive or otherwise, in bargaining
14 negotiations with LAUSD. (Few Decl. ¶ 12.)

15 ARGUMENT

16 **The Court should enjoin Defendants from collecting union dues and acting as**
17 **Mr. Few’s exclusive representative in bargaining negotiations with his**
18 **employer.**

19 In the Ninth Circuit, Plaintiffs seeking a preliminary injunction must satisfy one of
20 two tests. The first test considers 1) the likelihood Plaintiffs will succeed on the merits, 2)
21 whether Plaintiffs will suffer irreparable injury if the injunction is not granted, 3) the
22 balance of equities, and 4) whether the injunction would be in the public interest. *Coffman*
23 *v. Queen of the Valley Med. Ctr.*, 895 F.3d 717, 725 (9th Cir. 2018); *see also Winter v.*
24 *Nat. Res. Def. Council, Inc.*, 555 U.S. 7 (2008). The second variant the Ninth Circuit
25 considers provides that “if a plaintiff can only show that there are serious questions going
26 to the merits—a lesser showing than likelihood of success on the merits—then a
27 preliminary injunction may still issue if the balance of hardships tips sharply in the
28 plaintiff’s favor, and the other two *Winter* factors are satisfied.” *Alliance. for the Wild*

1 *Rockies v. Peña*, 865 F.3d 1211, 1217 (9th Cir. 2017). Under either mode of analysis, the
2 Court should grant Mr. Few a preliminary injunction on his claims.

3 **I. Mr. Few is likely to succeed on the merits.**

4 **A. Mr. Few is likely to succeed in his claim that continued deduction**
5 **of union dues violates his First Amendment rights to free speech**
6 **and freedom of association.**

7 The Court in *Janus* explained that payment to a union could be deducted from a
8 nonmember’s wages if that employee “affirmatively consents” to pay.

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

17 *Janus*, 138 S. Ct. at 2486 (citations omitted).

18 Supreme Court precedent provides that certain standards be met in order for a
19 person to properly waive their constitutional rights. First, waiver of a constitutional right
20 must be of a “known right or privilege.” *Johnson v. Zerbst*, 304 U.S. 458, 464 (1938).
21 Second, the waiver must be freely given; it must be voluntary, knowing, and intelligently
22 made. *D. H. Overmyer Co. v. Frick Co.*, 405 U.S. 174, 185-86 (1972). Finally, the Court
23 has long held that it will “not presume acquiescence in the loss of fundamental rights.”
24 *Ohio Bell Tel. Co. v. Public Utilities Comm’n*, 301 U.S. 292, 307 (1937).

25 In Mr. Few’s case, he could not have waived his First Amendment right to not join
26 or pay a union. First, at the time Mr. Few signed the union card, the right not to pay a
27 union was not known, since the Supreme Court had not yet issued its decision in *Janus*.
28 Further, Mr. Few could not have voluntarily, knowingly, or intelligently waived his right
not to join or pay a union because neither UTLA nor LAUSD informed him he had a right

1 not to join the union at all—whether paying agency fees or not. (Few Decl. ¶¶ 3-4.).
2 Further, at the time he signed the union card, Mr. Few had no choice but to pay the union,
3 so he could not have voluntarily waived his First Amendment right.

4 Because the Court will “not presume acquiescence in the loss of fundamental
5 rights,” *Ohio Bell Tel. Co.*, 301 U.S. at 307, the waiver of constitutional rights requires
6 “clear and compelling evidence” that the employees wish to waive their First Amendment
7 right not to pay union dues or fees. *Janus*, 138 S. Ct. 2484. In addition, “[c]ourts indulge
8 every reasonable presumption against waiver of fundamental constitutional rights.”
9 *College Savings Bank v. Fla. Prepaid Postsecondary Educ. Expense Bd.*, 527 U.S. 666
10 (1999) (citing *Aetna Ins. Co. v. Kennedy ex rel. Bogash*, 301 U.S. 389, 393 (1937)).

11 The union card Mr. Few signed did not provide a clear and compelling waiver of
12 Mr. Few’s First Amendment right to not join or pay a union because it did not expressly
13 state that Mr. Few has a constitutional right not to pay a union and because it did not
14 expressly state that Mr. Few was waiving that right.

15 After the decision in *Janus*, UTLA maintains that Mr. Few may only withdraw his
16 union membership during an arbitrary 30-day time window each year, (UTLA Ltr. to
17 Few, July 13, 2018; UTLA Ltr. to Few, Oct. 19, 2018), despite his repeatedly requests to
18 be removed from the union rolls and to stop the dues deduction from his paycheck. (Few
19 Decl. ¶¶ 5, 7-9).

20 However, the union dues authorization card signed by Mr. Few before the Supreme
21 Court’s decision in *Janus* cannot meet the standards set forth for waiving a constitutional
22 right, as required by the Supreme Court in *Janus*. Because Mr. Few has not waived his
23 First Amendment right to not join or pay a union, and because the union card does not
24 meet the standard for waiving a constitutional right, that union card is invalid. And UTLA
25 cannot hold Mr. Few to the time window to withdraw his union membership set forth in
26 that union card. Since being apprised of his constitutional rights by the *Janus* decision,
27 Mr. Few has not signed a union authorization card. Therefore, Mr. Few has still never
28 given UTLA the “affirmative consent” required by the *Janus* decision.

1 The likelihood that Mr. Few succeeds in his claim is, therefore, considerable. Mr.
2 Few has a clearly established right not to support the union. And he has not waived that
3 right. This Court should prohibit UTLA and LAUSD from treating Mr. Few as if he has
4 waived his First Amendment rights. Mr. Few has certainly “raised a serious question
5 going to the merits” of whether continuing to allow UTLA to take money from his
6 paycheck to fund their advocacy violates his rights under the First Amendment. *Alliance*
7 *for the Wild Rockies*, 865 F.3d at 1217.

8 **B. Mr. Few is likely to succeed in his claim that compelled**
9 **representation violates his First Amendment rights.**

10 As the Supreme Court has recently recognized:

11 Designating a union as the employees' exclusive representative substantially
12 restricts the rights of individual employees. Among other things, this
13 designation means that individual employees may not be represented by any
14 agent other than the designated union; nor may individual employees
negotiate directly with their employer.

15 *Janus*, 138 S. Ct. at 2460. The First Amendment should not countenance such a
16 substantial restriction. “[M]andatory associations are permissible only when they serve a
17 compelling state interest that cannot be achieved through means significantly less
18 restrictive of associational freedoms.” *Knox*, 567 U.S. at 310 (quoting *Roberts v. United*
19 *States Jaycees*, 468 U.S. 609, 623 (1984)) (internal quotation marks omitted). Because
20 forced union representation does not further a compelling state interest, Mr. Few is likely
21 to succeed in his claim that compelled representation by the union violates his
22 constitutional rights.

23 Unions and state governments have proffered various claimed interests in
24 compelling the association of employees. One often proffered is “labor peace,” meaning
25 the “avoidance of the conflict and disruption that it envisioned would occur if the
26 employees in a unit were represented by more than one union” because “inter-union
27 rivalries would foster dissension within the work force, and the employer could face
28

1 ‘conflicting demands from different unions.’” *Janus*, 138 S. Ct. at 2465. The other
2 interests typically asserted in support of exclusive representative status amount to much
3 the same claim: that it is in the state’s interest to have a “comprehensive system” that
4 bundles all employees into a single bargaining representative with which the state can
5 negotiate. *See, e.g.*, Brief for Respondents Lisa Madigan And Michael Hoffman at 4,
6 *Janus v. AFSCME*, 138 S. Ct. 2448, 2486 (2018) (No. 16-1466).

7 This justification does not apply to Mr. Few because he does not seek to introduce a
8 competing union into the bargaining mix but only to speak for himself. Furthermore, in
9 *Janus* the Supreme Court assumed, without deciding, that labor peace might be a
10 compelling state interest, but rejected it as a justification for agency fees, recognizing that
11 “it is now clear” that the fear of “pandemonium” if the union couldn’t charge agency fees
12 was “unfounded.” *Janus*, 138 S. Ct. at 2465.

13 To the extent individual bargaining is claimed to raise the same concerns, this too,
14 remains insufficient. The Supreme Court rejected the invocation of this rationale due to the
15 absence of evidence that some actual harm will follow if it is disregarded. *Id.* It may be
16 that the State finds it convenient to negotiate with a single agent, but that, in and of itself,
17 is not enough to overcome First Amendment rights. The rights to speech and association
18 cannot be limited by appeal to administrative convenience. *Police Dep't of Chicago v.*
19 *Mosley*, 408 U.S. 92, 102 n.9 (1972) (in free speech cases, a "small administrative
20 convenience" is not a compelling interest); *see also Tashjian v. Republican Party*, 479
21 U.S. 208, 218 (1986) (holding that a state could “no more restrain the Republican Party's
22 freedom of association for reasons of its own administrative convenience than it could on
23 the same ground limit the ballot access of a new major party”). While it may be quicker or
24 more efficient for the state to deal only with the union, “the Constitution recognizes
25 higher values than speed and efficiency.” *Stanley v. Illinois*, 405 U.S. 645, 656 (1972).
26 Even if the state could claim that it saves money resources by negotiating only with the
27 union, the preservation of government resources is not an interest that can justify First
28 Amendment violations. In other contexts where the state’s burden was only rational basis

1 review, the Supreme Court has rejected such justifications. *See, e.g., Romer v. Evans*, 517
2 U.S. 620, 635 (1996) (rejecting the “interest in conserving public resources” in a case
3 applying only heightened rational basis review); *see also Plyler v. Doe*, 457 U.S. 202, 227
4 (1982) (“a concern for the preservation of resources standing alone can hardly justify the
5 classification used in allocating those resources”). Such claimed interests are not enough
6 to leave Mr. Few “shanghaied for an unwanted voyage.” *Janus*, 138 S. Ct. at 2466.

7 Under California law, as a condition of his employment, Mr. Few is expressly
8 barred by Cal. Gov’t Code § 3543 from meeting or negotiating with his employer to
9 express his own views on matters that *Janus* recognizes to be of inherently public
10 concern. 138 S. Ct. at 2473. This restraint on Mr. Few’s own speech itself raises serious
11 First Amendment concerns. *Janus*, 138 S. Ct. at 2464 (whenever “a State prevents
12 individuals from saying what they think on important matters or compels them to voice
13 ideas with which they disagree, it undermines” First Amendment values). California law
14 goes further, granting UTLA prerogatives to speak on Mr. Few’s behalf on all manner of
15 contentious matters. For example, UTLA is entitled to speak on Mr. Few’s behalf
16 regarding the priorities LAUSD should consider when laying off teachers for lack of
17 funds. Cal. Gov’t Code § 3543.2(4)(c). It is entitled to speak in his voice as to whether
18 LAUSD should provide merit based incentive bonuses. Cal. Gov’t Code § 3543.2(4)(d). It
19 may even take a position directly contrary to Mr. Few’s best interest in advocating against
20 a salary schedule based on merit and in favor of one based on training and years of
21 experience. Cal. Gov’t Code § 3543.2(4)(e). These are precisely the sort of policy
22 decisions that *Janus* recognized are necessarily matters of public concern. 138 S. Ct.
23 2467.

24 California gives UTLA a right, by statute, to commandeer Mr. Few’s voice to push
25 its own views regarding “the definition of educational objectives, the determination of the
26 content of courses and curriculum, and the selection of textbooks.” Cal. Gov’t Code §
27 3543.2(3). Political fights over the content of curricula and textbooks in public schools are
28 such contentious matters of public policy that they’ve received national headlines and

1 been dubbed the “Textbook Wars.” See Gail Collins, *How Texas Inflicts Bad Textbooks*
2 *on Us*, The New York Review of Books, June 21, 2012; Daniel Golden, *New*
3 *Battleground in Textbook Wars: Religion in History*, Wall St. J., Jan. 25, 2006, at A1.
4 UTLA purports to speak for Mr. Few on this issue, too. Mr. Few submits that he can very
5 well speak for himself on this and other issues of public policy. (Decl. of Pl. at ¶ 13.)

6 Legally compelling Mr. Few to associate with UTLA demeans his First
7 Amendment rights. Indeed, “[f]orcing free and independent individuals to endorse ideas
8 they find objectionable is always demeaning . . . a law commanding involuntary
9 affirmation of objected-to beliefs would require even more immediate and urgent grounds
10 than a law demanding silence.” *Janus*, 138 S. Ct. at 2464 (2018) (quoting *West Virginia*
11 *Bd. of Ed. v. Barnette*, 319 U. S. 624, 633 (1943) (internal quotation marks omitted)).
12 California’s laws do command Mr. Few’s involuntary affirmation of objected-to beliefs.
13 None of the state interests offered in the past to overcome this deprivation of rights rise to
14 the level of being immediate, urgent, or compelling. Because the traditionally proffered
15 compelling state interests for exclusive representation do not apply to Mr. Few, he has
16 demonstrated a substantial likelihood that he will succeed on the merits of his claim. At a
17 minimum, he has “raised a serious question going to the merits” of whether compelling
18 him to associate with UTLA violates his First Amendment rights. *All. for the Wild*
19 *Rockies*, 865 F.3d at 1217.

20 **II. Mr. Few will suffer irreparable injury.**

21 **A. Irreparable injury will result if the union is allowed to continue**
22 **deducting dues from Plaintiff’s paychecks.**

23 The continued deduction of union dues constitutes an irreparable injury to Mr. Few.
24 Deducting over a thousand dollars a year from his paycheck is not insignificant. The
25 deduction is a hardship on Mr. Few and his family that cannot be compensated merely by
26 returning his money with interest. The immediate injury being suffered by Mr. Few’s
27 current lack of funds is irreparable at a later date.

28 The withholding from Mr. Few’s paycheck also constitutes irreparable injury

1 because it is a compelled subsidy that UTLA will use to fund ideological activities Mr.
2 Few objects to. (Decl. of Pl. at ¶ 13.) Such deductions are not simply a matter of money
3 which could be returned with interest at the conclusion of litigation. Rendering a
4 compelled subsidy to be a compelled loan by refunding it at the close of his case would
5 not resolve Mr. Few’s injury:

6 [E]ven a full refund would not undo the violation of First Amendment rights.
7 . . . [T]he First Amendment does not permit a union to extract a loan from
8 unwilling nonmembers even if the money is later paid back in full.

9 *Knox*, 567 U.S. at 317.

10 Long before *Janus* recognized that agency fees were too great an imposition to pass
11 constitutional muster, the Supreme Court put safeguards in place to “avoid the risk that
12 [objecting employees’] funds will be used, even temporarily, to finance ideological
13 activities unrelated to collective bargaining.” *Chicago Teachers Union, Local No. 1 v.*
14 *Hudson*, 475 U.S. 292, 305 (1986). In the public sector context, even bargaining itself
15 inherently implicates political and ideological concerns. See *Janus*, 138 S. Ct. at 2473.
16 “Given the existence of acceptable alternatives, [a] union cannot be allowed to commit
17 dissenters’ funds to improper uses even temporarily.” *Ellis v. Bhd. of Ry. Employees*, 466
18 U.S. 435, 444 (1984). The temporary deprivation to which the union claims an entitlement
19 should not be countenanced. “First Amendment values are at serious risk if the
20 government can compel a particular citizen, or a discrete group of citizens, to pay special
21 subsidies for speech on the side that [the government] favors.” *United States v. United*
22 *Foods*, 533 U.S. 405, 429 (2001). The only way to avoid that risk in this case is to enjoin
23 the collection of Mr. Few’s dues immediately.

24 **B. Irreparable injury will result if the union continues to act as**
25 **Plaintiff’s exclusive representative.**

26 Even without access to Mr. Few’s money, UTLA would continue to impinge his
27 First Amendment rights by acting as his exclusive representative. As the Supreme Court
28 observed,

1 that status gives the union a privileged place in negotiations over wages,
2 benefits, and working conditions. Not only is the union given the exclusive
3 right to speak for all the employees in collective bargaining, but the
4 employer is required by state law to listen to and to bargain in good faith
5 with only that union. Designation as exclusive representative thus ‘results in
6 a tremendous increase in the power’ of the union.

7 *Janus*, 138 S. Ct. at 2467 (quoting *American Communications Assn. v. Douds*, 339
8 U.S. 382, 401 (1950)) (internal citations omitted). Continuing to force Mr. Few to
9 associate with UTLA in this way irreparably denies him the independent voice guaranteed
10 to him by the First Amendment.

11 California law expressly commands that Mr. Few “shall not meet and negotiate
12 with [his] public school employer.” Cal. Gov’t Code § 3543. Yet UTLA can commandeer
13 his association to support its view of how teachers should be compensated and promoted,
14 how schools should address employee benefits when faced with budget shortfalls, and
15 what textbooks and curricula students should be taught. Cal. Gov’t Code § 3543.2. This
16 infringement on speech is not only personal or professional, it is political: “[i]n the public
17 sector, core issues such as wages, pensions, and benefits are important political issues.”
18 *Harris v. Quinn*, 134 S. Ct. 2618, 2632 (2014). In place of Mr. Few’s right to express his
19 views, UTLA is licensed to intercede on his behalf and to claim his imprimatur as to any
20 number of topics affecting California’s education system.

21 This infringement is of acute consequence in the present moment, as at the time of
22 this filing UTLA is threatening to go on strike against LAUSD due to a contract dispute.
23 City News Service, *LA teachers union rejects latest contract offer from LAUSD*, Los
24 Angeles Daily News (Nov. 1, 2018), [https://www.dailynews.com/2018/11/01/la-teachers-
25 union-rejects-latest-contract-offer-from-lausd/](https://www.dailynews.com/2018/11/01/la-teachers-union-rejects-latest-contract-offer-from-lausd/) (“the dispute is now in a “fact-finding”
26 stage, after which the union could call for a walkout”). Mr. Few has no desire for such a
27 strike and would prefer to continue to teach if it occurs. (Few Decl. ¶ 14.) UTLA is fast
28 moving in the opposite direction, yet it claims to represent the views of Mr. Few.

Mr. Few will suffer irreparable injury if he is forced to strike because of his union

1 membership. Mr. Few fears that the union is driving him into a situation in which he may
2 not get paid for days, weeks, or months, due to a general strike in the district. Worse, he
3 fears the irreparable harm of the loss of his job during a strike if replacement workers are
4 hired. On the other hand, if Mr. Few chooses not to strike, he fears retaliation from his
5 peers or superiors for breaking ranks with the union. Either way, Mr. Few is suffering
6 irreparable injury because UTLA is advocating a position contrary to his beliefs. *Id.*

7 “The loss of First Amendment freedoms, for even minimal periods of time,
8 unquestionably constitutes irreparable injury.” *Elrod v. Burns*, 427 U.S. 347, 373 (1976).
9 The only solution which gives proper weight to Mr. Few’s rights under the constitution is
10 to enjoin the Attorney General from enforcing Cal. Gov’t Code § 3543 because it
11 authorizes UTLA to act as Mr. Few’s exclusive representative. Such representation should
12 be stopped immediately and for the duration of the case.

13 **III. The balance of equities in this case favors granting Mr. Few an**
14 **injunction.**

15 **A. Enjoining the collections of Mr. Few’s dues will not harm**
16 **defendants.**

17 “[U]nions have no constitutional entitlement to the fees of nonmember-employees.”
18 *Davenport v. Wash. Educ. Ass’n*, 551 U.S. 177, 185 (2007). Nor do they have the right to
19 claim the membership of employees who have not provided affirmative consent to opt
20 into that membership. *Janus*, 138 S. Ct. at 2486. Given that the entire risk of
21 constitutional deprivation falls on the employees rather than the union, courts must ask
22 “[w]hich side should bear this risk? The answer is obvious: the side whose constitutional
23 rights are not at stake.” *Knox*, 567 U.S. at 321.

24 As the Supreme Court recognized when considering the pre-*Janus* agency fee
25 regime, “if unconsenting nonmembers pay less than their proportionate share, no
26 constitutional right of the union is violated because the union has no constitutional right to
27 receive any payment from these employees . . . The union has simply lost for a few
28 months the ‘extraordinary’ benefit of being empowered to compel nonmembers to pay for

1 services that they may not want and in any event have not agreed to fund.” *Knox*, 567 U.S.
2 at 321 (internal citations omitted). The same logic applies here: at most, UTLA can try to
3 claim a contractual right to some dues from Mr. Few. Weighed against Mr. Few’s interest
4 in the vindication of his First Amendment rights, UTLA’s desire for his dues is
5 insubstantial.

6 The balance of equities, therefore, favors Mr. Few. Given his significant likelihood
7 of success on the merits, the court should therefore issue a preliminary injunction. And in
8 this case the balance of equities so strongly favors Mr. Few that, under this Circuit’s
9 alternative test, the Court should enjoin dues collection even if it believes Mr. Few has
10 only raised a substantial question going to the merits of his claim. *All. for the Wild*
11 *Rockies*, 865 F.3d at 1217.

12 **B. Enjoining the UTLA’s status as Mr. Few’s exclusive representative**
13 **will not harm defendants.**

14 Enjoining UTLA from acting as Mr. Few’s exclusive representative will impose no
15 substantial harm on defendants. UTLA will still collect dues from thousands of
16 government workers and will maintain thousands of members. Thus, the balance of
17 equities favors preventing harm to Mr. Few. Given the substantial likelihood that Mr. Few
18 will succeed on the merits, the Court should issue an injunction. And given that the
19 balance of equities here so strongly favors Mr. Few, the Court should issue the injunction
20 under the 9th Circuit’s alternative test, even if it feels Mr. Few has raised only a substantial
21 question as to the merits. *All. for the Wild Rockies*, 865 F.3d at 1217.

22 **IV. Sustaining Mr. Few’s Constitutional rights is in the public interest.**

23 The enforcement of constitutional rights is, by definition, in the public interest.
24 *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (“[I]t is always in the public
25 interest to prevent the violation of a party’s constitutional rights.” (quoting *Sammartano v.*
26 *First Jud. Dist. Ct.*, 303 F.3d 959, 974 (9th Cir. 2002))). Moreover, there is no
27 countervailing private interest in having UTLA continue to collect Mr. Few’s dues or to
28 act as his exclusive representative. UTLA rightfully enjoys substantial rights under the

1 First Amendment to advocate for the issues it cares about. *See Citizens United v. Federal*
2 *Election Comm'n*, 558 U.S. 310, 364 (2010) (striking down spending limits on union issue
3 advocacy).

4 It is in the public interest to allow multiple voices and expand free speech when it
5 comes to important policy questions. The public benefits from robust debate on these
6 topics. It will benefit even more if that debate is expanded by allowing Mr. Few to meet
7 and negotiate directly with his employer, which he is currently not permitted to do. Cal.
8 Gov't Code § 3543. The topics on which Mr. Few wishes to meet and negotiate, such as
9 the pay and promotion of teachers, are “fundamental questions of education policy.”
10 *Janus*, 138 S. Ct. at 2475. The public benefit of Mr. Few and other non-union members
11 expressing their views directly to LAUSD greatly outweighs whatever small diminution in
12 UTLA’s speech might result from the denial of Mr. Few’s dues or the right to speak on
13 his behalf.

14 CONCLUSION

15 For the above stated reasons, the motion for preliminary injunction should be
16 granted.

17
18 Dated: November 13, 2018

19 Respectfully submitted,

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