

1 John A. Vogt (State Bar No. 198677)
2 javogt@jonesday.com
3 Edward S. Chang (State Bar No. 241682)
4 JONES DAY
5 3161 Michelson Drive
6 Suite 800
7 Irvine, CA 92612.4408
8 Telephone: +1.949.851.3939
9 Facsimile: +1.949.553.7539

10 Michael A. Carvin (*Pro Hac Vice To Be Filed*)
11 macarvin@JonesDay.com
12 James M. Burnham (*Pro Hac Vice To Be Filed*)
13 JONES DAY
14 51 Louisiana Avenue, N.W.
15 Washington, D.C. 20001.2113
16 Telephone: +1.202.879.3939
17 Facsimile: +1.202.626.1700

18 Michael E. Rosman (*Pro Hac Vice To Be Filed*)
19 rosman@cir-usa.org
20 Center for Individual Rights
21 1233 20th St. NW, Suite 300
22 Washington, DC 20036
23 Telephone: +1.202.833.8400

24 ATTORNEYS FOR PLAINTIFFS

25 **UNITED STATES DISTRICT COURT**
26 **CENTRAL DISTRICT OF CALIFORNIA**
27 **SOUTHERN DIVISION**

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

Case No.

COMPLAINT

1 ASSOCIATION INTERNATIONAL,

2 Plaintiffs,

3 v.

4 CALIFORNIA TEACHERS
5 ASSOCIATION; NATIONAL
6 EDUCATION ASSOCIATION;
7 SAVANNA DISTRICT TEACHERS
8 ASSOCIATION, CTA/NEA;
9 SADDLEBACK VALLEY
10 EDUCATORS ASSOCIATION;
11 ORANGE UNIFIED EDUCATION
12 ASSOCIATION, INC.; KERN HIGH
13 SCHOOL TEACHERS
14 ASSOCIATION; NATIONAL
15 EDUCATION ASSOCIATION-
16 JURUPA; SANTA ANA
17 EDUCATORS ASSOCIATION, INC.;
18 TEACHERS ASSOCIATION OF
19 NORWALK-LA MIRADA AREA;
20 SANGER UNIFIED TEACHERS
21 ASSOCIATION; ASSOCIATED
22 CHINO TEACHERS; SAN LUIS
23 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,

24 Defendants.

25
26
27
28

1 Plaintiffs Rebecca Friedrichs, Scott Wilford, Jelena Figueroa, George W.
2 White, Jr., Kevin Roughton, Peggy Searcy, Jose Manso, Harlan Elrich, Karen Cuen,
3 Irene Zavala, and Christian Educators Association International (“CEAI”), by and
4 through their undersigned counsel, allege as follows:

5 **INTRODUCTION**

6 1. The First Amendment to the United States Constitution protects the
7 individual rights of free speech and free association, including the right to withhold
8 support from political causes and activities that conflict with one’s beliefs. “When a
9 State establishes an ‘agency shop’ that exacts compulsory union fees as a condition
10 of public employment, the dissenting employee is forced to support financially an
11 organization with whose principles and demands he may disagree. Because a
12 public-sector union takes many positions during collective bargaining that have
13 powerful political and civic consequences, the compulsory fees constitute a form of
14 compelled speech and association that imposes a significant impingement on First
15 Amendment rights.” *Knox v. Serv. Emps. Int’l Union, Local 1000*, 132 S. Ct. 2277,
16 2289 (2012) (citations and alterations omitted).

17 2. The State of California (the “State”) and its public school districts, in
18 cooperation with the California Teachers Association (“CTA”) and the other named
19 Defendants, maintain an “agency shop” arrangement that injures public school
20 teachers, including Plaintiffs, by forcing them to make financial contributions to
21 teachers’ unions as a condition of public employment. This agency-shop
22 arrangement is established and maintained under color of State law, the California
23 Educational Employment Relations Act (“EERA”), Cal. Gov’t Code § 3540 *et seq.*
24 Each year, the unions estimate a breakdown of expenditures that will be
25 “chargeable” (*i.e.*, germane to collective bargaining) and “non-chargeable” (*i.e.*,
26 political or ideological and not germane to collective bargaining). Teachers are
27 required to contribute to the union’s “chargeable” expenditures. Teachers who wish
28 to avoid contributing to a union’s “non-chargeable” expenditures are annually forced

1 to affirmatively express that they do not wish to contribute. Each year they must
2 send the union a new notice indicating their objection.

3 3. This “opt out” process is unnecessarily burdensome and time-
4 consuming and is susceptible to resistance and pressure from the unions and their
5 members.

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

11 5. California’s “agency shop” arrangement violates Plaintiffs’ First
12 Amendment rights in two distinct ways. First, the agency-shop arrangement violates
13 their rights of free speech and association by forcing them to contribute to so-called
14 “chargeable” union expenditures germane to collective bargaining, even though
15 those contributions provide economic support to “non-chargeable” union activities
16 and even though many of the “chargeable” expenditures and collective-bargaining
17 activities are contrary to Plaintiffs’ personal interests and political beliefs. Second,
18 the agency-shop arrangement violates Plaintiffs’ rights of free speech and
19 association by forcing them to undergo an “opt out” process each year to avoid
20 contributing to political and ideological expenditures that the unions concede are not
21 germane to collective bargaining.

22 6. These severe infringements on Plaintiffs’ rights to free speech and
23 association cannot withstand First Amendment scrutiny. Laws mandating
24 compulsory speech and association must be narrowly tailored to serve a compelling
25 government interest. California’s “agency shop” arrangement cannot meet that
26 standard. Requiring forced contributions of non-members for collective bargaining-
27 efforts in the public sector serves no compelling state interest and is not narrowly
28 tailored. Requiring non-members to contribute to “non-chargeable” union

1 expenditures unless they go through an annual opt-out process also serves no
2 compelling state interest and is not narrowly tailored.

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

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

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

26 10. Plaintiffs additionally request that this Court declare that the
27 Defendants' practice of requiring an annual affirmative "opt out" to avoid
28

1 contributing to “non-chargeable” union expenditures violates the First Amendment,
2 and enjoin Defendants from imposing this unconstitutional burden.

3 **PARTIES**

4 11. Plaintiff Rebecca Friedrichs has been a public school teacher in the
5 Savanna School District for 25 years. She resigned her union membership in 2012
6 and opted out of paying the non-chargeable portion of the agency fees. But for
7 California’s “agency shop” arrangement, Ms. Friedrichs would not pay fees to or
8 otherwise subsidize the teachers’ union, and she objects to the State’s forced
9 subsidization policy. She objects to many of the unions’ public policy positions,
10 including positions taken in collective bargaining.

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

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

26 14. Plaintiff George W. White, Jr., has been a public school teacher in the
27 Kern High School District for 28 years. He resigned his union membership in 2000.
28 Every year since, he has opted out of paying the non-chargeable portion of the

1 agency fees. But for California’s “agency shop” arrangement, Mr. White would not
2 pay fees to or otherwise subsidize the teachers’ union, and he objects to the State’s
3 forced subsidization policy. He objects to many of the unions’ public policy
4 positions, including positions taken in collective bargaining.

5 15. Plaintiff Kevin Roughton has been a public school teacher in the Jurupa
6 Unified School District for eleven years. He resigned his union membership in
7 2008. Every year since, he has opted out of paying the non-chargeable portion of
8 the agency fees. But for California’s “agency shop” arrangement, Mr. Roughton
9 would not pay fees to or otherwise subsidize the teachers’ union, and he objects to
10 the State’s forced subsidization policy. He objects to many of the unions’ public
11 policy positions, including positions taken in collective bargaining.

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

19 17. Plaintiff Jose Manso began teaching in 1979. He left the profession for
20 a 23-year period and returned to teaching fulltime in the Norwalk-La Mirada Unified
21 School District in 2002. He resigned his union membership in 2010. Every year
22 since, he has opted out of paying the non-chargeable portion of the agency fees. But
23 for California’s “agency shop” arrangement, Mr. Manso would not pay fees to or
24 otherwise subsidize the teachers’ union, and he objects to the State’s forced
25 subsidization policy. He objects to many of the unions’ public policy positions,
26 including positions taken in collective bargaining.

27 18. Plaintiff Harlan Elrich has been a public school teacher for over 26
28 years and has been a public school teacher in California for over 20 years. He has

1 been a teacher in the Sanger Unified School District for 8 years. He resigned his
2 union membership in 2012 and opted out of paying the non-chargeable portion of
3 the agency fees. But for California’s “agency shop” arrangement, Mr. Elrich would
4 not pay fees to or otherwise subsidize the teachers’ union, and he objects to the
5 State’s forced subsidization policy. He objects to many of the unions’ public policy
6 positions, including positions taken in collective bargaining.

7 19. Plaintiff Karen Cuen has been a public school teacher in California for
8 25 years. She has been a teacher in the Chino Valley Unified School District for 20
9 years. She resigned her union membership in 1997. Every year since, she has opted
10 out of paying the non-chargeable portion of the agency fees. But for California’s
11 “agency shop” arrangement, Ms. Cuen would not pay fees to or otherwise subsidize
12 the teachers’ union, and she objects to the State’s forced subsidization policy. She
13 objects to many of the unions’ public policy positions, including positions taken in
14 collective bargaining.

15 20. Plaintiff Irene Zavala has been a public school teacher in California for
16 13 years. She began teaching in San Luis Obispo County in 2012. She resigned her
17 union membership in 2001. Because of her religious principles, Mrs. Zavala is a
18 religious objector under Cal. Gov’t Code § 3546.3 (providing that “any employee
19 who is a member of a religious body whose traditional tenets or teachings include
20 objections to joining or financially supporting employee organizations shall not be
21 required to join, maintain membership in, or financially support any employee
22 organization as a condition of employment; except that such employee may be
23 required, in lieu of a service fee, to pay sums equal to such service fee either to a
24 nonreligious, nonlabor organization, charitable fund . . . chosen by such employee
25 from a list of at least three such funds, designated in the organizational security
26 arrangement”). To qualify as a religious objector under her union’s collective-
27 bargaining agreement and California law, *id.*, Mrs. Zavala had to send a letter
28 confirming her religious objections to making contributions to the union. She then

1 had to engage in protracted e-mail correspondence with union and district officials
2 to ensure that her objections were processed. In accordance with State law, once
3 Mrs. Zavala’s objection was properly processed, she was required to donate the full
4 amount of the agency fee—not merely the chargeable portion—to one of three State-
5 approved charities specified in the collective-bargaining agreement. *See* San Luis
6 Obispo County Collective Bargaining Agreement, Art. 12.4.2 (attached as Ex. A).
7 But for California’s “agency shop” arrangement, Mrs. Zavala would not pay fees to
8 or otherwise subsidize the teachers’ union, would decide for herself how much to
9 donate in charitable contributions every year, and would not have her charitable
10 contributions constrained by a collective-bargaining agreement. She objects to the
11 State’s agency-shop law, and to many of the unions’ public policy positions,
12 including positions taken in collective bargaining.

13 21. Plaintiff CEAI is a non-profit religious organization that is the only
14 professional association specifically serving Christians working in public schools.
15 Founded and incorporated in the state of California, CEAI’s membership consists of
16 teachers, administrators, and para-professionals, and many other public and private
17 school employees. In addition, CEAI offers associate membership to parents,
18 pastors, school-board members, youth leaders, and others concerned or interested in
19 the education of the nation’s children. CEAI has approximately 600 members in the
20 State of California, most of whom are subject to the unconstitutional arrangements
21 outlined herein. Some of the individual Plaintiffs here—Kevin Roughton, Irene
22 Zavala, Peggy Searcy, Jose Manso, Rebecca Friedrichs, and Harlan Elrich—are
23 CEAI members. CEAI and its members object on policy grounds to the positions
24 taken by teachers’ unions in the collective bargaining process and outside of that
25 process. The interests that CEAI seeks to protect in this lawsuit are germane to the
26 organization’s purpose, and neither the claims asserted nor the relief requested
27 require the participation in this lawsuit of CEAI’s individual members. In addition,
28 Defendants’ conduct pursuant to the State’s agency-shop laws has the effect of

1 creating a drain on CEAI's resources. There is a direct conflict between CEAI's
2 mission and the challenged agency-shop arrangements, and CEAI engages in
3 counseling, referral, advocacy, and educational services relating to California's
4 agency-shop arrangements, independently of this litigation.

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

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

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

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

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

28

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

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

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

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

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

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

20 33. The San Luis Obispo County Education Association is the local union
21 that is recognized as the exclusive bargaining representative in the San Luis Obispo
22 County Office of Education. Its state affiliate is CTA and its national affiliate is
23 NEA.

24 34. Defendant school superintendents are the executive officers in charge
25 of the school districts that employ Plaintiff teachers, pay Plaintiff teachers' wages,
26 and process all deductions therefrom, including for union dues and "agency fees"
27 pursuant to "agency shop" arrangements authorized by State law. Cal. Gov't Code §
28

1 3540 *et seq.*, Cal. Educ. Code § 45061. Defendant school superintendents are sued
2 in their official capacity.

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

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

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

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

15 39. Defendant Elliott Duchon is the superintendent of the Jurupa Unified
16 School District, and is the executive officer who implements the deduction of
17 agency fees from the paychecks of Plaintiff Kevin Roughton.

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

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

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

27
28

1 school district) by submitting adequate proof that a majority of such employees in
2 the unit wish to be represented exclusively by the union. Cal. Gov't Code §§ 3544,
3 3544.1. "Public school employee" for these purposes is statutorily defined as "a
4 person employed by a public school employer except persons elected by popular
5 vote, persons appointed by the Governor of this state, management employees, and
6 confidential employees [who facilitate employee relations on behalf of
7 management]." *Id.* § 3540.1(j). When a union is designated as the exclusive
8 representative, all the "public school employees" in that district are represented
9 exclusively by the union for purposes of bargaining with the district. *Id.*
10 § 3543.1(a).

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

18 52. Under State law, a union that has been recognized as the exclusive
19 bargaining representative for a school district can enter into an agency-shop
20 arrangement (also known as an "organizational security agreement") with that
21 district. While teachers in the district are not required to become members of the
22 union, they are required to pay fees to the union as a condition of their employment.
23 *Id.* § 3546(a). State law authorizes the union to collect these "agency fees" from all
24 teachers in the district to fund the union's operations and expenditures. *Id.* Under
25 California law, the category of expenses covered by agency fees "may include, but
26 shall not necessarily be limited to, the cost of lobbying activities designed to foster
27 collective bargaining negotiations and contract administration, or to secure for the
28 represented employees advantages in wages, hours, and other conditions of

1 employment in addition to those secured through meeting and negotiating with the
2 employer.” *Id.* § 3546(b). Under the statute, the full amount of the “agency fee”
3 charged to non-members is determined by the union and “shall not exceed the dues
4 that are payable by members” of the union. *Id.* § 3546(a). In practice, the amount
5 of agency fees is typically equivalent to the amount of union dues.

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

20 54. Under State law, each school district may deduct agency fees from
21 teachers’ paychecks and pay the fees to the union recognized for that district. Cal.
22 Gov’t Code § 3546(a). Alternatively, “any employee may pay service fees directly
23 to the [union] in lieu of having such service fees deducted from the salary or wage
24 order.” Cal. Educ. Code § 45061. The amount of the total agency fee is determined
25 by the union based on an estimate of its expenditures in the coming year. The
26 “chargeable” and “non-chargeable” portions of the fee are calculated by the union
27 based on an audited financial report for a recent year of the union’s expenditures.
28 The union is required to include the audited financial report along with the

1 breakdown of “chargeable” and “non-chargeable” expenditures in the annual
2 “Hudson” notice sent out to teachers. *See* Regs. of Cal. Pub. Emp’t Relations Bd.
3 § 32992(b)(1).

4 55. An agency fee payer who disagrees with the union’s determination of
5 the chargeable portion of the agency fee may file a challenge with the union after
6 receiving the “Hudson” notice. Upon receipt of an agency fee challenge, the union
7 must request a prompt hearing regarding the agency-fee breakdown before an
8 impartial decisionmaker selected by either the American Arbitration Association or
9 the California State Mediation Service. *Id.* § 32994.

10 **II. The “Agency Shop” Arrangements in California’s Public School**
11 **Districts**

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

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

21 58. For each school district in which Plaintiffs are employed, the total
22 agency-fee amount is determined by the local union that is recognized as the
23 exclusive bargaining representative for that district, often in collaboration with CTA.
24 After the local union or CTA informs the school district of the annual agency-fee
25 amount, the school district automatically deducts that amount in pro rata shares from
26 the teacher’s regular paychecks (or, in some cases, the “chargeable” portions of the
27 fee for teachers who “opted out” of “non-chargeable” fees) unless the teacher
28 informs the district that he or she will pay the union directly. The school district

1 sends the deducted amounts directly to the local union, which then distributes part of
2 the fees to CTA and NEA.

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

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

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

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

1 check to the teacher equal to the non-chargeable portion of the annual agency fee.
2 Teachers who receive the “*Hudson*” notice also have the option to file a legal
3 challenge to the union’s calculation of the “chargeable” and “non-chargeable”
4 portions of the agency fee.

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

11 64. In order to participate in this “opt out” process, the teacher cannot be a
12 member of the union. This means that teachers who “opt out” must forgo the ability
13 to obtain direct benefits through the union, some of which benefits are typically (and
14 would likely otherwise be) obtainable through one’s employer. For example,
15 teachers who “opt out” are unable to obtain disability insurance as part of their
16 employment package. *See, e.g., CTA, Member Benefits,*
17 <http://archive.cta.org/MemberBenefits/Disability.html> (“Most school districts do not
18 provide disability insurance coverage for their employees.”); *id.* (“The CTA
19 Voluntary Disability Plan provides benefits to members when they become totally
20 disabled for any reason.”). Such insurance is necessary to, among other things,
21 provide teachers on maternity leave with monies approximating their regular salary.
22 Most school districts provide only differential pay during maternity leave (that is,
23 “the amount remaining of your salary after the district pays a substitute to fill your
24 position,” *CTA, Pregnancy and Parental Leave Rights,*
25 [http://ctainvest.org/home/insurance-estate-planning/disability-long-term/pregnancy-](http://ctainvest.org/home/insurance-estate-planning/disability-long-term/pregnancy-and-parental-leave-rights.aspx)
26 [and-parental-leave-rights.aspx](http://ctainvest.org/home/insurance-estate-planning/disability-long-term/pregnancy-and-parental-leave-rights.aspx)), leaving disability insurance to make up the
27 difference). *See CTA, Member Benefits; CTA, How is CTA saving you money?,*
28

1 <http://www.cta.org/Professional-Development/Publications/2012/12/December->
2 [2012-Educator-Magazine/How-CTA-is-saving-you-money.aspx](http://www.cta.org/Professional-Development/Publications/2012/12/December-2012-Educator-Magazine/How-CTA-is-saving-you-money.aspx).

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

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

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

16 68. Dues and agency fees yield significant revenues for the unions. For
17 example, CTA's revenue in 2009 was \$186 million, primarily from membership
18 dues and fees. In 2011, it was over \$191 million, over \$178 million of which came
19 from membership dues and fees.

20 69. CTA spent over \$211 million in political expenditures from 2000
21 through 2009. CTA's largest single expenditure, of over \$26 million, was made to
22 successfully oppose Proposition 38 on the 2000 ballot, which would have enacted a
23 school-voucher system in California and thereby increased the potential employment
24 pool for teachers. CTA also spent over \$50 million to oppose three ballot initiatives
25 in 2005, including Proposition 74, which sought to make changes in the
26 probationary period for California school teachers; Proposition 75, which sought to
27 prohibit the use of public employee agency fees for political contributions without
28

1 individual employees' prior consent; and Proposition 76, concerning state spending
2 and minimum school-funding requirements. *See* California Fair Political Practices
3 Commission, *Big Money Talks*, at 11-12 (Mar. 2010),
4 <http://www.fppc.ca.gov/reports/Report38104.pdf>. CTA also takes public positions
5 on a wide range of issues both related and unrelated to the educational system. For
6 example, CTA opposes school vouchers (CTA, *Issues & Action: Vouchers*,
7 <http://www.cta.org/Issues-and-Action/Education-Reform/Vouchers.aspx>) and
8 supports immigration reform that provides “timely legalization without regard to
9 national origin” (CTA, *Issues in Action: Immigration*, [http://www.cta.org/en/Issues-](http://www.cta.org/en/Issues-and-Action/Ongoing-Issues/Immigration.aspx)
10 [and-Action/Ongoing-Issues/Immigration.aspx](http://www.cta.org/en/Issues-and-Action/Ongoing-Issues/Immigration.aspx)).

11 70. CTA is a major donor to the California Democratic Party. From 2003
12 to 2012, CTA spent nearly \$102 million on political contributions, with only 0.08
13 percent of that money going to Republicans. *See* Troy Senik, *The Worst Union in*
14 *America*, *City Journal* (Spring 2012). CTA also spends money on direct political
15 advocacy, much of which is on issues with no connection to education. For
16 example, the California Teachers Association spent over \$1 million in opposition to
17 Proposition 8 (the gay marriage initiative). *See, e.g.*, Evelyn Larrubia, *\$1 million*
18 *from teachers' union to oppose Prop. 8*, *L.A. Times* (Oct. 17, 2008),
19 <http://articles.latimes.com/2008/oct/17/local/me-teachers17>.

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

- 27 • “Take ½ photo of Assembly members and have kids draw the other half
28 with a message stating what they want for their teachers,” State of

1 Emergency, *State Council Ideas for Potential Activities*, at 1,
2 <http://www.eiaonline.com/CTAStateofEmergencyIdeas.pdf>,

- 3 • Have their “students create a BIG poster on a school bus that is sent to
4 Sacramento,” *id.* at 5,
- 5 • Organize a “Student Video Contest” in which those teachers would
6 conduct a “contest for youth to create a video about what education
7 costs would mean to them,” *id.* at 10.

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

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

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

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

26 Further, while the documents that CTA gives to teachers do not provide much detail
27 on the activities underlying the listed charges, those documents do further reflect
28 that CTA deems “Regional Services” to be 93.1% chargeable, *id.* at 17, despite

1 “Regional Services” appearing to contain expenditures on numerous activities of a
2 non-bargaining-related nature. *See id.* at 28-29 (listing as several targets of
3 “emphasis” in 2010-2011, “[e]xpanding the CTA membership base”; “[a]ssistance
4 with chapter organization”; “identification and development of local issues”;
5 “[o]rganizing and training for political action and community outreach”).

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

9 76. NEA likewise classifies expenditures as “chargeable” even when those
10 expenditures appear to have little to do with collective bargaining. For example, in
11 2010-2011, NEA deemed “[p]rovide technical and financial support to affiliates
12 engaged in or preparing to engage in comprehensive salary campaigns” to be 76%
13 chargeable. *See* NEA Combined Financial Statements at 28 (Aug. 31, 2011)
14 (attached as Ex. D). NEA likewise deemed:

- 15 • “Provide resources to assist affiliates build capacity to support their
16 initiatives designed to advance pro-public education policies for
17 student learning and workforce quality,” to be 91.5% chargeable, *id.*,
- 18 • “Affiliate programs and services that increase membership,” to be
19 73.38% chargeable, *id.*,
- 20 • “[B]uild[ing] affiliate capacity for membership growth through project
21 funding and constituency group assistance,” to be 81% chargeable, *id.*
22 at 35,
- 23 • “Facilitate[] the development of NEA strategy and operations,”
24 “[i]mplement[] workplace culture initiative,” and “[m]aintain[] NEA
25 records archives,” to be 80.9% chargeable, NEA Letter, *Chargeable &*
26 *Nonchargeable Audited Expenditures for the 2010-2011 Fiscal Year*, at
27 15 (Aug. 9, 2012) (attached as Ex. E), and
28

- 1 • Conferences for NEA staff to be 100% chargeable, *id.* at 16
2 (“Provided learning opportunities through the Leadership Institute that
3 enhance NEA staff’s professional skills and contribute to high
4 performance.”).

5 NEA also deems to be partially chargeable spending such as “[c]ommunicate the
6 NEA beliefs, qualities, and services to engage members and improve target
7 audiences’ recognition of NEA through print and electronic media” (13.36%
8 chargeable), NEA Combined Financial Statements, at 36 (Ex. D), “[i]ncrease
9 efficient use of campaign tools, technology, and resources in all NEA targeted
10 campaigns” (14.09% chargeable), *id.*, and “[p]artner with ethnic minority, civil
11 rights, and other organizations to advance NEA’s commitment to social justice”
12 (36.76% chargeable), NEA Letter, *Chargeable & Nonchargeable Audited*
13 *Expenditures for the 2010-2011 Fiscal Year*, at 11 (Ex. E).

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

20 **III. California’s “Agency Shop” Law Violates the First Amendment**

21 78. California’s agency-shop arrangement violates the First Amendment
22 rights of Plaintiffs and other public-school teachers who are not voluntary union
23 members. There is no justification—much less a compelling one—for mandating
24 that Plaintiffs make contributions to support collective bargaining and the other
25 activities of California’s teachers’ unions, which are among the most powerful and
26 politically controversial organizations in the State. Particularly given the inherently
27 political nature of collective bargaining and its profound economic consequences,
28 the First Amendment forbids coercing any money from Plaintiffs to fund so-called

1 “chargeable” union expenditures. Moreover, even if the First Amendment did
2 somehow tolerate conditioning public employment on subsidizing the unions, there
3 is still no justification for forcing Plaintiffs and other teachers to pay for political
4 and ideological activities—expenditures that the unions themselves admit are “non-
5 chargeable” under the First Amendment—unless they affirmatively “opt out” of
6 making payments each year.

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

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

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

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

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

13 **B. The “Opt Out” Requirement for Non-Chargeable Expenditures is**
14 **Unconstitutional.**

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

22 84. This requirement to pay for political and ideological activities absent
23 annual, affirmative disapproval constitutes a serious burden on the First Amendment
24 rights of public employees. It also creates an environment susceptible to contrary
25 pressure by union personnel. Finally, given the strong likelihood that individuals
26 who choose not to join the union prefer not to subsidize the union’s explicitly
27 political expenditures by paying full agency fees, nonmembers should be presumed
28 to be non-contributors unless they affirmatively “opt in.” In short, the Constitution

1 requires unions seeking political donations to solicit those donations from non-
2 members through the ordinary process of voluntary, affirmative consent.

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

9 **FIRST COUNT**

10 **Exacting Compulsory Fees to Support Collective Bargaining** 11 **Violates the First Amendment**

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

14 87. The First Amendment to the United States Constitution provides:
15 “Congress shall make no law . . . abridging the freedom of speech.”

16 88. The Fourteenth Amendment to the United States Constitution
17 incorporates the protection of the First Amendment against the States, providing:
18 “No State shall make or enforce any law which shall abridge the privileges or
19 immunities of citizens of the United States; nor shall any State deprive any person of
20 life, liberty, or property, without due process of law; nor deny to any person within
21 its jurisdiction the equal protection of the laws.”

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

26 90. Plaintiffs have no adequate remedy at law.
27
28

1 barring Defendants from seeking to require payments for “non-chargeable”
2 expenditures from any employee who has not affirmatively stated a willingness to
3 financially support such expenditures;

4 (D) Grant Plaintiffs such additional or different relief as it deems just and
5 proper, including an award of reasonable attorneys’ fees and the costs of this action.

6 Dated: April 30, 2013 JONES DAY

7
8 By: _____
9 John A. Vogt

10 ATTORNEYS FOR PLAINTIFFS

11
12 Michael A. Carvin, Esq. (*Pro Hac Vice To Be Filed*)
13 James M. Burnham, Esq. (*Pro Hac Vice To Be Filed*)
14 JONES DAY
15 51 Louisiana Avenue
16 Washington, DC 20001-2113

17 Michael E. Rosman (*Pro Hac Vice To Be Filed*)
18 Center for Individual Rights
19 1233 20th St. NW, Suite 300
20 Washington DC 20036

21 ATTORNEYS FOR PLAINTIFFS
22
23
24
25
26
27
28