

1 John A. Vogt (State Bar No. 198677)  
 Edward S. Chang (State Bar No. 241682)  
 2 Ann T. Rossum (State Bar No. 2871236)  
 JONES DAY  
 3 3161 Michelson Drive, Suite 800  
 Irvine, CA 92612  
 4 Telephone: (949) 851.3939  
 Facsimile: (949) 553.7539  
 5 Email: [javogt@jonesday.com](mailto:javogt@jonesday.com)  
 Email: [echang@jonesday.com](mailto:echang@jonesday.com)  
 6 Email: [atrossum@jonesday.com](mailto:atrossum@jonesday.com)

7 Michael A. Carvin (*Pro Hac Vice to be filed*)  
 Anthony J. Dick (*Pro Hac Vice to be filed*)  
 8 William D. Coglianesse (*Pro Hac Vice to be filed*)  
 JONES DAY  
 9 51 Louisiana Avenue NW  
 Washington, DC 20001  
 10 Telephone: (202) 879.3939  
 Facsimile: (202) 626.1700  
 11 Email: [macarvin@jonesday.com](mailto:macarvin@jonesday.com)  
 Email: [ajdick@jonesday.com](mailto:ajdick@jonesday.com)  
 12 Email: [wcoglianesse@jonesday.com](mailto:wcoglianesse@jonesday.com)

13 Michael E. Rosman (*Pro Hac Vice to be filed*)  
 CENTER FOR INDIVIDUAL RIGHTS  
 14 1100 Connecticut Ave. NW, Suite 625  
 Washington, DC 20036  
 15 Telephone: (202) 833.8400  
 Facsimile: (202) 833.8410  
 16 Email: [rosman@cir-usa.org](mailto:rosman@cir-usa.org)

17 Attorneys for Plaintiffs

18 UNITED STATES DISTRICT COURT  
 19 CENTRAL DISTRICT OF CALIFORNIA  
 20 SOUTHERN DIVISION

22 RYAN YOHN; MICHELLE RALEY;  
 23 STACY VEHRs; ROBERT VEHRs;  
 24 DARREN MILLER; BRUCE ASTER;  
 ALLEN OSBORN; GEORGE  
 25 MEILAHN; ASSOCIATION OF  
 AMERICAN EDUCATORS,

26 Plaintiffs,

27 v.

Case No. \_\_\_\_\_

**COMPLAINT**

1 CALIFORNIA TEACHERS  
ASSOCIATION; NATIONAL  
2 EDUCATION ASSOCIATION;  
WESTMINSTER TEACHERS  
3 ASSOCIATION; EUREKA UNION  
TEACHERS ASSOCIATION;  
4 PORTERVILLE EDUCATORS  
ASSOCIATION; SAN JUAN  
5 TEACHERS ASSOCIATION;  
CARLSBAD UNIFIED TEACHERS  
6 ASSOCIATION; RIVERSIDE CITY  
TEACHERS ASSOCIATION;  
7 PITTSBURG EDUCATION  
ASSOCIATION; MARIAN KIM  
8 PHELPS, in her official capacity as  
Superintendent of Westminster School  
9 District; TOM JANIS, in his official  
capacity as Superintendent of Eureka  
10 Union School District; KEN GIBBS, in  
his official capacity as Superintendent  
11 of Porterville Unified School District;  
KENT KERN, in his official capacity  
12 as Superintendent of San Juan Unified  
School District; BENJAMIN  
13 CHURCHILL, in his official capacity  
as Superintendent of Carlsbad Unified  
14 School District; DAVID HANSEN, in  
his official capacity as Superintendent  
15 of Riverside Unified School District;  
JANET SCHULZE, in her official  
16 capacity as Superintendent of Pittsburg  
Unified School District; XAVIER  
17 BECERRA, in his official capacity as  
Attorney General of California,

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Defendants.

1 Plaintiffs Ryan Yohn, Michelle Raley, Stacy Vehrs, Robert Vehrs, Darren  
2 Miller, Bruce Aster, Allen Osborn, George Meilahn, and the Association of  
3 American Educators, by and through their undersigned counsel, allege as follows:

4 **INTRODUCTION**

5 1. The First Amendment to the United States Constitution protects the  
6 individual rights of free speech and free association, including the right to withhold  
7 support from political causes and activities that conflict with one’s beliefs. “When  
8 a State establishes an ‘agency shop’ that exacts compulsory union fees as a  
9 condition of public employment, ‘the dissenting employee is forced to support  
10 financially an organization with whose principles and demands he may disagree.’  
11 Because a public-sector union takes many positions during collective bargaining  
12 that have powerful political and civic consequences, the compulsory fees constitute  
13 a form of compelled speech and association that imposes a significant impingement  
14 on First Amendment rights.” *Knox v. SEIU, Local 1000*, 132 S. Ct. 2277, 2289  
15 (2012) (citations and alterations omitted). Indeed, “[a]gency-fee provisions  
16 unquestionably impose a heavy burden on the First Amendment interests of  
17 objecting employees.” *Harris v. Quinn*, 134 S. Ct. 2618, 2643 (2014).

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

1 nonchargeable expenditures are annually forced to affirmatively express that they  
2 do not wish to contribute. Each year they must send the union a new notice  
3 indicating their objection. This opt-out process is unnecessarily burdensome.

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

9 4. California's agency-shop arrangement violates Plaintiffs' First  
10 Amendment rights in two distinct ways. First, it violates Plaintiffs' rights of free  
11 speech and association by forcing them to contribute to so-called chargeable union  
12 expenditures that are germane to collective bargaining, even though those  
13 contributions provide economic support to nonchargeable union activities and even  
14 though many of the chargeable expenditures and collective-bargaining activities are  
15 contrary to Plaintiffs' political beliefs and personal interests. Second, the agency-  
16 shop arrangement violates Plaintiffs' rights of free speech and association by  
17 forcing them to undergo an opt-out process each year to avoid contributing to  
18 political and ideological expenditures that Defendant Unions<sup>1</sup> concede are *not*  
19 germane to collective bargaining.

20 5. These severe infringements on Plaintiffs' rights to free speech and  
21 association cannot withstand First Amendment scrutiny. Laws mandating  
22 compulsory speech and association must be narrowly tailored to serve a compelling  
23 government interest. California's agency-shop arrangement cannot meet that  
24 standard. Requiring nonmembers to make forced contributions to public-sector  
25 collective-bargaining efforts serves no compelling state interest and is not narrowly  
26 tailored. Similarly, requiring nonmembers to contribute to nonchargeable union

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28 <sup>1</sup> In this Complaint, "Defendant Unions" encompasses CTA, the National  
Education Association ("NEA"), and the seven Defendant Local Unions.

1 expenditures, unless they annually opt out of doing so, also serves no compelling  
2 state interest and is not narrowly tailored. Also, neither the agency shop nor the  
3 opt-out requirement can satisfy even the lower standard that applies to employee  
4 speech on matters of public concern, under which courts balance the employee's  
5 interests in speaking against the government's interests, as an employer, in  
6 suppressing the speech.

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

18 7. Recognizing that compulsory agency fees violate the First Amendment  
19 will not undermine Defendant Unions' authority or entitlement to engage in  
20 collective bargaining. The Defendant Local Unions will remain the exclusive  
21 collective-bargaining agent in each school district as long as they retain the support  
22 of a majority of teachers in those districts. Public-school teachers will, therefore,  
23 remain fully entitled to join together and collectively bargain through Defendant  
24 Unions for any and all desired labor protections.

25 8. Given the severe and ongoing infringement of Plaintiffs' rights to free  
26 speech and free association, Plaintiffs respectfully request that this Court declare  
27 that California's practice of forcing nonunion members to contribute funds to  
28 unions—including funds to support their collective-bargaining activities—violates

1 the First Amendment, and enjoin Defendants from enforcing this unconstitutional  
2 arrangement.

3 9. Plaintiffs additionally request that this Court declare that Defendants'  
4 practice of requiring an annual affirmative opt-out to avoid contributing to  
5 nonchargeable union expenditures violates the First Amendment, and enjoin  
6 Defendants from imposing this unconstitutional burden.

7 **PARTIES**

8 10. Plaintiff Ryan Yohn has been a public-school teacher in the  
9 Westminster School District for 13 years. He resigned his union membership in  
10 2012. Nevertheless, the collective-bargaining agreement in his district requires Mr.  
11 Yohn to pay agency fees to the union that is recognized as the exclusive  
12 representative, Defendant Westminster Teachers Association. CBA Between  
13 Westminster Sch. Dist. & Westminster Teachers Association, at Art. III, § 4.2  
14 (attached as Exhibit A). Since resigning his union membership, Mr. Yohn has  
15 opted out of paying the nonchargeable portion of the agency fees. But for  
16 California's agency-shop arrangement, Mr. Yohn would not pay fees to or  
17 otherwise subsidize the teachers' union, and he objects to the State's forced  
18 subsidization policy. Mr. Yohn objects to the agency shop, the opt-out  
19 requirement, and many of the unions' public-policy positions, including positions  
20 taken in collective bargaining. If it were not for Westminster School District's  
21 agency-shop arrangement with the Westminster Teachers Association, and if it  
22 were not for California's law authorizing and implementing these arrangements,  
23 Mr. Yohn would not pay any fees to or otherwise subsidize the Westminster  
24 Teachers Association, CTA, or NEA.

25 11. Plaintiff Michelle Raley has been a public-school teacher in the Eureka  
26 Union School District for 17 years. She resigned her union membership in 2015.  
27 Nevertheless, the collective-bargaining agreement in her district requires Ms. Raley  
28 to pay agency fees to the union that is recognized as the exclusive representative,

1 Defendant Eureka Union Teachers Association. CBA Between Eureka Union  
2 Elementary School District & Eureka Union Teachers Association, at § 9.1  
3 (attached as Exhibit B). Since resigning her union membership, Ms. Raley has  
4 opted out of paying the nonchargeable portion of the agency fees. But for  
5 California's agency-shop arrangement, Ms. Raley would not pay fees to or  
6 otherwise subsidize the teachers' union, and she objects to the State's forced  
7 subsidization policy. Ms. Raley objects to the agency shop, the opt-out  
8 requirement, and many of the unions' public-policy positions, including positions  
9 taken in collective bargaining. If it were not for Eureka Union School District's  
10 agency-shop arrangement with the Eureka Union Teachers Association, and if it  
11 were not for California's law authorizing and implementing these arrangements,  
12 Ms. Raley would not pay any fees to or otherwise subsidize the Eureka Union  
13 Teachers Association, CTA, or NEA.

14 12. Plaintiff Stacy Vehrs has been a public-school teacher in the  
15 Porterville Unified School District for 24 years. Ms. Vehrs has never been a  
16 member of the union that is recognized as the exclusive representative in her  
17 district, Defendant Porterville Educators Association. Nevertheless, the collective-  
18 bargaining agreement in her district requires Ms. Vehrs to pay agency fees to  
19 Defendant Porterville Educators Association. CBA Between Porterville Unified  
20 Sch. Dist. & Porterville Educators Ass'n, at Art. XXXII (attached as Exhibit C).  
21 Ms. Vehrs has opted out of paying the nonchargeable portion of the agency fees.  
22 But for California's agency-shop arrangement, Ms. Vehrs would not pay fees to or  
23 otherwise subsidize the teachers' union, and she objects to the State's forced  
24 subsidization policy. Ms. Vehrs objects to the agency shop, the opt-out  
25 requirement, and many of the unions' public-policy positions, including positions  
26 taken in collective bargaining. If it were not for Porterville Unified School  
27 District's agency-shop arrangement with the Porterville Educators Association, and  
28 if it were not for California's law authorizing and implementing these

1 arrangements, Ms. Vehrs would not pay any fees to or otherwise subsidize the  
2 Porterville Educators Association, CTA, or NEA.

3 13. Plaintiff Robert Vehrs has been a public-school teacher in the  
4 Porterville Unified School District for 27 years. Mr. Vehrs has never been a  
5 member of the union that is recognized as the exclusive representative in his  
6 district, Defendant Porterville Educators Association. Nevertheless, the collective-  
7 bargaining agreement in his district requires Mr. Vehrs to pay agency fees to  
8 Defendant Porterville Educators Association. Ex. C at Art. XXXII. Mr. Vehrs has  
9 opted out of paying the nonchargeable portion of the agency fees. But for  
10 California's agency-shop arrangement, Mr. Vehrs would not pay fees to or  
11 otherwise subsidize the teachers' union, and he objects to the State's forced  
12 subsidization policy. Mr. Vehrs objects to the agency shop, the opt-out  
13 requirement, and many of the unions' public-policy positions, including positions  
14 taken in collective bargaining. If it were not for Porterville Unified School  
15 District's agency-shop arrangement with the Porterville Educators Association, and  
16 if it were not for California's law authorizing and implementing these  
17 arrangements, Mr. Vehrs would not pay any fees to or otherwise subsidize the  
18 Porterville Educators Association, CTA, or NEA.

19 14. Plaintiff Darren Miller has been a public-school teacher in the San  
20 Juan Unified School District for 16 years. He resigned his union membership in  
21 2005. Nevertheless, the collective-bargaining agreement in his district requires Mr.  
22 Miller to pay agency fees to the union that is recognized as the exclusive  
23 representative, Defendant San Juan Teachers Association. CBA Between San Juan  
24 Unified Sch. Dist. & San Juan Teachers Ass'n, at § 12.05.1 (attached as Exhibit D).  
25 Since resigning his union membership, Mr. Miller has opted out of paying the  
26 nonchargeable portion of the agency fees. But for California's agency-shop  
27 arrangement, Mr. Miller would not pay fees to or otherwise subsidize the teachers'  
28 union, and he objects to the State's forced subsidization policy. Mr. Miller objects

1 to the agency shop, the opt-out requirement, and many of the unions' public-policy  
2 positions, including positions taken in collective bargaining. If it were not for San  
3 Juan Unified School District's agency-shop arrangement with the San Juan  
4 Teachers Association, and if it were not for California's law authorizing and  
5 implementing these arrangements, Mr. Miller would not pay any fees to or  
6 otherwise subsidize the San Juan Teachers Association, CTA, or NEA.

7 15. Plaintiff Bruce Aster has been a public-school teacher in the Carlsbad  
8 Unified School District for 29 years. Mr. Aster has never been a member of the  
9 union that is recognized as the exclusive representative in his district, Defendant  
10 Carlsbad Unified Teachers Association. Nevertheless, the collective-bargaining  
11 agreement in his district requires Mr. Aster to pay agency fees to Defendant  
12 Carlsbad Unified Teachers Association. CBA Between Carlsbad Unified Sch. Dist.  
13 & Carlsbad Unified Teachers Ass'n, at § 21.1 (attached as Exhibit E). Mr. Aster  
14 has opted out of paying the nonchargeable portion of the agency fees. But for  
15 California's agency-shop arrangement, Mr. Aster would not pay fees to or  
16 otherwise subsidize the teachers' union, and he objects to the State's forced  
17 subsidization policy. Mr. Aster objects to the agency shop, the opt-out requirement,  
18 and many of the unions' public-policy positions, including positions taken in  
19 collective bargaining. If it were not for Carlsbad Unified School District's agency-  
20 shop arrangement with the Carlsbad Unified Teachers Association, and if it were  
21 not for California's law authorizing and implementing these arrangements, Mr.  
22 Aster would not pay any fees to or otherwise subsidize the Carlsbad Unified  
23 Teachers Association, CTA, or NEA.

24 16. Plaintiff Allen Osborn has been a public-school teacher in the  
25 Riverside Unified School District for 11 years. Mr. Osborn has never been a  
26 member of the union that is recognized as the exclusive representative in his  
27 district, Defendant Riverside City Teachers Association. Nevertheless, the  
28 collective-bargaining agreement in his district requires Mr. Osborn to pay agency

1 fees to Defendant Riverside City Teachers Association. CBA Between Riverside  
2 Unified Sch. Dist. & Riverside City Teachers Ass'n, at Art. VI, § 2 (attached as  
3 Exhibit F). Mr. Osborn has opted out of paying the nonchargeable portion of the  
4 agency fees. But for California's agency-shop arrangement, Mr. Osborn would not  
5 pay fees to or otherwise subsidize the teachers' union, and he objects to the State's  
6 forced subsidization policy. Mr. Osborn objects to the agency shop, the opt-out  
7 requirement, and many of the unions' public-policy positions, including positions  
8 taken in collective bargaining. If it were not for Riverside Unified School District's  
9 agency-shop arrangement with the Riverside City Teachers Association, and if it  
10 were not for California's law authorizing and implementing these arrangements,  
11 Mr. Osborn would not pay any fees to or otherwise subsidize the Riverside City  
12 Teachers Association, CTA, or NEA.

13 17. Plaintiff George Meilahn has been a public-school teacher in the  
14 Pittsburg Unified School District for 19 years. He resigned his union membership  
15 in 2006. Because of his religious principles, Mr. Meilahn is a religious objector  
16 under California Government Code section 3546.3, which provides that "any  
17 employee who is a member of a religious body whose traditional tenets or teachings  
18 include objections to joining or financially supporting employee organizations shall  
19 not be required to join, maintain membership in, or financially support any  
20 employee organization as a condition of employment." Under section 3546.3, a  
21 religious objector can be required, as a condition of employment, to pay a sum  
22 equal to the agency fee (including the non-chargeable portion) "to a nonreligious,  
23 nonlabor organization, charitable fund" that the employee chooses from a list of at  
24 least three such charitable funds. The charitable funds included on this list are  
25 chosen by the union that is recognized as the exclusive representative for that  
26 district. In accordance with State law and the collective-bargaining agreement  
27 entered into by the union representing his district (Defendant Pittsburg Education  
28 Association), each year Mr. Meilahn is required to donate the full amount of the

1 agency fee—not merely the chargeable portion—to one of four State-approved  
2 charities specified in the collective-bargaining agreement. CBA Between Pittsburg  
3 Unified Sch. Dist. & Pittsburg Education Ass’n, at § 5.3 (attached as Exhibit G).  
4 Despite having made known his objection to paying any amount to a union, Mr.  
5 Meilahn recently learned that his district is automatically deducting \$1 from each of  
6 his paychecks and giving that amount to Defendant Pittsburg Education  
7 Association. Email from R. Cuyugan to G. Meilahn (Jan. 26, 2017) (attached as  
8 Exhibit H). Mr. Meilahn was never informed of this change, and objects to this  
9 redirection of his earnings to a union. Mr. Meilahn objects to the agency shop, the  
10 opt-out requirement, and many of the unions’ public-policy positions, including  
11 positions taken in collective bargaining. But for California’s agency-shop  
12 arrangement, Mr. Meilahn would not pay fees to or otherwise subsidize the  
13 teachers’ union, would decide for himself how much to donate in charitable  
14 contributions every year, and would not have his charitable contributions  
15 constrained by a collective-bargaining agreement.

16 18. Plaintiff Association of American Educators (“AAE”) is a nonprofit  
17 organization representing nonunion professional educators. Founded and  
18 incorporated in California, AAE’s membership consists of teachers, administrators,  
19 and para-professionals, and many other public- and private-school employees.  
20 AAE has approximately 1,400 members in the State of California, most of whom  
21 are subject to the unconstitutional arrangements outlined herein. The individual  
22 Plaintiffs here are AAE members. AAE and its members object to California’s  
23 laws authorizing agency-shop arrangements and opt-out requirements, and also  
24 object on policy grounds to the positions taken by teachers’ unions in the  
25 collective-bargaining process and outside of that process. The interests that AAE  
26 seeks to protect in this lawsuit are germane to the organization’s purpose, and  
27 neither the claims asserted nor the relief requested require the participation in this  
28 lawsuit of AAE’s individual members. In addition, Defendants’ conduct pursuant

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

6 19. Defendant California Teachers Association ("CTA") is the California  
7 affiliate of Defendant National Education Association. It is the largest teachers'  
8 union in California and one of the largest public-employee unions in the United  
9 States. It receives a share of the agency fees that are extracted from Plaintiffs and  
10 other public-school teachers under California's agency-shop laws. It has annual  
11 revenues of over \$180 million per year. CTA is a major participant in California  
12 politics and is heavily active at all levels of state and local government.

13 20. Defendant National Education Association ("NEA") is the largest  
14 teachers' union in the United States and one of the largest public-sector unions. It  
15 receives a share of the agency fees that are extracted from Plaintiffs and other  
16 public-school teachers under California's agency-shop laws. It has annual revenues  
17 of over \$400 million per year. NEA, *Financial Reports* at 8 (July 2016),  
18 <https://goo.gl/bzjLPZ>. NEA is a major participant in political activities at the  
19 national, state, and local levels.

20 21. Defendant Westminster Teachers Association is the local union that is  
21 recognized as the exclusive bargaining representative in the Westminster School  
22 District. Its state affiliate is CTA and its national affiliate is NEA.

23 22. Defendant Eureka Union Teachers Association is the local union that  
24 is recognized as the exclusive bargaining representative in the Eureka Union School  
25 District. Its state affiliate is CTA and its national affiliate is NEA.

26 23. Defendant Porterville Educators Association is the local union that is  
27 recognized as the exclusive bargaining representative in the Porterville Unified  
28 School District. Its state affiliate is CTA and its national affiliate is NEA.

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

4           25. Defendant Carlsbad Unified Teachers Association is the local union  
5 that is recognized as the exclusive bargaining representative in the Carlsbad Unified  
6 School District. Its state affiliate is CTA and its national affiliate is NEA.

7           26. Defendant Riverside City Teachers Association is the local union that  
8 is recognized as the exclusive bargaining representative in the Riverside Unified  
9 School District. Its state affiliate is CTA and its national affiliate is NEA.

10           27. Defendant Pittsburg Education Association is the local union that is  
11 recognized as the exclusive bargaining representative in the Pittsburg Unified  
12 School District. Its state affiliate is CTA and its national affiliate is NEA.

13           28. Defendant Superintendents are the executive officers in charge of the  
14 school districts that employ Plaintiff teachers, pay Plaintiff teachers' wages, and  
15 process all deductions therefrom, including for union dues and agency fees pursuant  
16 to agency-shop arrangements authorized by state law. Cal. Gov't Code § 3540 *et*  
17 *seq.*; Cal. Educ. Code § 45061. Defendant Superintendents are sued in their official  
18 capacity.

19           29. Defendant Marian Kim Phelps is the superintendent of Westminster  
20 School District, and is the executive officer who implements the deduction of  
21 agency fees from the paychecks of Plaintiff Ryan Yohn.

22           30. Defendant Tom Janis is the superintendent of Eureka Union School  
23 District, and is the executive officer who implements the deduction of agency fees  
24 from the paychecks of Plaintiff Michelle Raley.

25           31. Defendant Ken Gibbs is the superintendent of Porterville Unified  
26 School District, and is the executive officer who implements the deduction of  
27 agency fees from the paychecks of Plaintiffs Stacy Vehrs and Robert Vehrs.

28           32. Defendant Kent Kern is the superintendent of San Juan Unified School

1 District, and is the executive officer who implements the deduction of agency fees  
2 from the paychecks of Plaintiff Darren Miller.

3 33. Defendant Benjamin Churchill is the superintendent of Carlsbad  
4 Unified School District, and is the executive officer who implements the deduction  
5 of agency fees from the paychecks of Plaintiff Bruce Aster.

6 34. Defendant David Hansen is the superintendent of Riverside Unified  
7 School District, and is the executive officer who implements the deduction of  
8 agency fees from the paychecks of Plaintiff Allen Osborn.

9 35. Defendant Janet Schulze is the superintendent of Pittsburg Unified  
10 School District, and is the executive officer who implements the deduction of  
11 charitable contributions from the paychecks of Plaintiff George Meilahn.

12 36. Defendant Xavier Becerra is the Attorney General of California (“the  
13 Attorney General”). As “the chief law officer of the State,” the Attorney General is  
14 charged with “see[ing] that the laws of the State”—including the laws authorizing  
15 agency-fee arrangements—“are uniformly and adequately enforced.” Cal. Const.  
16 art. V, § 13. Because this case challenges the constitutionality of California  
17 statutes, the Attorney General would have the right to intervene as a Defendant in  
18 this litigation if he were not named as a Defendant. 28 U.S.C. § 2403(b). The  
19 Attorney General is sued in his official capacity.

## 20 **JURISDICTION AND VENUE**

21 37. This is an action under the Federal Civil Rights Act of 1871 (42 U.S.C.  
22 § 1983) to redress the deprivation, under color of state law, of rights, privileges and  
23 immunities secured to Plaintiffs by the Constitution of the United States,  
24 particularly the First and Fourteenth Amendments

25 38. This Court has subject-matter jurisdiction over this action under 28  
26 U.S.C. §§ 1331 and 1343(a)(3)-(4). Declaratory relief is authorized by 28 U.S.C.  
27 §§ 2201 and 2202 and by Federal Rule of Civil Procedure 57.

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



1 concerning which unions may collectively bargain, to include a wide range of  
2 issues at the heart of education policy. *Id.* § 3543.2(a)(1). These topics of  
3 collective bargaining include wages, hours, “health and welfare benefits,” “leave,”  
4 “transfer and reassignment policies,” “safety conditions of employment,” “class  
5 size,” “procedures to be used for the evaluation of employees,” and “procedures for  
6 processing grievances.” *Id.* In addition, a union that has been recognized as the  
7 exclusive representative “has the right to consult on,” among other things, “the  
8 content of courses and curriculum.” *Id.* § 3543.2(a)(3).

9       45. Under state law, a union that has been recognized as the exclusive  
10 bargaining representative for a school district can enter into an agency-shop  
11 arrangement (also known as an “organizational security agreement”) with that  
12 district. State law defines this arrangement as one in which all employees “shall, as  
13 a condition of continued employment, be required either to join the recognized  
14 employee organization or pay the fair share service fee,” which is commonly  
15 known as an agency fee. *Id.* § 3546(a). School districts “shall deduct the amount  
16 of the fair share service fee authorized by this section from the wages and salary of  
17 the employee and pay that amount to the” union. *Id.* The full amount of the agency  
18 fee is determined by the union and “shall not exceed the dues that are payable by  
19 [union] members.” *Id.* In practice, the amount of agency fees is typically  
20 equivalent to the amount of union dues.

21       46. Unions must divide the agency fee into chargeable and nonchargeable  
22 portions. Under state law, the chargeable portion purports to support union  
23 activities that are “germane to [the union’s] functions as the exclusive bargaining  
24 representative.” *Id.* California law includes a range of activities in this category,  
25 including—“but [] not necessarily [] limited to”—“the cost of lobbying activities  
26 designed to foster collective bargaining negotiations and contract administration, or  
27 to secure for the represented employees advantages in wages, hours, and other  
28 conditions of employment in addition to those secured through meeting and

1 negotiating with the employer.” *Id.* § 3546(b).

2 47. The nonchargeable portion of agency fees supports activities that are  
3 “not devoted to ... negotiations, contract administration, and other activities of the  
4 employee organization that are germane to its function as the exclusive bargaining  
5 representative.” *Id.* § 3546(a). The union is responsible for annually determining  
6 which expenses fall into this nonchargeable category. Unions make this  
7 determination by calculating the total agency fee based on expenditures for the  
8 coming year, then calculating the nonchargeable portion of this fee based on a  
9 recent year’s expenditures. REGS. OF CAL. PUB. EMP’T RELATIONS BD.  
10 § 32992(b)(1).

11 48. If a teacher chooses to be a member of the union that is the exclusive  
12 representative in his or her district, the school district collects the full amount of  
13 union dues from that teacher and forwards them to the union. *Id.* § 3543.1(d); *see*  
14 *also* Cal. Educ. Code §§ 45060, 45061, 45061.5, 45168.

15 49. Nonunion teachers, by contrast, are required to pay the above-  
16 described agency fees to the union. Each year, the union must send out a “*Hudson*  
17 notice” that sets forth the amount of the agency fee as well as a breakdown of the  
18 chargeable and nonchargeable portions of this fee. Cal. Gov’t Code § 3546(a);  
19 REGS. OF CAL. PUB. EMP’T RELATIONS BD. § 32992(a); *see generally* *Chi. Teachers*  
20 *Union, Local No. 1 v. Hudson*, 475 U.S. 292 (1986). The amount of the total  
21 agency fee is determined by the union based on an estimate of its expenditures in  
22 the coming year. The chargeable and nonchargeable portions of the fee are  
23 calculated by the union based on an audited financial report for a recent year of the  
24 union’s expenditures.

25 50. The *Hudson* notice must include either the union’s audited financial  
26 report for the year or a certification from its independent auditor confirming that the  
27 chargeable and nonchargeable expenses have been accurately stated. REGS. OF  
28 CAL. PUB. EMP’T RELATIONS BD. § 32992(b)(1). The independent auditor does not,

1 however, confirm that the union has properly classified its expenditures.

2 51. To avoid paying for nonchargeable expenditures, a nonmember is  
3 required to opt out each year by notifying the union of his or her objection. REGS.  
4 OF CAL. PUB. EMP'T RELATIONS BD. § 32993. The period for lodging this objection  
5 must last at least thirty days (*id.* § 32993(b)), and typically lasts no longer than six  
6 weeks. Nonmembers who opt out are entitled to a rebate or fee reduction for that  
7 year. Cal. Gov't Code § 3546(a). Absent such an affirmative opt-out by the  
8 deadline, the nonmember must pay the full amount of the agency fee.

9 52. An agency-fee payer who disagrees with the union's determination of  
10 the chargeable portion of the agency fee may file a challenge with the union after  
11 receiving the *Hudson* notice. Upon receipt of an agency-fee challenge, the union  
12 must "request a prompt hearing regarding the agency fee before an impartial  
13 decisionmaker" selected by either the American Arbitration Association or the  
14 California State Mediation Service. *Id.* § 32994(b)(1), (2).

15 53. California law provides a limited exception to the agency-fee  
16 requirement for "religious objectors"—that is, "any employee who is a member of a  
17 religious body whose traditional tenets or teachings include objections to joining or  
18 financially supporting employee organizations." Cal. Gov't Code § 3546.3.  
19 Collective-bargaining agreements cannot require religious objectors to join a union  
20 or pay agency fees to a union. The agreements can, however—and typically do—  
21 require religious objectors to pay the equivalent of the full agency fee (including the  
22 non-chargeable portion) to a "nonreligious, nonlabor organization, charitable fund."  
23 *Id.* The agreement must designate at least three approved charities, which are  
24 selected by the union serving as the exclusive representative in that district. The  
25 objecting employee then selects which charity will receive his or her payment.

## 26 **II. The Agency-Shop Arrangements in California's Public School Districts**

27 54. Under color of state law (Cal. Gov't Code § 3540 *et seq.*), Defendant  
28 Local Unions have been designated the exclusive bargaining agents for the school

1 districts in which Plaintiffs are employed as teachers.

2 55. Under color of state law (*id.*), Defendant Local Unions have entered  
3 into agency-shop agreements with the school districts where Plaintiffs or their  
4 members are employed as teachers. These agreements include provisions requiring  
5 all teachers in these districts to either join the unions or pay agency fees to the  
6 unions. The agreements also provide that teachers must contribute to  
7 nonchargeable union expenditures unless they go through an opt-out process.

8 56. For each school district in which Plaintiffs are employed, the relevant  
9 Defendant Local Union determines the total agency fee, often in collaboration with  
10 CTA. After the Defendant Local Union or CTA informs the district of the year's  
11 agency-fee amount, the district automatically deducts that amount in pro rata shares  
12 from teachers' paychecks (or deducts the chargeable portion of the fee for teachers  
13 who opted out of nonchargeable fees), unless the teacher informs the district that he  
14 or she will pay the union directly. The district sends the deducted amounts directly  
15 to the Defendant Local Union or CTA.

16 57. For each school district in which Plaintiffs are employed, the  
17 Defendant Local Union's agency fee includes "affiliate fees" for both CTA and  
18 NEA. Affiliate fees are treated as partially chargeable, with the chargeable portion  
19 based on the chargeable portion of all statewide expenditures by CTA and NEA.  
20 Thus, the portions of CTA and NEA affiliate fees deemed chargeable to teachers  
21 are not designed to—and do not—correspond to actual collective-bargaining  
22 expenditures made by CTA and NEA within each Plaintiff's district.

23 58. On information and belief, the bulk of dues do not go to the local  
24 union that actually engages in collective-bargaining for a particular district.  
25 Instead, approximately 65% of dues typically is allocated to CTA and 18% is  
26 allocated to NEA, leaving only 17% for the local union.

27 59. On information and belief, NEA has approximately 100,000 agency-  
28 fee payers nationwide, and approximately 28,000 agency-fee payers in California.

1           60. For each school district in which plaintiffs are employed, the  
2 chargeable and nonchargeable portions of the agency fees are calculated based on  
3 an audit of the union expenditures in a recent year. The auditors confirm that the  
4 union expenditures were made as indicated, but do not confirm that the union has  
5 properly classified the expenditures as chargeable or nonchargeable.

6           61. For each school district in which plaintiffs are employed, teachers who  
7 are not union members receive a *Hudson* notice each fall, providing a breakdown of  
8 the chargeable and nonchargeable portions of the agency fee. Upon receiving this  
9 notice, nonmembers have the option of undergoing the opt-out process, which  
10 requires them to object to the nonchargeable portion of the agency fee within  
11 approximately six weeks. If a teacher succeeds in making a timely objection, the  
12 union either refrains from collecting the nonchargeable portion of the agency fee or  
13 sends a “rebate” check to the teacher equal to the nonchargeable portion of the  
14 annual agency fee. Teachers who receive the *Hudson* notice also have the option of  
15 filing a legal challenge to the union’s calculation of the chargeable and  
16 nonchargeable portions of the agency fee.

17           62. Annual dues (or agency fees for nonmembers) typically consume  
18 roughly two percent of a new teacher’s salary, and sometimes increase regardless of  
19 whether there is an increase in teacher pay. The total amount of annual dues  
20 generally exceeds \$1,000 per teacher, while the amount of the refund received by  
21 nonmembers who successfully opt out of the nonchargeable portion of the agency  
22 fee is generally around \$350 to \$400 annually.

23           63. Defendant Unions require nonmembers to “opt out” of subsidizing  
24 nonchargeable expenses every year, in writing, during a roughly six-week period  
25 following the annual *Hudson* notice. No matter how many consecutive years a  
26 nonmember opts out, that nonmember still must send an opt-out letter to CTA each  
27 year. If a teacher misses the deadline, he or she is obligated to pay the full agency  
28 fee for that year.

1           64. Defendant Unions provide public-school teachers with a membership  
2 enrollment form that teachers may wrongly interpret as saying that they can join the  
3 union without subsidizing its political activities. The form states that CTA  
4 maintains a political action committee (“PAC”), for which it solicits member  
5 donations. The form then invites CTA members to check a box “if you choose not  
6 to allocate a portion of your dues to the [CTA’s PAC] account and want all of your  
7 dues to remain in the General Fund.” CTA/NEA Membership Enrollment Form  
8 (attached as Exhibit I). This box-checking option potentially creates the mistaken  
9 impression that checking the box means a teacher has opted out of subsidizing  
10 political expenditures altogether.

11           65. In order to participate in the opt-out process, a 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 are typically (and would  
14 likely otherwise be) obtainable through one’s employer. For example, many unions  
15 decline to bargain for disability insurance as part of the employment package that  
16 districts offer teachers; the unions instead offer this valuable benefit solely to  
17 members as an inducement to join the union. *See, e.g., CTA, CTA Voluntary*  
18 *Group Disability Insurance*, <https://goo.gl/iwV2Ss> (“Not all school districts provide  
19 Disability Insurance to their employees ...”); CTA, *Disability and Life Insurance:*  
20 *CTA Member Benefits For Educators, 2016–2017 School Year* at 15,  
21 <https://goo.gl/w9l6Y9> (noting that only “member[s] in good standing of CTA” are  
22 eligible for disability insurance). Disability insurance is necessary to, among other  
23 things, provide teachers on maternity leave with monies approximating their regular  
24 salary. Most districts provide teachers on maternity leave only with differential  
25 pay—that is, “the amount remaining of your salary after the district pays a  
26 substitute to fill your position” (CTA, *Pregnancy and Parental Leave Rights*,  
27 <https://goo.gl/C2mgVR>)—such that a teacher would need disability insurance in  
28 order to make up the difference. CTA, *How is CTA saving you money?*,

1 <https://goo.gl/H9pKgj>. Defendant Unions invoke teachers' inability to obtain  
2 disability insurance through their school district employers as a reason for  
3 encouraging employees to join the union.

4 66. Defendant Unions are not required to advocate nonmembers' preferred  
5 positions on any issues, either in collective bargaining or outside of bargaining.  
6 Moreover, Defendant Unions' approach to collective bargaining would not be any  
7 different even if they were not required to bargain on behalf of all employees in the  
8 bargaining unit, including Plaintiffs and other nonmembers.

9 67. Under the collective bargaining agreements they have secured in each  
10 district, Defendant Unions are authorized to represent all employees, including  
11 nonmembers, in grievance proceedings. No Defendant Union is obligated to pursue  
12 a grievance if it concludes that the grievance is not in the interest of the entire  
13 bargaining unit. Employees are limited in the degree to which they can pursue  
14 grievances on their own behalf; if the union elects not to pursue a grievance past a  
15 certain stage, the employee cannot himself or herself pursue the grievance any  
16 further. Defendant Unions' obligation to process grievances is limited to  
17 employees who allege some violation of the collective-bargaining agreement. Ex.  
18 A at Art. V, § 1.1; Ex. B at § 8.1.1; Ex. C at § 10.1.1; Ex. D at § 2.01.1; Ex. E at  
19 § 20.1; Ex. F at Art. XX, § 1; Ex. G at § 4.2.1. For teachers who oppose terms of  
20 their district's collective-bargaining agreement, assistance in enforcing those terms  
21 has little value. Defendant Unions do not assist nonmembers on matters that would  
22 tangibly benefit them, such as resisting discipline or termination.

23 **III. Defendant Unions Routinely Take Positions on Political Issues and**  
24 **Matters of Public Concern, Including in Collective Bargaining.**

25 68. In recent years, NEA has deemed approximately 48% of its  
26 expenditures to be chargeable. NEA, Consolidated Financial Statements, August  
27 31, 2015 at 33 (attached as Exhibit J). CTA has deemed approximately 70% of its  
28 expenditures to be chargeable. CTA, *Combined Financial Statements for the Year*

1 *Ended August 31, 2015*, at 4 (attached as Exhibit K). Local unions often use the  
2 same chargeability percentage as CTA. This practice is based on a “local union  
3 presumption,” which presumes that local unions tend to spend as much or more of  
4 their budgets on collective bargaining as do their state affiliates.

5 69. Dues and agency fees yield significant revenues for the unions. For  
6 example, CTA’s revenue in 2015 was \$181 million, over \$178 million of which  
7 (98.6%) came from membership dues and fees. Ex. K-903.

8 70. California’s teachers’ unions routinely engage in express political  
9 advocacy. For instance, CTA and its affiliated entities (the CTA Association for  
10 Better Citizenship, the CTA Issues PAC, and NEA) spent over \$211 million in  
11 political expenditures (including contributions to candidates and other committees,  
12 independent expenditures, and lobbying) from 2000 through 2009. *See* Cal. Fair  
13 Political Practices Comm’n, *Big Money Talks* at 11 (Mar. 2010),  
14 <https://goo.gl/kLpHTA>. The largest single expenditure, of over \$26 million, was  
15 made to successfully oppose Proposition 38 on the 2000 ballot, which would have  
16 enacted a school-voucher system in California and thereby increased the potential  
17 employment pool for teachers. *Id.* CTA and its affiliated entities also spent over  
18 \$50 million opposing three ballot initiatives in 2005: Proposition 74, which sought  
19 to make changes in the probationary period for California school teachers;  
20 Proposition 75, which sought to prohibit the use of public employee agency fees for  
21 political contributions without individual employees’ prior consent; and Proposition  
22 76, concerning state spending and minimum school-funding requirements. *Id.* at  
23 12.

24 71. CTA also takes public positions on a wide range of issues both related  
25 and unrelated to the educational system. For example, CTA opposes school  
26 vouchers (CTA, *Issues & Action: Vouchers*, <https://goo.gl/B5AlmL>), advocates tax  
27 reform that “restore[s] fairness to the system” by increasing taxes on higher earners  
28 (CTA, *Issues & Action: Tax Fairness*, <https://goo.gl/Xip9me>), and supports

1 immigration reform that provides “timely legalization without regard to national  
2 origin” (CTA, *Issues & Action: Immigration Reform*, <https://goo.gl/nsdKAw>).

3 72. CTA is a major donor to the California Democratic Party. From 2003  
4 to 2012, CTA and its affiliated entities (including the CTA Association for Better  
5 Citizenship) spent nearly \$102 million on political contributions, with only 0.08%  
6 of that money going to Republicans. Troy Senik, *The Worst Union in America*,  
7 City Journal (Spring 2012), <https://goo.gl/qN44Cy>. CTA also spends money on  
8 direct political advocacy, much of which is spent on issues with no connection to  
9 education. For example, CTA and its affiliated entities (including CTA Issues  
10 PAC) spent over \$1 million—more than any other entity—on the opposition to  
11 Proposition 8, the state ballot initiative seeking to ban same-sex marriage. *Id.*;  
12 Evelyn Larrubia, *\$1 million from teachers’ union to oppose Prop. 8*, L.A. Times  
13 (Oct. 17, 2008), <https://goo.gl/JXW4i4>.

14 73. CTA also encourages its members to engage in extensive political  
15 activism in the public schools where they work. For example, as part of a 2011  
16 campaign to lobby the California legislature on school funding issues, CTA  
17 distributed a list of practices that it suggested to its teacher-members as ways to  
18 further CTA’s campaign in their classrooms. Dina Martin, *State of Emergency*, 15  
19 Cal. Educator 7, <https://goo.gl/ZHYcV8>; CTA, *L.E.A.R.N.: State Council Ideas for*  
20 *Potential Activities*, <https://goo.gl/XcK09U> (“L.E.A.R.N.”). Among other things,  
21 CTA suggested that teachers:

- 22 • “Take ½ photo of Assembly members and have kids draw the other half  
23 with a message stating what they want for their teachers” (*L.E.A.R.N.* at  
24 1);
- 25 • To visualize “how 3 classrooms are shuffled into two,” have “kids sit on  
26 floor with no books, chanting, ‘we need a teacher’” (*id.* at 5);
- 27 • Organize a “Student Video Contest” in which teachers would conduct a  
28 “contest for youth to create a video about what education costs would

1 mean to them” (*id.* at 10).

2 74. NEA likewise engages in widespread political advocacy on a wide  
3 range of issues. This includes support for firearm restrictions (*Sensible Solutions*  
4 *for Safer Schools* at 26, VIVA NEA Idea Exchange (Apr. 24, 2013),  
5 <https://goo.gl/74D5Oc>), and support for the Affordable Care Act (NEA, *Affordable*  
6 *Health Care for America*, <https://goo.gl/ohS6wS>). NEA has endorsed every  
7 Democratic presidential nominee since 1976, and has never endorsed a Republican  
8 presidential nominee. Lauren Camera, *Teachers Union Backs Clinton for*  
9 *President*, U.S. News (Oct. 3, 2015), <https://goo.gl/48lUKt>; *NEA Endorses Kerry*  
10 *for President*, USA Today (July 6, 2004), <https://goo.gl/Myqwfp>. Of the 295  
11 candidates that NEA endorsed in United States House and Senate races in 2016,  
12 272 (92%) were Democrats. NEA Fund, *Recommended Candidates*,  
13 <https://goo.gl/jtSKwY>.

14 75. When Defendant Unions advocate concerning employment terms and  
15 conditions in the context of lobbying or other political activities, they do not seek  
16 preferential conditions for union members.

17 76. Defendant Unions engage in advocacy on many of the same topics in  
18 the contexts of both lobbying and collective bargaining. For instance, they have  
19 lobbied to secure a number of state statutes addressing topics that would otherwise  
20 be topics of collective-bargaining, including tenure, seniority preferences in layoffs,  
21 and termination procedures. *See, e.g.*, Cal. Educ. Code §§ 44929.21(b); 44934;  
22 44938(b)(1), (2); 44944; 44955.

23 77. In coordination with their express political advocacy, California’s  
24 teachers’ unions routinely take positions in the collective-bargaining process that  
25 have profound political and budgeting consequences. For example, public-sector  
26 unions’ collective bargaining over wages and benefits has a significant impact on  
27 public finances. In 2015, the total cost of wages and benefits for state and local  
28 workers nationwide was \$1.4 trillion—more than half of the \$2.6 trillion in total

1 spending by state and local governments. U.S. Bureau of Econ. Analysis, *National*  
2 *Income and Product Accounts* (<https://goo.gl/nBKNRG>), Table 3.3 (“State and  
3 Local Government Current Receipts and Expenditures”) and Table 6.2D  
4 (“Compensation of Employees by Industry”). And beyond wages and benefits,  
5 Defendant Unions bargain over many other issues of educational policy, many of  
6 which are the subjects of robust debate. For instance, Defendant Unions  
7 collectively bargain for seniority preferences in transferring and reassigning  
8 teachers. Ex. A at Art. VII, §§ 3.1, 6.1; Ex. B at §§ 11.3.5, 11.4.1, 11.5.7; Ex. C at  
9 §§ 13.2.6, 13.3.4, 13.5.3, 13.6.4; Ex. D at § 4.03.1; Ex. E at § 17.2; Ex. F at Art.  
10 XV, §§ 2(A), § 3(C); Ex. G at § 9.3.1.

11 78. In addition, Respondent Unions advocate policies that affirmatively  
12 harm teachers who are above average relative to their colleagues. For instance,  
13 NEA’s “basic contract standards” include, among other things: “[l]ayoff and recall  
14 based only on seniority as bargaining unit members, licensure/certification, and ...  
15 affirmative action”; and “[s]alary schedules ... that exclude any form of merit pay  
16 except in institutions of higher education where it has been bargained.” NEA, *2016*  
17 *Handbook* at 289-90, <https://goo.gl/2vPMRH>. NEA also considers any “system of  
18 compensation based on an evaluation of an education employee’s performance” to  
19 be “inappropriate,” and “opposes providing additional compensation to attract  
20 and/or retain education employees in hard-to-recruit positions.” *Id.* at 291.

21 79. CTA classifies expenditures as being chargeable—and thus germane to  
22 collective bargaining—even when those expenditures appear to have little to do  
23 with collective bargaining. For example, in 2014-2015, CTA made the following  
24 chargeability classifications:

- 25 • A program on “Human Rights, Women, and GLBT Issues”: 100%  
26 chargeable. Ex. K-921.
- 27 • “Cyber Café”: 100% chargeable. Ex. K-924.
- 28 • Publication and dissemination of CTA’s internal magazine, *The*

1           *California Educator*: 80.8% chargeable. Ex. K-920.

2           80. Further, while the documents that CTA gives to teachers do not  
3 provide much detail on the activities underlying the listed charges, those documents  
4 do further reflect that CTA deems “Regional Services” to be 91.7% chargeable (Ex.  
5 K-917), despite “Regional Services” appearing to contain expenditures on  
6 numerous activities unrelated to bargaining. *See* Ex. K-929-930 (listing targets of  
7 “emphasis” in 2014-2015, including “[o]rganizing and training for political action  
8 activities at the state, local, and national levels”; “[s]upporting local and regional  
9 organizing activities to influence the re-authorization of the Elementary and  
10 Secondary Education Act”; and “[i]ncreasing CTA members in newly established  
11 charter schools”).

12           81. CTA maintains that “[c]hargeable expenses generally include ... those  
13 related to” policy strategizing or public polling. *See* Ex. K-938 (“[s]trategic  
14 planning and polling on priorities for association activities”).

15           82. NEA likewise classifies expenditures as chargeable even when those  
16 expenditures appear to have little to do with collective bargaining. For example, in  
17 2014-2015, NEA made the following chargeability classifications:

- 18           • “Advance NEA’s student-centered social and economic justice agenda in  
19 public schools”: 83.4% chargeable. Ex. J-883.
- 20           • “Create locally-based or state-based ‘campaigns’ ... to improve teaching  
21 and learning conditions”: 99.3% chargeable. Ex. J-881.
- 22           • “[A]dvance NEA’s criteria for Great Public Schools and workforce  
23 quality agenda”: 77.6% chargeable. Ex. J-882.
- 24           • “[D]evelop [affiliates’] capacity and enhance their effectiveness” in  
25 membership and organizing: 81.8% chargeable. Ex. J-882.

26           83. NEA also deems to be partially chargeable spending such as “using  
27 popular culture and the arts as a tool to ... effectively support mission-critical  
28 communications” (43.2% chargeable) (Ex. J-885); “[p]rovid[ing] technical

1 assistance and support to NEA Leaders to advance policy and practice that supports  
2 NEA’s mission, vision, and core values (17.4% chargeable) (Ex. J-884); and  
3 “supporting affiliates to activate our vast network in pursuit of the Association’s  
4 vision” (63.9% chargeable) (NEA Letter, Chargeable & Nonchargeable Audited  
5 Expenditures by Core Function Area and Strategic Goal Category at 4 (Aug. 8,  
6 2016) (attached as Exhibit L)).

7 84. NEA has “determined that *chargeable* activities and expenditures were  
8 related to” actions focused on setting employment terms in public schools that  
9 affect core education policy, including, for example, “promotions,” “discharge,”  
10 and “performance evaluation.” Ex. J-889.

11 85. California law deems as chargeable “the cost of lobbying activities  
12 designed to foster collective bargaining negotiations and contract administration, or  
13 to secure for the represented employees advantages in wages, hours, and other  
14 conditions of employment in addition to those secured through meeting and  
15 negotiating with the employer.” Cal. Gov’t Code § 3546(b).

16 **IV. California’s Agency-Shop Law and Allowance of Opt-Out Requirements**  
17 **Both Violate the First Amendment.**

18 86. California’s agency-shop arrangement violates the First Amendment  
19 rights of Plaintiffs and other public-school teachers who are not union members.  
20 There is no justification—much less a compelling one—for mandating that  
21 Plaintiffs make contributions to support collective bargaining and the other  
22 activities of California’s teachers’ unions, which are among the most powerful and  
23 politically controversial organizations in the State. Particularly given the inherently  
24 political nature of collective bargaining and its profound economic consequences,  
25 the First Amendment forbids coercing any money from Plaintiffs to fund so-called  
26 chargeable union expenditures. In any event, forced subsidization of speech  
27 concerning even mundane commercial, apolitical topics is unconstitutional.  
28 Moreover, even if the First Amendment did somehow tolerate conditioning public

1 employment on subsidizing unions, there is still no justification for forcing  
2 Plaintiffs and other teachers to pay for political and ideological activities—  
3 expenditures that the unions themselves admit are nonchargeable under the First  
4 Amendment—unless they affirmatively opt out of making payments each year.

5 **A. *Conditioning Public Employment on the Payment of Mandatory***  
6 ***Fees to Support Collective Bargaining Is Unconstitutional.***

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

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

27 89. California’s agency-shop arrangement does not serve any compelling  
28 state interest, nor is it narrowly tailored to serve whatever interest the State may

1 have. There is no compelling or even persuasive evidence that compulsory agency  
2 fees are needed to achieve “labor peace” in California or its public schools, or to  
3 prevent “free riding” on unions’ collective-bargaining. Nor is there any compelling  
4 or even persuasive evidence that such a compulsory policy is the least restrictive  
5 means of securing equitable policies in public employment. Moreover, compulsory  
6 agency fees are not a necessary incident of any larger regulatory purpose. Finally,  
7 any governmental interest in “labor peace” or preventing “free riding” does not out-  
8 weigh Plaintiff’s interest in not subsidizing the Unions’ speech, or otherwise justify  
9 such coerced subsidization.

10 **B. *The Opt-Out Requirement for Nonchargeable Expenditures Is***  
11 ***Unconstitutional.***

12 90. Under the State’s agency-shop provisions, any public-school teacher  
13 who wishes to withhold contributions to unions’ nonchargeable expenditures must  
14 provide written notification that they are opting out each year. CTA must receive  
15 this written notification by a hard deadline or the request to opt out will be denied  
16 and the teacher will be required to pay full dues for the subsequent year. No matter  
17 how many years in a row a nonmember has opted out of paying the political portion  
18 of agency fees, that nonmember must still send written notification each year to  
19 CTA in order to successfully opt out.

20 91. This requirement to pay for political and ideological activities absent  
21 annual, affirmative disapproval constitutes a serious burden on the First  
22 Amendment rights of public employees. It also creates an environment susceptible  
23 to contrary pressure by union personnel. Finally, given the strong likelihood that  
24 individuals who choose not to join the union prefer not to subsidize the union’s  
25 explicitly political expenditures by paying full agency fees, nonmembers should be  
26 presumed to be noncontributors unless they affirmatively opt in. In short, the  
27 Constitution requires unions seeking political donations to solicit those donations  
28 from nonmembers through the ordinary process of voluntary, affirmative consent.



1 United States Constitution.

2 98. Plaintiffs have no adequate remedy at law.

3 **SECOND COUNT:**

4 **Requiring Opt-Out for Nonchargeable Expenses**

5 **Violates the First Amendment.**

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

8 100. By requiring Plaintiffs to undergo opt-out procedures to avoid making  
9 financial contributions in support of nonchargeable union expenditures, California's  
10 agency-shop arrangement violates Plaintiffs' rights to free speech and association  
11 under the First and Fourteenth Amendments to the United States Constitution.

12 101. Plaintiffs have no adequate remedy at law.

13 **COSTS AND ATTORNEYS' FEES**

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

16 **PRAYER FOR RELIEF**

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

19 WHEREFORE, Plaintiffs pray that this Court:

20 (A) Enter a judgment declaring that California's agency-shop law, codified  
21 in California Government Code § 3540 *et seq.*, impermissibly abridges Plaintiffs'  
22 First Amendment free speech rights by requiring payment of any fees to any union  
23 as a condition of public employment;

24 (B) Enter a judgment declaring that California's agency-shop arrangement,  
25 codified in California Government Code § 3540 *et seq.*, impermissibly abridges  
26 Plaintiffs' First Amendment free speech rights by requiring payments in support of  
27 nonchargeable union expenditures unless they affirmatively opt out of such  
28 payments;

1 (C) Enter an injunction barring Defendants from seeking to require  
2 nonunion employees to pay any monies that support any union or, at a minimum,  
3 barring Defendants from seeking to require payments for nonchargeable  
4 expenditures from any employee who has not affirmatively stated a willingness to  
5 financially support such expenditures;

6 (D) Grant Plaintiffs such additional or different relief as it deems just and  
7 proper, including an award of reasonable attorneys' fees and the costs of this action.  
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9 Dated: February 6, 2017 JONES DAY

10  
11 By: /s/ John A. Vogt  
12 John A. Vogt

13 Attorney for Plaintiffs  
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