UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

RYAN YOHN; MICHELLE RALEY; STACY VEHRS; ROBERT VEHRS; DARREN MILLER; BRUCE ASTER; ALLEN OSBORN; GEORGE MEILAHN; ASSOCIATION OF AMERICAN EDUCATORS,

Plaintiffs,

vs.

CALIFORNIA TEACHERS ASSOCIATION; NATIONAL EDUCATION ASSOCIATION; WESTMINSTER TEACHERS ASSOCIATION; EUREKA UNION TEACHERS ASSOCIATION; PORTERVILLE EDUCATORS ASSOCIATION; SAN JUAN TEACHERS ASSOCIATION; CARLSBAD UNIFIED TEACHERS ASSOCIATION; RIVERSIDE CITY TEACHERS ASSOCIATION; PITTSBURG EDUCATION

Case No. 8:17-cv-202-JLS-DFMx

ORDER DENYING PLAINTIFFS' MOTION FOR JUDGMENT ON THE PLEADINGS (Doc. 97)

ASSOCIATION; MARIAN KIM PHELPS, in her official capacity as Superintendent of Westminster School District; TOM JANIS, in his official capacity as Superintendent of Eureka Union School District; KEN GIBBS, in his official capacity as Superintendent of Porterville Unified School District; KENT KERN, in his official capacity as Superintendent of San Juan Unified School District; BENJAMIN CHURCHILL, in his official capacity as Superintendent of Carlsbad Unified School District; DAVID HANSEN, in his official capacity as Superintendent of Riverside Unified School District; JANET SCHULZE, in her official capacity as Superintendent of Pittsburg Unified School District; XAVIER BECERRA, in his official capacity as Attorney General of California,

Defendants.

I. INTRODUCTION

On February 6, 2017, Plaintiffs[1] filed a Complaint seeking declaratory and injunctive relief for Defendants'[2] alleged violation of their First Amendment rights. Specifically, Plaintiffs allege that the Union Defendants,[3] operating under California's

[1] Plaintiffs are Ryan Yohn, Michelle Raley, Stacy Vehrs, Robert Vehrs, Darren Miller, Bruce Aster, Allen Osborn, George Meilahn, and the Association of American Educators.

[2] Defendants are the California Teachers Association; the National Education Association; several local teachers' unions in California; the superintendents of the school districts in which the individual Plaintiffs work; and California Attorney General Xavier Becerra.

[3] The "Union Defendants" refer to the teachers' unions who are parties to this action: the California Teachers Association; the National Education Association; the Westminster Teachers

"agency-shop" laws, violate Plaintiffs' rights to free speech and association by (1) charging non-members an "agency fee" that supports the Union Defendants' activities, and (2) requiring non-members who do not wish to pay the agency fee to opt out of paying the "nonchargeable" portion of the fee (the "chargeable" portion remains mandatory). Before the time for Defendants to respond had passed, Plaintiffs filed the instant Motion for Judgment on the Pleadings seeking entry of judgment against themselves on the grounds that all relief is foreclosed by Supreme Court and Ninth Circuit precedent. In short, Plaintiffs argue that there is nothing to be done at the trial court stage but stamp their papers and shuffle them off to the Ninth Circuit. Defendants disagree.

II. BACKGROUND

The following allegations are taken from Plaintiffs' Complaint which, for purposes of Plaintiffs' Motion, are presumed to be true:

The State of California and its public school districts, in cooperation with the California Teachers Association ("CTA") and the other named Defendants, maintain an agency-shop regime that requires public-school teachers (including Plaintiffs) to make financial contributions to teachers' unions as a condition of their employment. (Compl. ¶ 2, Doc. 1.) This regime is established and maintained under the California Educational Employment Relations Act. (*Id.*) Each year, the unions estimate a breakdown of expenditures that will be "chargeable" (*i.e.*, germane to collective bargaining) and "nonchargeable" (*i.e.*, not germane to collective bargaining). (*Id.*) Teachers are required to contribute to the union's chargeable expenditures. (*Id.*) Teachers who wish to avoid contributing to a union's nonchargeable expenditures must affirmatively express each year that they do not wish to contribute. (*Id.*) Any teacher who objects to the union's

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Association; the Eureka Union Teachers Association; the Porterville Educators Association; the San Juan Teachers Association; the Carlsbad Unified Teachers Association; the Riverside City Teachers Association; and the Pittsburg Education Association.

classification of chargeable expenditures must bear the additional burden and expense of filing a legal challenge. (*Id.* ¶ 3.)

Plaintiffs allege that in the course of collective bargaining, unions frequently take political positions on matters of public concern that contradict the deeply-held beliefs of some teachers who do not believe the policies advocated by unions to be in their best interest or in the best interest of society at large. (*Id.* ¶ 6.) For example, unions consistently bargain for provisions requiring increased state spending and against important educational reforms which some teachers believe would benefit teachers, students, and taxpayers. (*Id.*) Seniority provisions and other union-advocated employment protections benefit some teachers at the expense of other teachers who would fare better under an alternative system. (*Id.*)

A. Parties

The individual Plaintiffs are public-school teachers in various school districts in California with work experience ranging from 11 to 29 years. (*Id.* ¶¶ 10–17.) Some are former union members who resigned their union memberships, and others were never union members at all. (*Id.*) Nevertheless, all but one are required to pay agency fees to the unions that represent the teachers in the school districts in which they work. (*Id.* ¶¶ 10–16.) Those Plaintiffs who are required to pay agency fees to the unions have consistently opted out of paying the nonchargeable portions of their fees. (*Id.*) But for California's agency-shop arrangement, they would not pay fees to the teachers' unions. (*Id.*) The one Plaintiff who is not required to pay agency fees, George Meilahn, is a religious objector and must, as a condition of employment, pay a sum equal to the agency fee (including the nonchargeable portion) to a nonreligious, nonlabor organization, charitable fund. (*Id.* ¶ 17.) However, despite having made known his objection to paying any amount to a union, George Meilahn recently learned that his school district is automatically deducting $1 from each of his paychecks and giving that amount to Defendant Pittsburg Education Association. (*Id.*) But for California's agency-shop requirement, Meilahn would not pay

any fees to the teachers' union, and he would decide for himself how much to donate in charitable contributions each year without having his charitable contributions constrained by a collective-bargaining agreement. (*Id.*)

Plaintiff Association of American Educators ("AAE") is a nonprofit organization representing nonunion professional educators. (*Id.* ¶ 18.) It engages in counseling, referral, advocacy, and educational services related to California's agency-shop requirements. (*Id.*) The individual Plaintiffs are members of AAE. (*Id.*) AAE and its members object to California laws authorizing agency-shop arrangements and opt-out requirements and object on policy grounds to the positions taken by teachers' unions in the collective-bargaining process and in other contexts. (*Id.*)

Defendant CTA is the largest teachers' union in California and the California affiliate of Defendant National Education Association ("NEA"). (*Id.* ¶ 19.) The CTA receives a share of the agency fees that are collected from Plaintiffs and other public-school teachers under California's agency-shop laws. (*Id.*) It has annual revenues of over $180 million per year and is a major participant in California politics at all levels of state and local government. (*Id.*) The NEA is the largest teachers' union in the United States, and it also receives a share of the agency fees collected from Plaintiffs and other public-school teachers. (*Id.* ¶ 20.) Its annual revenues exceed $400 million per year, and it is a major participant in political activities at the national, state, and local levels. (*Id.*) The remaining Defendants are the Attorney General of California, various local teachers' unions in California (the "Local Unions") that serve as the exclusive bargaining representatives of the school districts in which the individual Plaintiffs work, and the superintendents of those school districts. (*Id.* ¶¶ 21–36.)

B. California's Agency-Shop Law

Under California law, a union has the option of becoming the exclusive bargaining representative for public school employees in a public school district. Cal. Gov't Code § 3544(a). To become the exclusive representative, a union must submit adequate proof that

a majority of employees in the unit wish to be represented exclusively by that union. *Id.* When a union is designated as the exclusive representative, it represents all public school employees in that district for purposes of bargaining with the district. *Id.* § 3543.1(a). However, serving as exclusive representative does not require the union to consider or advocate the policy or employment views of nonmembers. (Compl. ¶ 42.)

California law defines the "terms and conditions of employment," concerning which unions may collectively bargain, to include a wide range of issues including wages, hours, "health and welfare benefits," "leave," "transfer and reassignment policies," "safety conditions of employment," "class size," "procedures to be used for the evaluation of employees," and "procedures for processing grievances." Cal Gov't Code § 3543.2(a)(1). In addition, a union that is an exclusive representative "has the right to consult on," among other things, "the content of courses and curriculum." *Id.* § 3543.2(a)(3).

A union that is an exclusive bargaining representative for a school district can enter into an "agency-shop" arrangement with that district. (Compl. ¶ 45.) California law defines this arrangement as one in which all employees "shall, as a condition of continued employment, be required either to join the recognized employee organization or pay the fair share service fee," which is also known as an "[a]gency fee." Cal. Gov't Code § 3546(a). School districts "shall deduct the amount of the fair share service fee authorized by this section from the wages and salary of the employee and pay that amount to the [union]." *Id.* The full amount of the agency fee is determined by the union, (*see id.*), and, in practice, is typically equivalent to the amount of union dues, (Compl. ¶ 45.)

Unions must divide the agency fee into "chargeable" and "nonchargeable" portions. (*Id.* ¶ 46.) Under California law, the chargeable portion purports to support union activities that are "germane to [the union's] functions as the exclusive bargaining representative." Cal. Gov't Code § 3546(a). This includes a range of activities including "the cost of lobbying activities designed to foster collective bargaining negotiations and contract administration, or to secure for the represented employees advantages in wages,

hours, and other conditions of employment in addition to those secured through meeting and negotiating with the employer. *Id.* § 3546(b).

The nonchargeable portion of agency fees supports activities that are "not devoted to . . . negotiations, contract administration, and other activities of the employee organization that are germane to its function as the exclusive bargaining representative." *Id.* § 3546(a). The union is responsible for annually determining which expenses fall into this category. (Compl. ¶ 47.) Unions make this determination by calculating the total agency fee based on expenditures for the coming year, then calculating the nonchargeable portion of this fee based on an audited financial report of the union's expenditures for a recent year. (*Id.* ¶ 47); Regs. of Cal. Pub. Emp't Relations Bd. § 32992(b)(1).

Nonunion teachers are required to pay the above-described agency fees to the union. (Compl. ¶ 49.) Each year, the union must send out a "*Hudson* notice" that sets forth the amount of the agency fee as well as a breakdown of its chargeable and nonchargeable portions. Cal. Gov't Code § 3546(a); Regs. of Cal. Pub. Emp't Relations Bd. § 32992(a). The *Hudson* notice must include either the union's audited financial report for the year or a certification from its independent auditor confirming that the chargeable and nonchargeable expenses have been accurately stated. Regs. of Cal. Pub. Emp't Relations Bd. § 32992(b)(1). However, the independent auditor does not confirm that the union has properly classified its expenditures. (Compl. ¶ 50.)

To avoid paying for nonchargeable expenditures, a nonmember must opt out each year by notifying the union of his or her objection. Regs. of Cal. Pub. Emp't Relations Bd. § 32993. The period for lodging this objection must last at least thirty days, *id.* § 32993(b), and typically lasts no longer than six weeks, (Compl. ¶ 51.) Nonmembers who opt out are entitled to a rebate or fee reduction for that year. Cal. Gov't Code § 3546(a).

An agency-fee payer who disagrees with the union's determination of the chargeable portion of the agency fee may file a challenge with the union after receiving the *Hudson* notice. (Compl. ¶ 52.) Upon receipt of an agency-fee challenge, the union must

"request a prompt hearing regarding the agency fee before an impartial decisionmaker" selected by either the American Arbitration Association or the California State Mediation Service. Regs. of Cal. Pub. Emp't Relations Bd. §§ 32994(b)(3)–(4).

California law also provides an exception to the agency-fee requirement for religious objectors. Cal. Gov't Code § 3546.3. A religious objector is "any employee who is a member of a religious body whose traditional tenets or teachings include objections to joining or financially supporting employee organizations." *Id.* Collective-bargaining agreements cannot require religious objectors to join a union or pay agency fees to a union. (Compl. ¶ 53.) However, the agreements can require religious objectors to pay the full agency fee (including the nonchargeable portion) to a "nonreligious, nonlabor organization, charitable fund." Cal. Gov't Code § 3546.3. The agreement must designate at least three approved charities, which are selected by the union, and the employee then selects which charity will receive the payment. (Compl. ¶ 53.)

C. Agency-Shop Arrangements of the Local Unions

The Local Unions have each been designated as the exclusive bargaining agents for the school districts in which the individual Plaintiffs are employed as teachers. (*Id.* ¶ 54.) Each Local Union has entered into an agency-shop agreement with the school districts, and these agreements include provisions requiring all teachers in those districts to either join the unions or pay agency fees. (*Id.* ¶ 55.) The agreements also provide that teachers must contribute to nonchargeable union expenditures unless they go through the opt-out process. (*Id.*)

For each school district in which the individual Plaintiffs are employed, the Local Union representing that school district determines the total agency fee, often in collaboration with the CTA. (*Id.* ¶ 56.) After the Local Union or the CTA informs the district of the year's agency-fee amount, the district automatically deducts that amount in pro rata shares from each teacher's paycheck unless the teacher informs the district that he or she will pay the Local Union directly. (*Id.*) For those teachers who opt out of paying

the nonchargeable portion, the district deducts only the chargeable portion of the fee. (*Id.*) The district then sends the deducted amounts to either the Local Union or the CTA. (*Id.*)

For each school district in which the individual Plaintiffs are employed, the Local Union's agency fee includes "affiliate fees" for both the CTA and the NEA. (*Id.* ¶ 57.) These affiliate fees are treated as partially chargeable, with the chargeable amount based on the chargeable portion of all statewide expenditures by the CTA and the NEA. (*Id.*) Thus, Plaintiffs allege that the chargeable portions of the affiliate fees are not designed to, and do not, correspond to the actual collective-bargaining expenditures made by the CTA and the NEA within each individual Plaintiff's school district. (*Id.*) Plaintiffs further allege that the bulk of dues does not go to the Local Unions that actually engage in collective bargaining for their particular districts. (*Id.* ¶ 58.) Rather, approximately 65% of dues typically is allocated to the CTA and 18% to the NEA, leaving only 17% for the Local Unions. (*Id.*)

The chargeable and nonchargeable portions of a Local Union's agency fee are calculated based on audits of that Local Union's expenditures in a recent year. (*Id.* ¶ 60.) The auditors confirm that the expenditures were made as indicated, but they do not confirm that the expenditures were properly classified as chargeable or nonchargeable. (*Id.*) Each fall, nonunion members receive a *Hudson* notice that provides a breakdown of the chargeable and nonchargeable portions of the agency fee. (*Id.* ¶ 61.) Upon receiving this notice, nonmembers have approximately six weeks to object, in writing, to the nonchargeable portion of the agency fee and opt out of paying it. (*Id.* ¶¶ 61, 63.) No matter how many consecutive years a nonmember opts out, he or she still must send an opt-out letter to the CTA each year. (*Id.* ¶ 63.) If a teacher makes a timely objection, the Local Union either refrains from collecting the nonchargeable portion or sends a rebate check equal to the nonchargeable portion of the annual agency fee. (*Id.* ¶ 61.) Teachers may also file a legal challenge to a Local Union's calculation of the chargeable and nonchargeable portions of the agency fee. (*Id.*)

Agency fees typically consume about two percent of a new teacher's salary and sometimes increase regardless of whether there is an increase in teacher pay. (*Id.* ¶ 62.) The total amount generally exceeds $1,000 per teacher, while the amount of the refund for nonmembers who successfully opt out is generally around $350 to $400 annually. (*Id.*)

Plaintiffs allege that the Local Unions also provide teachers with a membership enrollment form that teachers may wrongly interpret as saying they can join the union without subsidizing political activities. (*Id.* ¶ 64.) The form states that the CTA maintains a political action committee ("PAC"), for which it solicits member donations. (*Id.*) The form then invites CTA members to check a box "if you choose not to allocate a portion of your dues to the [CTA's PAC] account and want all of your dues to remain in the General Fund." (*Id.*) Plaintiffs allege that this box-checking option potentially creates the impression that checking the box means a teacher has opted out of subsidizing political expenditures altogether. (*Id.*)

Because a teacher who opts out cannot be a union member, those who do must also forgo the ability to obtain direct benefits through his or her local union. (*Id.* ¶ 65.) Plaintiffs allege that some of these benefits are of the kind that typically are obtainable through one's employer. (*Id.*) For example, many unions decline to bargain for disability insurance as part of the employment package and instead offer this benefit to members directly. (*Id.*) The Local Unions allegedly invoke teachers' inability to obtain disability insurance through their school district employers as a reason to encourage employees to join the union. (*Id.*)

Under the Local Unions' collective bargaining agreements, the Local Unions are authorized to represent all employees, including nonmembers, in grievance proceedings. (*Id.* ¶ 67.) No Local Union is obligated to pursue a grievance if it concludes that the grievance is not in the interest of the entire bargaining unit. (*Id.*) The Local Unions' obligation to process grievances is limited to employees who allege some violation of the collective-bargaining agreement. (*Id.*) Plaintiffs allege that employees are limited in the

degree to which they can pursue grievances on their own behalf. (*Id.*) If a Local Union chooses not to pursue a grievance past a certain stage, the employee cannot pursue the grievance any further on his or her own. (*Id.*)

D. Union Defendants' Political Activities

In recent years, the NEA has deemed approximately 48% of its expenditures to be chargeable. (*Id.* ¶ 68.) The CTA has deemed approximately 70% of its expenditures to be chargeable. (*Id.*) Local unions often use the same chargeability percentage as the CTA based on a presumption that local unions tend to spend as much or more of their budgets on collective bargaining as do their state affiliates. (*Id.*)

Plaintiffs allege that these unions routinely engage in express political advocacy. (*Id.* ¶ 70.) For instance, the CTA and its affiliated entities spent over $211 million in political expenditures from 2000 through 2009. (*Id.*) These expenditures have gone towards, among other things, opposing ballot initiatives that would have (1) enacted a school-voucher system in California, (2) made changes in the probationary period for California school teachers, (3) prohibited the use of public employee agency fees for political contributions without individual employees' prior consent, (4) affected state spending and minimum school-funding requirements, and (5) banned same-sex marriage. (*Id.* ¶¶ 70, 72.) The CTA also takes public positions on a wide range of issues including opposing school vouchers, advocating raising taxes on higher earners, and supporting timely legalization of immigrants without regard to national origin. (*Id.* ¶ 71.) From 2003 to 2012, the CTA and its affiliated entities spent nearly $102 million on political contributions, only 0.08% of which went to Republicans. (*Id.* ¶ 72.) The CTA also encourages its members to engage in extensive political activism in the public schools where they work, including having students engage in classroom activities that further the CTA's political campaigns. (*Id.* ¶ 73.) The NEA likewise engages in widespread political advocacy on a range of issues, including supporting firearm restrictions and the Affordable Care Act. (*Id.* ¶ 74.) The NEA has endorsed every Democratic presidential nominee since

1976 and has never endorsed a Republican presidential nominee. (*Id.*) Of the 295 candidates that the NEA endorsed in House and Senate races in 2016, 92% were Democrats. (*Id.*)

Plaintiffs allege that the CTA classifies expenditures as being chargeable even when those expenditures appear to have little to do with collective bargaining. (*Id.* ¶ 79.) For example, in 2014–2015, the CTA classified as chargeable expenditures a program on "Human Rights, Women, and GLBT Issues," a "Cyber Café," and publication and dissemination of the CTA's internal magazine. (*Id.*) The CTA also deems "Regional Services" to be 91.7% chargeable even though "Regional Services" includes expenditures on organizing and training for political action activities at the state, local, and national levels; supporting local and regional organizing activities to influence the re-authorization of the Elementary and Secondary Education Act; and increasing CTA members in new charter schools. (*Id.* ¶ 80.) Chargeable expenses also include those related to policy strategizing or public polling. (*Id.* ¶ 81.)

The NEA also allegedly classifies expenditures as chargeable even when they appear to have little to do with collective bargaining. (*Id.* ¶ 82.) For example, in 2014–2015, the NEA classified as chargeable the following: expenditures to (1) advance the NEA's student-centered social and economic justice agenda in public schools, (2) create locally-based or state-based campaigns to improve teaching and learning conditions, (3) advance the NEA's criteria for Great Public Schools and workforce quality agenda, and (4) develop affiliates' capacity and effectiveness in membership and organizing. (*Id.*) The NEA also deems partially chargeable expenditures on popular culture and the arts to "effectively support mission-critical communications," on technical assistance and support to NEA leaders to advance "policy and practice that supports NEA's mission, vision, and core values," and on supporting affiliates "to activate our vast network in pursuit of the Association's vision." (*Id.* ¶ 83.)

Based on the above allegations, Plaintiffs filed the instant action alleging that the Union Defendants' agency fees and opt-out requirements violate the First Amendment. (*Id.* ¶¶ 94–101.) Specifically, Plaintiffs allege that by requiring them to make financial contributions in support of the Union Defendants, and requiring them to opt-out of paying for nonchargeable union expenditures, California's agency-shop arrangement violates their rights to free speech and association. (*Id.* ¶¶ 97, 100.)

Plaintiffs now move for judgment on the pleadings against themselves.

III. LEGAL STANDARD

"Judgment on the pleadings is proper when the moving party clearly establishes on the face of the pleadings that no material issue of fact remains to be resolved and that it is entitled to judgment as a matter of law." *Hal Roach Studios, Inc. v. Richard Feiner & Co.*, 896 F.2d 1542, 1550 (9th Cir. 1989). "[T]he allegations of the non-moving party must be accepted as true, while the allegations of the moving party which have been denied are assumed to be false." *Id.* Typically, when a plaintiff is moving for judgment on the pleadings, it is moving for judgment in its favor. In such cases, analyzing the pleadings in the light most favorable to the defendant, the non-moving party, is appropriate as it ensures "that the procedural and substantive rights of the nonmoving party are decided as fully and fairly on a Rule 12(c) motion as if there had been a trial on the merits." 5C Charles Alan Wright, et al., Federal Practice and Procedure § 1368 (3d ed. 1998) (April 2017 Update).

However, this is not a typical case. Plaintiffs are moving for entry of judgment against themselves on the grounds that they fail to state a claim and that Defendants "should have filed" a motion to dismiss. (Mem. at 1, Doc. 97-1, Reply at 11, Doc. 116.) Defendants oppose entry of judgment on the grounds that they have a right to control their own defense and that Plaintiffs do state a viable claim. (Union Opp. at 8, 8 n.5, Doc. 114; AG Opp. at 7, 11, Doc. 115.) "The Federal Rules of Civil Procedure are designed to further the due process of law that the Constitution guarantees." *Nelson v. Adams USA,*

Inc., 529 U.S. 460, 465 (2000). Looking beyond the form of Plaintiffs' Motion and analyzing its substance, Plaintiffs' Rule 12(c) Motion is effectively a Rule 12(b)(6) motion to dismiss. In that situation, the standard of review applicable to a Rule 12(b)(6) motion applies. *Dworkin v. Hustler Magazine Inc.*, 867 F.2d 1188, 1192 (9th Cir. 1989).

Under that standard, the complaint must contain "sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). "A claim has facial plausibility when the pleaded factual content allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* (citing *Twombly*, 550 U.S. at 556). Although a complaint "does not need detailed factual allegations," the "[f]actual allegations must be enough to raise a right to relief above the speculative level . . . ." *Twombly*, 550 U.S. at 555. Thus, a complaint must (1) "contain sufficient allegations of underlying facts to give fair notice and to enable the opposing party to defend itself effectively[,]" and (2) "plausibly suggest an entitlement to relief, such that it is not unfair to require the opposing party to be subjected to the expense of discovery and continued litigation." *Starr v. Baca*, 652 F.3d 1202, 1216 (9th Cir. 2011). So long as the complaint states a claim under "any legal theory," it should not be dismissed. *Haddock v. Bd. of Dental Exam'rs of Cal.*, 777 F.2d 462, 464 (9th Cir. 1985) (citing *United States v. Howell*, 318 F.2d 162, 166 (9th Cir. 1963)).

IV. DISCUSSION

As a preliminary matter, the Court notes that Plaintiffs' Motion is procedurally improper. Federal Rule of Civil Procedure 12(c) provides that a party may move for judgment on the pleadings "[a]fter the pleadings are closed." Fed. R. Civ. P. 12(c). Typically, "the pleadings are closed for the purposes of Rule 12(c) once a complaint and answer have been filed." *Doe v. United States*, 419 F.3d 1058, 1061 (9th Cir. 2005). When a motion for judgment on the pleadings is filed before the filing of an answer, the

motion is premature and should be denied. *Id.* Here, Plaintiffs filed their Motion on March 1, 2017, before the Union Defendants and the Attorney General filed their Answers on March 30, 2017. This alone is grounds for denial of Plaintiffs' Motion.

However, even if Plaintiffs had waited to bring the instant Motion, the Court finds that judgment on the pleadings would still be inappropriate.

A. Plaintiffs State a Viable Claim

Taking the factual allegations in the Complaint as true, Plaintiffs have stated cognizable claims despite the Supreme Court's holding in *Abood v. Detroit Board of Education*, 431 U.S. 209 (1977), and the Ninth Circuit's holding in *Mitchell v. Los Angeles Unified School District*, 963 F.2d 258 (9th Cir. 1992).

In *Abood*, the Supreme Court considered the constitutionality of an agency shop arrangement between a union and a local government employer whereby every employee represented by the union, even though not a union member, had to pay the union an agency fee equal in amount to union dues. 431 U.S. at 211. Citing to some of its earlier decisions, the Court held that the agency shop arrangement was constitutional "insofar as the service charge is used to finance expenditures by the Union for the purposes of collective bargaining, contract administration, and grievance adjustment." *Id.* at 225–26, 232. However, nonmembers could prevent the public-sector union from spending part of their required agency fees "to contribute to political candidates and to express political views unrelated to its duties as exclusive bargaining representative." *Id.* at 234–36. The Court declined to further define the difference between collective-bargaining activities and activities unrelated to collective bargaining, citing the lack of an evidentiary record before it. *Id.* at 236–37 ("The lack of factual concreteness and adversary presentation to aid us in approaching the difficult line-drawing questions highlights the importance of avoiding unnecessary decision of constitutional questions.").

In *Mitchell*, the Ninth Circuit considered the constitutionality of a public-sector union's opt-out procedure for nonunion members who wished to avoid paying for the

union's nonchargeable expenditures. 963 F.2d at 259. After reviewing the Supreme Court's decisions on union agency-shop arrangements, the court found that there was "no support for the plaintiffs' position . . . that affirmative consent to deduction of full fees is required in order to protect their First Amendment rights." *Id.* at 261. It was sufficient that nonunion members be "given the opportunity to object to such deductions and to pay a fair share fee to support the union's representation costs." *Id.* Accordingly, the court held that "[t]he procedures followed by the union to give plaintiffs the opportunity to object to the full agency fee complied with the applicable standard to ensure protection of their First Amendment rights." *Id.* at 263.

Here, Plaintiffs allege a long list of conduct by Defendants that, if true, plausibly contravene the holdings in *Abood* and *Mitchell*. The CTA and the NEA allegedly classify expenditures that have little to do with collective bargaining as chargeable to nonmembers. (Compl. ¶¶ 79, 82.) For example, the CTA allegedly classified expenditures on a program on "Human Rights, Women, and GLBT Issues," and a "Cyber Cafe" as 100% chargeable. (*Id.* ¶ 79.) The NEA allegedly classified "[a]dvanc[ing] NEA's student-centered social and economic justice agenda in public schools" as 83.4% chargeable and "[d]evelop[ing] [affiliates'] capacity and enhanc[ing] their effectiveness in membership and organizing" as 81.8% chargeable. (*Id.* ¶ 82 (internal quotation marks omitted).) Such conduct plausibly violates *Abood*'s holding that public-sector unions may charge nonmembers only for the purposes of collective bargaining, contract administration, and grievance adjustment.

Plaintiffs also allege that the Union Defendants' opt-out procedures are "unnecessarily burdensome." (*Id.* ¶ 2.) Although *Mitchell* approved an opt-out process for nonmembers seeking to avoid paying the full agency fee, it did not hold that a union can make the opt-out process unduly burdensome. *Cf. Knox v. Serv. Emps. Int'l Union, Local 1000*, 567 U.S. 298, 314 (2012) (discussing what standard opt-out procedures must satisfy and suggesting that the use of an opt-out system approaches "the limit[s] of what the First Amendment can tolerate"); *Chicago Teachers Union, Local No. 1, AFT, AFL-CIO v.*

Hudson, 475 U.S. 292, 307 (1986) ("The nonunion employee . . . is entitled to have his objections addressed in an expeditious, fair, and objective manner."). Here, "[n]o matter how many consecutive years a nonmember opts out, that nonmember still must send an opt-out letter to CTA each year." (Compl. ¶ 63.) Each of the individual Plaintiffs have been teachers for over ten years and many of them have been opting out of paying the full agency fee for decades. (*See id.* ¶¶ 10–17.) For example, Plaintiff Aster has been a public-school teacher in the Carlsbad Unified School District for 29 years, has never been a member of Defendant Carlsbad Unified Teachers Association, and has consistently opted out of paying the nonchargeable portion of the agency fee, but he still must go through the opt-out process every year. (*Id.* ¶ 15.) If he were to miss the deadline one year, he would be obligated to pay the full agency fee for that year. (*Id.* ¶ 63.) In addition, Defendant Pittsburg Education Association allegedly has been deducting $1 from each of Plaintiff Meilahn's paychecks even though Meilahn, as a religious objector, objected to paying any amount to the union. (*Id.* ¶ 17.) These allegations plausibly state a claim that the Union Defendants' opt-out procedures violate the First Amendment.

Plaintiffs' characterization of their claims as "facial," rather than "as applied," does not mean they fail to state a claim. "[T]he distinction between facial and as-applied challenges is not so well defined that it has some automatic effect or that it must always control the pleadings and disposition in every case involving a constitutional challenge." *Citizens United v. Federal Election Comm'n*, 558 U.S. 310, 331 (2010). The distinction between the two types of challenges delineate "the breadth of the remedy employed by the Court, not what must be pleaded in a complaint." *Id.* Here, Plaintiffs clearly seek a particular form of relief for their injury—a Supreme Court ruling that overturns *Abood* and *Mitchell*. (*See* Compl., Prayer for Relief; Reply at 1.). However, the disposition of a motion for judgment on the pleadings for failure to state a claim is governed, not by Plaintiffs' preferred relief, but by whether Plaintiffs have stated a plausible claim for relief. *See Cafasso, U.S. ex rel. v. Gen. Dynamics C4 Sys., Inc.*, 637 F.3d 1047, 1054 n.4 (2011);

Iqbal, 556 U.S. at 678 ("[A] complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'").

Plaintiffs' contention that they have pleaded no viable claim based on selective quotations of their own Complaint is unavailing. In evaluating Plaintiffs' Complaint, the Court must consider the complaint "as a whole." *See Ronconi v. Larkin*, 253 F.3d 423, 429 (9th Cir. 2001). Taken as a whole, Plaintiffs have included in their Complaint numerous factual allegations relating to the Union Defendants' agency fee collection practices, their expenditures on political campaigns, their procedures for classifying expenditures as chargeable or nonchargeable, the opt-out process, and the many ways in which the Union Defendants' conduct conflicts with Plaintiffs' beliefs and interests. The Court cannot ignore these allegations under the relevant standard, which does not change simply because Plaintiffs are moving for entry of judgment against themselves.

B. Relevance of Developing a Factual Record

Moreover, developing a factual record is relevant to this action despite Plaintiffs' assertions to the contrary. As Defendants articulate in their briefs, evidence of how mandatory agency fees and opt-out procedures function in practice, and the benefits they provide to Defendants and the State of California, would help them present a more compelling argument on appeal for why the holdings in *Abood* and *Mitchell* should be affirmed. If the Supreme Court decides that those holdings must be modified in some way, the Court will be aided in making its modification in light of the realities of how public-sector unions work in practice rather than factual allegations that are merely assumed to be true. In fact, the Court in *Abood* explicitly declined to more clearly define the difference between expenditures that are germane to collective-bargaining and those that are not germane because "there [was] no evidentiary record of any kind." 431 U.S. at 236. Just because the Court has decided constitutional questions on the pleadings before, does not mean that evidentiary records are irrelevant or undesirable or that such a record would not be helpful in reaching a decision. *See McCutcheon v. Federal Election Comm'n*, 134 S.

Ct. 1434, 1479–80 (2014) (Breyer, J., dissenting) (stating the ways in which an evidentiary record would be useful when deciding constitutional issues).

Developing a factual record will benefit Plaintiffs as well. If, as Plaintiffs allege, there truly is no compelling or persuasive evidence that mandatory agency fees and opt-out procedures achieve the State's proffered interests, then rather than relying on mere factual allegations, Plaintiffs will have actual evidence that *Abood* and *Mitchell* unconstitutionally burden their First Amendment rights. The numerous factual allegations in the Complaint indicate that Plaintiffs, too, consider the facts relevant in this case, even as they claim those facts are "irrelevant" to determining whether they state a claim. If Plaintiffs truly consider Defendants' denial of their factual allegations to be irrelevant to their claims, then it begs the question why Plaintiffs included so many allegations about how much money the Union Defendants raise in fees, how they allocate those funds, how they fail to properly differentiate between chargeable and nonchargeable portions, and how burdensome the opt-out process is for the individual Plaintiffs.

Finally, the unusual manner in which this Motion was brought before the Court and the positions of the parties cannot be ignored. Plaintiffs initiated this action by filing their Complaint on February 6, 2017. (Compl.) Less than one month later, before the Union Defendants or the Attorney General had filed any answer or responsive motion, Plaintiffs filed the instant Motion seeking entry of judgment against themselves on the basis that they fail to state a claim. (Mot., Doc. 97.) Plaintiffs' Motion relies primarily on *Friedrichs v. California Teachers Association*, a case where the union defendants stipulated to the entry of judgment on the pleadings and the California attorney general agreed that judgment on the pleadings was warranted. (Stip. to MJP, 8:13-cv-00676-JLS-CW, ECF No. 87 (C.D. Cal. Jul. 22, 2013); AG Response to MJP, 8:13-cv-00676-JLS-CW, ECF No. 104 (C.D. Cal. Nov. 25, 2013).)

Unlike in *Friedrichs*, neither the Union Defendants nor the Attorney General agree to entry of judgment on the pleadings in this case. Rather, these Defendants would prefer

to obtain a judgment following development of a factual record, believing that this would better protect their interests going forward. (*See* Union Opp. at 15–17; AG Opp. at 7–10.) The due process extended by the Federal Rules of Civil Procedure extends to defendants as well as plaintiffs. *C.f.*, *Nelson*, 529 U.S. at 465; *Boddie v. Connecticut*, 401 U.S. 371, 377 (1971) ("[D]ue process of law signifies a right to be heard in one's defense . . . ." (internal quotation marks omitted)). Nowhere do the Rules require a defendant to file a Rule 12(b) motion to dismiss or a Rule 12(c) motion for judgment on the pleadings. If a defendant so chooses, he may simply file an answer to the plaintiff's complaint and proceed to discovery. *See* Fed. R. Civ. P. 12; *Republic of Arg. v. NML Capital, Ltd.*, 134 S. Ct. 2250, 2254 (2014) ("The general rule in the federal system is that . . . '[p]arties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense.'" (quoting Fed. R. Civ. P. 26(b)(1)); *cf. Condit v. Dunne*, 225 F.R.D. 100, 109 (S.D.N.Y. 2004) ("To deny defendant access to any information that may support [an affirmative defense] would deny defendant his right to due process."). Plaintiffs failed to cite anywhere in their briefs or at oral argument a case where, upon the plaintiffs' motion, a court entered judgment on the pleadings against the plaintiffs and in the defendants' favor over the defendants' objections. In a similar situation, a district court in the Northern District of Illinois also found "no precedent for granting one party's motion for judgment in favor of its opponent." *Penn Mut. Life Ins. Co. v. Greatbanc Trust Co.*, 887 F. Supp. 2d 822, 826 (N.D. Ill. 2012).

Like the moving party in *Penn Mutual*, Plaintiffs here also appear to have filed a Rule 12(c) motion "only so it could take a position[] that there are no factual disputes and no need for discovery." *Id.* Such gamesmanship is contrary to the purpose for which the Federal Rules of Civil Procedure were promulgated. *See In re Allbrand Appliance & Television Co., Inc.*, 875 F.2d 1021, 1022 (2d Cir. 1989). At heart, Plaintiffs have a very particular view of this case with a very particular outcome in mind and a preferred way of achieving that outcome. However, the Defendants get to decide how they want to defend

this case and what actions best achieve that defense, and the Court decides whether Plaintiffs have stated a claim to relief.

V. CONCLUSION

Accordingly, the Court DENIES Plaintiffs' Motion for Judgment on the Pleadings.

DATED: June 1, 2017

JOSEPHINE L. STATON
UNITED STATES DISTRICT JUDGE