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CALIFORNIA POLICY CENTER

PLAINTIFF STORIES: Barke et al. v. Banks et al.

The plaintiffs in Barke et al. v. Banks et. al. have felt the real world consequences of California Code Section 3550's unconstitutional gag rule. Here are a few of their experiences:

- A school board member reports that he no longer feels free to inform his constituents about union negotiating positions on issues that have significant consequences for his school system's budget, including salaries, benefits, and seniority rules.

- A city council member was threatened with a Section 3550 complaint because she posted to Facebook a letter questioning union support for a candidate to city council.

- In one small community, a school board member reports that he feels that he may no longer may be able to engage in informal discussions with his constituents about matters that touch on union policies for fear of triggering a Section 3550 charge.

- An elected official who ran on a platform of countering union demands for increases in salaries, pensions, and other benefits was troubled to learn that he might trigger a 3550 charge if he shares with his constituents and employees the basic fact that increased benefits for union employees would mean lower salaries for all. Nor can he mention the fact that union seniority policies tend to disfavor younger workers. Publicizing either fact might well deter or discourage union membership.

- One official reports that he cannot inform employees that they have a First Amendment right to leave their union — or not to join one at all — without having to pay further mandatory dues. Simply restating the Supreme Court's 2018 decision in *Janus v. AFSCME* could trigger a charge of an unfair labor practice because it could "deter or discourage" individuals from membership.

- Several elected officials report that Section 3550 makes it difficult to respond to constituents' questions posed at regular public meetings since they cannot know in advance what questions will be asked. Once at the podium, they cannot consult with counsel to determine which answers might later be construed as "deterring or discouraging" union membership. As a result, they have been advised to avoid discussion of many issues relevant to their constituents' questions.

- The California School Boards Association ("CSBA"), a nonprofit education association representing the elected officials who govern public school districts and county offices of education, issued a legal advice letter counseling school Board members to be mindful of their communications with the public and school employees, particularly when discussing the *Janus* decision or making comments that could be construed as deterring or discouraging union participation.