

For Immediate Release

February 24, 2020

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California Public Officials File Suit Against California Gag Law

Washington, DC and Irvine, CA –The California Policy Center and the Center for Individual Rights today filed suit on behalf of seven California elected officials challenging a California law that prohibits public employers, including many elected school board and city council members, from statements that “deter or discourage” public employees from union membership.

“I was elected by the people to ask tough questions and discuss public policy issues in an open dialogue without fear of legal action. This law makes it impossible for me and other elected public officials to represent our constituents fully and candidly,” said lead plaintiff Jeffrey Barke, MD, who serves as a member of the Rossmoor Community Services District and from 2006-2018 served as an elected member of the Los Alamitos Unified School District Board of Education.

The 2018 law (California Government Code Section 3550) bans any speech that is critical of unions, which is a violation of the First Amendment. The law’s inherently vague standard – whatever might “deter or discourage” union membership – inevitably chills a broad swath of clearly protected speech since public officials have no way of knowing in advance what speech might “deter or discourage” union membership. The plaintiffs feel they cannot say anything about unions – even making factual statements – without fear of triggering a complaint.

In response to the law, the California School Boards Association advised its nearly 1,000-member school boards to limit discussion about union issues that might trigger a complaint. United Teachers Los Angeles (UTLA) has already filed complaints of an unfair labor practice against 11 public charter schools based on statements by administrators who shared their personal experiences as teachers who worked in a unionized public school district. The Public Employment Relations Board (“PERB”) has yet to rule.

The seven public official-plaintiffs have experienced numerous instances where the law has interfered and continues to interfere with their responsibility to participate fully and candidly in public discussion on significant issues or answer basic constituent questions.

“Public employee unions in California have positions on many issues that directly affect the budgets and policies in every school, city, and county in the state,” continued Barke. “This law unfairly censors any discussion of those positions and of the unions that support them.”

Among the other six plaintiffs are local school board and city council members from various communities in California.

Section 3550 is part of a slate of laws enacted in the last several years designed to bolster the ability of California unions to continue to extract dues and fees from state and local employees. Lead Counsel David Schwarz of the Los Angeles firm of Sheppard Mullin, Richter & Hampton LLP commented, “it is no coincidence that Section 3550 was signed into law the same day the U.S. Supreme Court decided *Janus v. AFSCME*, the landmark 2018 holding that forcing public employees to pay union dues violates the First Amendment’s prohibition against compelled speech.”

CPC CEO Mark Bucher said, “This law systematically suppresses criticism of public employee union policies on everything from wage and benefit demands to sanctuary city policies. The California Legislature cannot silence public debate in this way.”

CIR President Terence Pell said, “The First Amendment does not allow a state to selectively punish speech of *anyone* based solely on the point of view expressed. It is fundamental to our representative government that elected officials are free to participate fully and candidly in public discussion. This California gag law must go.”

The suit was filed in Federal District Court of the Central District of California.

To read more about the case, visit <https://www.cir-usa.org>

About California Policy Center:

The California Policy Center is an educational non-profit focused on public policies that aim to improve California’s democracy and economy. Learn more about CPC’s work at Californiapolicycenter.org

About The Center for Individual Rights:

The Center for Individual Rights is a nonprofit public interest law firm that defends individual rights, with particular emphasis on civil rights and free speech. CIR provides free legal representation to deserving clients whose individual rights are threatened. Learn more about CIR’s work at cir-usa.org.

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