

Sheppard Mullin Files First Amendment Challenge To State Law Muzzling Speech Of California Local Public Officials

Elected Representatives Claim Pro-Union Law Chills Ability To Share Facts And Opinions About Public Employee Unionization

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On Friday, February 21, 2020, seven elected members of Southern California local school boards, city councils, and community colleges districts, represented by Sheppard Mullin, filed a complaint in federal court challenging recently enacted legislation that prohibits public employers from “deter[ring] or discourag[ing]” unionization or union membership. Attorneys from the Center for Individual Rights and the California Policy Center are acting as co-counsel.

“As alleged, Section 3550 squelches only one side of the public debate over public employee unions,” said Sheppard Mullin partner David Schwarz. “It chills the ability of elected officials, including plaintiffs in this lawsuit, to communicate their opinions – or even factual information – about public employee unions, for fear of exposing their agency and themselves to unfair labor charges. At the same time, Section 3550 limits the public’s ability to receive information about the benefits and disadvantages of unionization from their own elected officials.”

Section 3550 is part of a slate of legislative enactments intended to bolster California public employee unions and to protect their ability to continue to extract dues and fees from state employees. It was signed into law just days after the U.S. Supreme Court granted review in *Janus v. AFSCME*, the landmark First Amendment decision holding that state-compelled union agency fees violate the First Amendment’s prohibition against compelled speech.

The Wall Street Journal, which published an opinion piece about the case on February 24, noted,

“A legal analysis for the League of California Cities directed employers to refer to unions all employee requests to discontinue membership dues. Welcome to the Sacramento version of Hotel California where workers can’t speak up or leave. Plaintiffs argue that the law violates the First Amendment by chilling speech and is unconstitutionally vague, and based on this evidence they have a very strong case.

Notably, too, the law does not prohibit public officials from encouraging union membership. Nor does it exempt government officers when they are campaigning for election. Public officials enjoy the same speech rights as workers and all Americans. California Democrats want to preserve one First Amendment violation that the Supreme Court struck down by creating another.”

The case is *Jeffrey I. Barke et al v. Eric Banks et al.*, 8:20-cv-00358-JLS-ADS

The Sheppard Mullin team, led by David Schwarz, includes Jay Ramsey and Alexandra (A.J.) Jackson.

A copy of the Complaint and Exhibits can be found [here](#).

To read the joint Center for Individual Rights and California Policy Center press release, [click here](#).

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