FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

JODEE WRIGHT, an individual, *Plaintiff-Appellant*, v. SERVICE EMPLOYEES INTERNATIONAL UNION LOCAL 503, a labor organization; KATY COBA, in her official capacity as Director of the Oregon Department of Administrative Services; DEPARTMENT OF ADMINISTRATIVE SERVICES, *Defendants-Appellees.*	No. 20-35878 D.C. No. 6:20-cv-00520-MC OPINION

Appeal from the United States District Court
for the District of Oregon
Michael J. McShane, District Judge, Presiding

Argued and Submitted February 8, 2022
Portland, Oregon

Filed September 19, 2022

Before: Richard A. Paez and Jacqueline H. Nguyen, Circuit Judges, and John R. Tunheim,[*] District Judge.

Opinion by Judge Paez

SUMMARY[**]

Civil Rights

The panel affirmed the district court's dismissal of plaintiff's claims for prospective relief against all defendants for lack of jurisdiction and her claims for retrospective relief against Service Employees International Union Local 503 ("SEIU") for failure to allege state action under 42 U.S.C. § 1983.

Before her retirement, plaintiff was employed by the Oregon Health Authority, and SEIU was the exclusive representative for her bargaining unit. Plaintiff never joined SEIU, but the State deducted union dues from her salary and remitted the dues to SEIU. Plaintiff alleged that SEIU forged her signature on a union membership agreement. Plaintiff demanded that the State and SEIU stop the dues deductions and return the withheld payments. After she retired, plaintiff filed this action against State defendants and SEIU, alleging several constitutional claims under 42 U.S.C.

[*] The Honorable John R. Tunheim, Chief United States District Judge for the District of Minnesota, sitting by designation.

[**] This summary constitutes no part of the opinion of the court. It has been prepared by court staff for the convenience of the reader.

§ 1983. She also alleged several Oregon state law claims against SEIU.

The panel held that plaintiff lacked standing to pursue her claims for prospective relief, and plaintiff's § 1983 claims failed for lack of state action.

Because jurisdiction is a threshold issue, the panel first considered whether it could entertain plaintiff's claims for prospective declaratory and injunctive relief against all defendants. As to plaintiff's claims for prospective relief for violation of her First Amendment rights, the panel concluded that her fear of future harm was based on a series of interferences that were too speculative to establish a "case or controversy" for the prospective relief she sought. Because she retired before filing this lawsuit, plaintiff's sole basis for her impending injury was her fear that, should she return to work, SEIU would forge a new membership agreement. Plaintiff's theory of future injury was unavailing. Plaintiff's allegations of past injury were also insufficient to establish standing. Plaintiff's theory that potential future unauthorized dues deductions chilled her exercise of her First Amendment rights was also too speculative to establish standing. Similarly, as to plaintiff's claims for prospective relief for violation of her Fourteenth Amendment procedural due process rights, the panel concluded that she lacked any concrete interest in her future wages or her right to be free from compelled union speech that were threatened by the alleged lack of procedural safeguards. The panel therefore affirmed the dismissal of these claims for lack of jurisdiction.

The panel next considered whether plaintiff's remaining claims against SEIU for retrospective relief—damages—were cognizable under 42 U.S.C. § 1983. The panel held

that the district court did not err in dismissing these claims because SEIU was not a state actor for § 1983 purposes. *Belgau v. Inslee*, 975 F.3d 940 (9th Cir. 2020), dealt with an analogous statutory scheme in Washington authorizing union dues deductions. Given the similarities in the two statutory schemes of Oregon and Washington, the panel agreed with SEIU that, as in *Belgau*, it was not a state actor for purposes of § 1983. Plaintiff's claims failed to identify any "state policy" that would make SEIU a state actor under § 1983. SEIU further cannot fairly be described as a state actor under the joint action or public function tests. The panel therefore affirmed the district court's dismissal of plaintiff's claims for retrospective relief against SEIU.

COUNSEL

Rebekah C. Millard (argued) and James G. Abernathy, Freedom Foundation, Olympia, Washington, for Plaintiffs-Appellants.

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Christopher A. Perdue (argued), Assistant Attorney General; Benjamin Gutman, Solicitor General; Ellen F. Rosenblum, Attorney General; Office of the Attorney General, Salem, Oregon; for Defendants-Appellees Katy Coba and Department of Administrative Services.

OPINION

PAEZ, Circuit Judge:

Before her retirement in February 2020, Jodee Wright ("Wright") was employed by the Oregon Health Authority. The Service Employees International Union, Local 503 ("SEIU" or "Union") was the exclusive representative for her designated bargaining unit. Although Wright never joined the Union, the State began deducting union dues from her salary and remitting the dues to SEIU. In this lawsuit, Wright alleges that the Union forged her signature on a union membership agreement that included a dues deduction authorization, and then requested that the State deduct dues from her salary and remit them to SEIU. Months later, and while still employed, Wright demanded that the State and Union stop the dues deductions and return the withheld payments.

After Wright retired, she filed this lawsuit against the Department of Administrative Services, Katy Coba, the Director of the Department of Administrative Services (collectively, "state Defendants"), and SEIU alleging several constitutional claims under 42 U.S.C. § 1983 against Defendants. First, she alleged that by deducting dues without her consent, Defendants violated her First Amendment right to be free from compelled speech, as recognized by *Janus v. American Federation of State, County, & Municipal Employees, Council 31*, 138 S. Ct. 2448 (2018). Second, she alleged that Defendants violated her right to procedural due process under the Fourteenth Amendment by deducting dues and remitting them to the Union without affording her certain procedural safeguards. Wright also alleged several state law claims against SEIU. She sought declaratory and injunctive relief and reimbursement of all the dues payments wrongfully

withheld. The district court concluded that Wright's claims for prospective relief were moot because she was no longer employed by the State. The court dismissed these claims for lack of jurisdiction under Federal Rule of Civil Procedure 12(b)(1). The court dismissed the damages claims against SEIU under Rule 12(b)(6) because Wright failed to allege facts showing a plausible basis that SEIU was a state actor for purposes of § 1983.

We affirm, but we conclude that Wright lacked standing to pursue her claims for prospective relief.[1] *Johnson v. Riverside Healthcare Sys., LP*, 534 F.3d 1116, 1121 (9th Cir. 2008) (holding that this court may affirm on the basis of any ground fairly supported by the record). We also agree, for reasons similarly laid out in *Belgau v. Inslee*, 975 F.3d 940 (9th Cir. 2020), that Wright's § 1983 claims fail for lack of state action.

[1] Wright's complaint does not allege when she retired, but the record shows that she did so at the end of February 2020. Wright does not dispute that she retired in February 2020. She then filed her lawsuit at the end of March 2020. We can properly consider this information because it was provided by the Defendants in declarations they filed in support of their motions to dismiss under Rule 12(b)(1). *See Safe Air for Everyone v. Meyer*, 373 F.3d 1035, 1039 (9th Cir. 2004) (holding that when a defendant makes a factual attack on the court's jurisdiction under Rule 12(b)(1), a court may consider evidence outside the complaint to resolve the jurisdictional challenge). Because Wright retired before she filed suit, this is a case in which she lacked "[t]he requisite personal interest that must exist at the commencement of the litigation" rather than one in which she lost that interest during the pendency of the suit. *Friends of the Earth, Inc. v. Laidlaw Env't Servs. (TOC), Inc.*, 528 U.S. 167, 189 (2000). We therefore believe it is more straightforward to hold that her claims fail on standing grounds rather than to assume that standing exists in order to analyze mootness. *See Arizonans for Official English v. Arizona*, 520 U.S. 43, 66–67 (1997).

I.

Wright worked for the Oregon Health Authority, a state agency, whose employees were represented exclusively by SEIU. According to SEIU, Wright joined SEIU on October 5, 2017, by electronically signing an SEIU membership and dues authorization agreement ("membership agreement"). From October 2017 until her retirement in February 2020, at SEIU's request, the State deducted union dues from Wright's salary and remitted them to SEIU. On October 15, 2019, Wright sent a letter to SEIU resigning her union membership and terminating her dues deduction authorization. On November 5, 2019, SEIU responded and included a copy of Wright's purported membership agreement. Wright had "no memory of signing" the membership agreement and determined that her signature had been forged.[2] When Wright retired in February 2020, the State ceased deducting and remitting union dues to SEIU.

After retiring, Wright filed this lawsuit under § 1983 against all Defendants, alleging the claims noted above. The district court dismissed Wright's claim for prospective relief against all Defendants as moot under Rule 12(b)(1). The court dismissed Wright's remaining damages claims against SEIU under Rule 12(b)(6) because she failed to allege a plausible basis for state action under § 1983. Wright timely appealed.[3] Fed. R. App. P. 4(a)(1)(A).

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[2] While the parties dispute whether Wright's membership agreement was forged, we assume that it was. *See Fowler Packing Co. v. Lanier*, 844 F.3d 809, 814 (9th Cir. 2016).

[3] We have jurisdiction under 28 U.S.C. § 1291. We review de novo an order dismissing a complaint for failure to state a claim, *Daniels-Hall v. Nat'l Educ. Ass'n*, 629 F.3d 992, 998 (9th Cir. 2010), and for lack of

II.

Because jurisdiction is a threshold issue, we first consider whether we may entertain Wright's claims for prospective declaratory and injunctive relief against all Defendants. As to Wright's claims for prospective relief for violation of her First Amendment rights, we conclude that her fear of future harm is based on a series of inferences that are too speculative to establish a "case or controversy" for the prospective relief she seeks. Similarly, as to Wright's claims for prospective relief for violation of her Fourteenth Amendment procedural due process rights, we conclude that she lacks any concrete interest in future wages or her right to be free from compelled union speech that are threatened by the alleged lack of procedural safeguards. We therefore affirm the district court's dismissal of these claims for lack of jurisdiction.

A. First Amendment Claim

To establish Article III standing, a plaintiff must demonstrate that: (1) she suffered an "actual or imminent" injury as a result of the alleged illegal conduct; (2) there is a "causal connection between the injury and the conduct complained of"; and (3) the injury will "likely" be "redressed by a favorable decision" of the court. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560–61 (1992). The plaintiff has the burden of establishing standing "for each claim [s]he seeks to press and for each form of relief that is sought."

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subject-matter jurisdiction, *Sec. & Exch. Comm'n v. World Cap. Mkt., Inc.*, 864 F.3d 996, 1003 (9th Cir. 2017), and we review jurisdictional factual findings for clear error, *id.* The district court declined to exercise supplemental jurisdiction over Wright's state law claims for common law fraud and wage theft in violation of Or. Rev. Stat. §§ 652.610 and 652.615. We do not discuss these claims further.

Davis v. FEC, 554 U.S. 724, 734 (2008) (internal quotation marks omitted).

Because Wright's First Amendment claim for declaratory and injunctive relief was based on the threat of future injury, she has standing to sue only "if the threatened injury is 'certainly impending,' or there is a 'substantial risk that the harm will occur.'" *In re Zappos.com, Inc.*, 888 F.3d 1020, 1024 (9th Cir. 2018) (quoting *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 158 (2014)). Wright cannot rely "on mere conjecture" about Defendants' possible actions; she must present "concrete evidence to substantiate [her] fears." *Index Newspapers LLC v. U.S. Marshals Serv.*, 977 F.3d 817, 825 (9th Cir. 2020) (quoting *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 420 (2013)). Past wrongs are "insufficient by themselves to grant standing," but are "evidence bearing on whether there is a real and immediate threat of repeated injury." *Davidson v. Kimberly-Clark Corp.*, 889 F.3d 956, 967 (9th Cir. 2018) (citing *City of Los Angeles v. Lyons*, 461 U.S. 95, 102 (1983)). When a plaintiff's standing is grounded entirely on the threat of repeated injury, a plaintiff must show "a sufficient likelihood that [s]he will again be wronged in a similar way." *Id.* (quoting *Lyons*, 461 U.S. at 111).

In *Clapper*, the plaintiffs argued that they had standing based on their fear that in the future, government officials would seek to surveil their communications with foreign individuals, the Foreign Intelligence Surveillance Court ("FISC") would grant such a request, and the government would then carry out the surveillance. 568 U.S. at 410–11. The Supreme Court rejected that argument, holding that the threatened future injury was too speculative to constitute injury for standing purposes. *Id.* at 410–14. The Court noted that the plaintiffs' claimed injury rested on a "highly

attenuated chain of possibilities" and held that such possibilities were not enough to establish a "certainly impending" injury. *Id.* The Court further rejected the plaintiffs' alternative theory that they suffered ongoing injuries by resorting to preventative measures to protect their communications from surveillance. *Id.* at 415. The Court held that the plaintiffs could not "manufacture standing merely by inflicting harm on themselves based on their fears of hypothetical future harm that is not certainly impending." *Id.* at 416.

Similarly, we held in *Munns v. Kerry*, 782 F.3d 402 (9th Cir. 2015), that a former security services contractor lacked standing to seek prospective relief based on his fear of future injury if he were to obtain future private security work in Iraq. *Id.* at 409–11. The contractor alleged that during the military occupation of Iraq, the U.S. government had a policy of granting blanket immunity from prosecution to security contractors, who, as a result of the policy, engaged in "lawless behavior" which invited retribution from Iraqi terrorist groups. *Id.* at 407. The contractor feared that if he were to return to Iraq to provide security services, the government would reinstate the blanket immunity policy or a similar one and he would be injured or kidnapped by Iraqi terrorists who sought retribution. *Id.* We rejected the contractor's theory, noting that for him to sustain future injury, he would need to be hired for private security work in Iraq, the government would need to reinstate the former immunity policy or a similar one, and the reinstated policy would cause him to suffer harm as he alleged. *Id.* at 409–10. This attenuated chain of events was not "certainly impending," nor did it "present a substantial risk of its occurrence" sufficient for standing. *Id.* at 410.

We further rejected the contractor's alternative theory of injury that he was deterred from seeking future employment because of the uncertainty of the government's policy. *Id.* at 410. Comparing his deterrence theory to an analogous theory rejected in *Clapper*, we noted that the contractor's "chilling effect" argument was based on the same series of events as his initial theory and therefore was "too speculative to confer standing." *Id.*; *cf. Index Newspapers LLC*, 977 F.3d at 826–27 (holding that repeated police assaults sufficiently chilled investigative reporters' exercise of their First Amendment rights to constitute injury for standing purposes).

As in *Clapper* and *Munns*, Wright's fear of future unauthorized dues deduction is too speculative to confer standing for her First Amendment claim. Because she retired before filing this lawsuit, the sole basis for her impending injury is her fear that, should she return to work, SEIU will forge a new membership agreement. Wright's theory of future injury is unavailing. Although Wright does not allege that she intends to return to work, she argues, nonetheless, that we should infer that she will return to work either in the same position or one where she would be represented by SEIU, that SEIU will forge her signature on a new membership agreement, and that the State will again improperly deduct and remit dues to SEIU. Wright's fear, like the plaintiffs' fear of government surveillance in *Clapper* and the contractor's fear in *Munns*, rests on a "highly attenuated chain" of inferences in which independent actors must act in a certain manner to target her specifically. *Clapper*, 568 U.S. at 410; *Munns*, 782 F.3d at 410. These inferences rest on nothing more than rank speculation. While the scenario she posits may be theoretically possible, it is not "certainly impending," *In re Zappos.com, Inc.*, 888 F.3d at 1024, and she cannot show a

sufficient likelihood that she will be wronged again in such a way, *Davidson*, 889 F.3d at 967.

Wright's allegations of past injury alone are also insufficient to establish standing. We have held that past exposure to harmful or illegal conduct does not necessarily confer standing to seek injunctive relief if the plaintiff does not continue to suffer adverse effects. *Index Newspapers, LLC*, 977 F.3d at 825 (citing *Lyons*, 461 U.S. at 102). Wright does not allege any continuing "adverse effects" from the past unauthorized dues deductions, so they cannot provide her with standing to seek prospective relief.[4] *Id.*; *see also Lyons*, 491 U.S. at 108–09.

Wright's theory that potential future unauthorized dues deductions chill her exercise of her First Amendment rights is also too speculative to establish standing. Wright argues that because SEIU insists that her membership agreement was not forged and that Oregon's statutory dues deduction scheme complies with due process, she remains under continued threat that if she were to return to public employment, SEIU would again forge a membership agreement with her name. Wright's fear of the potential chilling effect of her First Amendment rights fails for the same reason as her fear of future unauthorized dues deduction does not support standing: her reliance on a series of inferences unsupported by the record. While a plaintiff's

[4] While Wright points to other cases where SEIU is alleged to have forged a union membership agreement to show the "growing number of cases of forgery alleged against the same union," her argument is not persuasive. Wright cites to cases where the plaintiffs allege that SEIU forged their membership agreements. These cases, which allege similar acts of forgery, do not make it more likely that Wright would suffer another forgery if she returned to work, particularly with the "flagging" safeguards SEIU has put in place.

alleged chilling of her First Amendment rights "can constitute a cognizable injury," such an effect cannot be "based on a fear of future injury that itself [is] too speculative to confer standing." *Index Newspapers LLC*, 977 F.3d at 826 (alteration in original). Like the analogous deterrence theories in *Clapper* and *Munn*s, Wright's fear of potential chilling relies on the same series of inferences as her theory of injury, and it is therefore too speculative to constitute injury-in-fact. *Clapper*, 568 U.S. at 415–16; *Munns*, 782 F.3d at 410.

B. Fourteenth Amendment Procedural Due Process Claim

Wright similarly lacks standing to assert her Fourteenth Amendment procedural due process claim seeking prospective relief. When a plaintiff alleges a procedural violation of her rights, she is excused from the "normal standards for redressability and immediacy." *Cantrell v. City of Long Beach*, 241 F.3d 674, 682 (9th Cir. 2001) (quoting *Lujan*, 504 U.S. at 572 n.7). In this situation, she need only show "that [she] was accorded a procedural right to protect [her] interests and that [she] has concrete interests that are threatened." *City of Las Vegas v. FAA*, 570 F.3d 1109, 1114 (9th Cir. 2009). We have recognized that employees have a concrete interest in receiving their salaries without unauthorized deductions. *Roybal v. Toppenish Sch. Dist.*, 871 F.3d 927, 931 (9th Cir. 2017). Wright is retired and thus no longer receives wages from the State, however. Accordingly, she no longer has a concrete interest in her future wages or in freedom from compelled speech that would be threatened by the alleged lack of procedural safeguards. *See Salmon River Concerned Citizens v. Robertson*, 32 F.3d 1346, 1355 (9th Cir. 1994). Indeed, the threat of future unauthorized dues deductions from her

wages is entirely "imaginary." *Yesler Terrace Cmty. Council v. Cisneros*, 37 F.3d 442, 446 (9th Cir. 1994). Wright therefore lacks standing to assert her procedural due process claim.

III.

We next consider whether Wright's remaining claims against SEIU for retrospective relief, i.e., damages, are cognizable under 42 U.S.C. § 1983. We conclude that the district court did not err in dismissing these claims because SEIU is not a state actor for § 1983 purposes. We therefore affirm the district court's dismissal of Wright's claims for retrospective relief against SEIU.

Our resolution of this issue is guided by our recent decision in *Belgau v. Inslee*, 975 F.3d 940 (9th Cir. 2020), which dealt with an analogous Washington state statutory scheme authorizing union dues deductions. We briefly describe the two statutory schemes to give context to our discussion. Washington and Oregon do not require state employees to join a union. *Compare* Wash. Rev. Code § 41.80.050 *with* Or. Rev. Stat. § 243.672(1)(c). For those employees who join a union, both states rely on the union to provide a list of employees who have authorized union dues deductions. *Compare* Wash. Rev. Code § 41.80.100(2)(g) *with* Or. Rev. Stat. § 243.806(7). The states then deduct the dues from the employees' salary and remit them to the union. *Belgau*, 975 F.3d at 945; *compare* Wash. Rev. Code § 41.80.100(2)(c) *with* Or. Rev. Stat. § 243.806(2). Indeed, there are no meaningful differences between the Washington and Oregon statutory schemes. In *Belgau*, we held that the union was not a state actor for § 1983 purposes, in part, because of the state's ministerial role in processing dues deductions. *Belgau*, 975 F.3d at 948. Given the similarities

in the two statutory schemes, we agree with SEIU that, as in *Belgau*, it is not a state actor for purposes of § 1983.

To maintain a claim under § 1983, Wright must prove that SEIU "deprived [her] of a right secured by the Constitution," and "acted under color of state law." *Collins v. Womancare*, 878 F.2d 1145, 1147 (9th Cir. 1989 (citation omitted). We use a two-prong inquiry to determine whether SEIU, as a private actor, engaged in state action to qualify as a state actor under § 1983. *Belgau*, 975 F.3d at 946; *see also Caviness v. Horizon Cmty. Learning Ctr., Inc.*, 590 F.3d 806, 812 (9th Cir. 2010) (citation omitted) (holding that state action generally excludes "merely private conduct, no matter how discriminatory or wrongful"). The private actor must meet (1) the state policy requirement, and (2) the state actor requirement. *Collins*, 878 F.2d at 1151.

Under the state policy requirement, we consider "whether the claimed constitutional deprivation resulted from 'the exercise of some right or privilege created by the State or by a rule of conduct imposed by the [S]tate or by a person for whom the State is responsible.'" *Ohno v. Yasuma*, 723 F.3d 984, 994 (9th Cir. 2013) (quoting *Lugar v. Edmondson Oil Co., Inc.*, 457 U.S. 922, 937 (1982)). "The state policy requirement ensures that the alleged deprivation is fairly attributable to a state policy." *Collins*, 878 F.2d at 1151 (citations omitted).

Next, under the state actor requirement, we generally utilize one of four tests outlined by the Supreme Court to examine "whether the party charged with the deprivation could be described in all fairness as a state actor." *Ohno*, 723 F.3d at 994 (citing *Lugar*, 457 U.S. at 937); *see Tsao v. Desert Palace, Inc.*, 698 F.3d 1128, 1140 (9th Cir. 2012)

(outlining the four tests).[5] Those tests include the public function test, the joint action test, the state compulsion test, and the governmental nexus test. *Tsao*, 698 F.3d at 1140. Any of the four tests are sufficient to satisfy the state actor requirement. *Id.* at 1139–40. We discuss only whether SEIU meets the requirements of the joint action and public function tests, as Wright and Defendants focus their arguments on those two tests.[6] SEIU satisfies neither prong of the state action inquiry.

Wright's alleged constitutional deprivation did not result from "the exercise of some right or privilege created by the State or by a rule of conduct imposed by the state or by a person for whom the State is responsible." *Ohno*, 723 F.3d at 994 (quoting *Lugar*, 457 U.S. at 937). To explain, we begin our state action analysis by identifying "the specific conduct of which the plaintiff complains." *Am. Mfrs. Mut. Ins. Co. v. Sullivan*, 526 U.S. 40, 51 (1999) (citation omitted). Although Wright makes repeated references to the "*forgery* of [her] authorization agreement," she frames her threatened injury as "the deduction of [her] money without her consent" pursuant to state law. As Wright acknowledges, it is the State, not SEIU, which deducts union dues from employees' wages. Nonetheless, Wright argues

[5] We note that courts use a variety of tests to determine whether the state actor requirement is met, including the four outlined above. *George v. Pacific-CSC Work Furlough*, 91 F.3d 1227, 1230 (9th Cir. 1996) (per curiam). Because any one of the four tests outlined in *Tsao* is sufficient to demonstrate that a private party can be fairly considered a state actor, we utilize those tests here.

[6] We have said, however, that the public function and joint action tests "largely subsume the state compulsion . . . and . . . governmental nexus test[s]." *Ohno*, 723 F.3d at 996 n.13. Given the parties' arguments, there is no need for us to weigh in on that observation.

that the Oregon statutory scheme grants to SEIU a "special privilege created by law," which allows it to dictate from which employees the State should deduct union dues.[7] Wright ignores that Oregon law requires employees to authorize union dues deductions. Or. Rev. Stat. §§ 165.007, 165.013, 243.806. Contrary to Wright's argument, Oregon law does not create a "right or privilege" in SEIU to direct the State's deductions of union dues. *Lugar*, 457 U.S. at 937. At its core, the right to authorize dues deductions is vested in the state employee, not SEIU. SEIU's role is to transmit the employee's authorization to the State so that it may be implemented as provided in the collective bargaining agreement and related statutes. Or. Rev. Stat. § 243.806(7).

In her claims against SEIU, Wright challenges SEIU's transmission of her forged dues authorization, not the State's withholding of union dues.[8] Because SEIU only transmits a

[7] Wright also argues that state action exists here because the circumstances of her case are indistinguishable from holdings in *Janus* and *Lugar*. Wright's comparison is inapposite because these cases do not concern a private actor's alleged violation of state law. *See Janus*, 138 S. Ct. at 2460–61 (concerning compulsory agency fees); *see also Lugar*, 457 U.S. at 924 (concerning ex parte prejudgment attachment with government aid).

[8] In the present case, as in *Ochoa v. Pub. Consulting Grp., Inc.*, No. 19-35870, __ F.4th __ (9th Cir. 2022), Wright pleads a Fourteenth Amendment due process claim, alleging that SEIU implemented insufficient procedural safeguards against unauthorized withholding of union dues. However, our state action analysis differs in this case because Wright challenges different conduct. Ochoa's claim was against private payment processors hired by the State to handle salary payments and dues withholdings. By contrast, Wright's claim is against SEIU, which transmits a list of employees who agreed to join the union and authorized dues deductions. Therefore, while *Ochoa* analyzes whether the payment processors' withholding of dues is state action, we analyze

list of employees who have authorized dues deductions to the State, Wright can only challenge SEIU's forgery of her dues authorization agreement. Or. Rev. Stat. § 243.806(7). But this fraudulent act is by its nature antithetical to any "right or privilege created by the State" because it is an express violation of existing state law. *Lugar*, 457 U.S. at 937; Or. Rev. Stat. §§ 165.007, 165.013. As in *Lugar*, Wright's constitutional claims against SEIU rest on a "private misuse of a state statute" that is, by definition, "contrary to the relevant policy articulated by the State." *Lugar*, 457 U.S. at 940–41. Wright's claims thus fail to identify any "state policy" that would make SEIU a state actor under § 1983.

SEIU further cannot fairly be "described . . . as a state actor" under the joint action or public function tests. *Ohno*, 723 F.3d at 994 (citing *Lugar*, 457 U.S. at 937); *Tsao*, 698 F.3d at 1140.

> "A joint action between a state and a private party may be found in two scenarios: the government either (1) 'affirms, authorizes, encourages, or facilitates unconstitutional conduct through its involvement with a private party,' or (2) 'otherwise has so far insinuated itself into a position of interdependence with the non-governmental party,' that it is 'recognized as a joint participant in the challenged activity.'"

Belgau, 975 F.3d at 947 (quoting *Ohno*, 723 F.3d at 996). The joint action test is not satisfied here because Oregon did

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whether the Union's transmission of Wright's name as a member of the union is state action.

not "affirm[], authorize[], encourage[], or facilitate[] unconstitutional conduct" by processing dues deductions. *Id.* (quoting *Ohno*, 723 F.3d at 996). In *Belgau*, we described the state's role in processing dues deductions as the "ministerial processing of payroll deductions pursuant to Employees' authorizations." *Id.* at 948. That characterization of Washington's actions in *Belgau* applies with equal force to Oregon's actions in this case. As we explained in *Belgau*, "providing a 'machinery' for implementing the private agreement by performing an administrative task does not render [the State] and [SEIU] joint actors." *Id.* (citation omitted). Indeed, Oregon law, like Washington law, mandates that the State accept SEIU's dues deductions certifications and remit the payments to the union. *Compare* Or. Rev. Stat. § 243.806(2), (7) *with* Wash. Rev. Code § 41.80.100. The State's "mandatory indifference" to whether Wright's authorization was authentic "refutes any characterization" of SEIU as a joint actor with the State. *Belgau*, 975 F.3d at 948 (quoting *Ohno*, 723 F.3d at 997).

Wright argues that *Belgau* is factually distinguishable because the plaintiffs in *Belgau* voluntarily agreed to join the union, whereas Wright did not. This argument is unavailing because the factual distinctions between this case and *Belgau* are inconsequential. The joint action test examines the government's action, not the status of the underlying agreement. *Ohno*, 723 F.3d at 996. While the factual circumstances of the present case and *Belgau* may be different, the actions that Washington and Oregon took are the same: processing authorizations for dues deductions and remitting the payments to the union. *See Belgau*, 975 F.3d at 945.

The joint action test is further not satisfied because the State did not "so far insinuate[] itself into a position of interdependence with" SEIU such that SEIU can be "recognized as a joint participant" in dues deductions. *Ohno*, 723 F.3d at 996 (citation omitted). The state Defendants and SEIU did not have a "symbiotic relationship" of mutual benefit with one another or a "substantial degree of cooperative action"; rather, they had a contractual relationship. *Belgau*, 975 F.3d at 948 (citation omitted). The State received no direct benefits when it served as a passthrough for union dues deductions.[9] *See id.*; Or. Rev. Stat. § 243.806(2). Therefore, we conclude that the district court did not err in determining that Wright's constitutional claims against SEIU do not satisfy the joint action test.

Under the public function test, Wright's claims similarly fail. "Under the public function test, when private individuals or groups are endowed by the State with powers or functions governmental in nature, they become agencies or instrumentalities of the State and subject to its constitutional limitations." *Kirtley v. Rainey*, 326 F.3d 1088, 1093 (9th Cir. 2003) (citation omitted). Wright argues that the State delegated to SEIU the authority under Or. Rev. Stat. § 243.806 to obtain an employee's authorization for

[9] Wright argues that "the State clearly receive[d] benefit from the procedural system it has implemented" because "it relieve[d] itself of any time or expense associated with obtaining verification of employee consent or authorization of dues deductions." In exchange, the Union "indemnifie[d] the State for liability for payroll deductions." Wright is incorrect. The State only took on the task of facilitating union dues deductions because it is required to do so by the collective bargaining agreement between the Union and the State and by Oregon state law. *See* Or. Rev. Stat. § 243.806(2). The State receives no direct benefit from its involvement in the dues deduction process.

union membership and dues deduction. Wright's argument founders given the nature of the State's role in the process and the task itself. As in *Belgau*, Oregon's obligation under Or. Rev. Stat. § 243.806(7) to accept SEIU's certification of those employees who have authorized dues deductions is not a "traditional[] and exclusive[] government[]" task. *Florer v. Congregation Pidyon Shevuyim, N.A.*, 639 F.3d 916, 924 (9th Cir. 2011) (citation omitted); *see Belgau*, 975 F.3d at 947 n.2. Although employees' wages are involved, the State has no "affirmative obligation" under Or. Rev. Stat. § 243.806(7) to ensure that SEIU's certifications are accurate. *See* Or. Rev. Stat. § 243.806(7); *West v. Atkins*, 487 U.S. 42, 56 (1988). Rather, the State's use of SEIU's certification to process authorized dues deductions is the type of "day-to-day administrati[ve]" task, *Blum v. Yaretsky*, 457 U.S. 991, 1012 (1982), that does not fit into the "very few" functions the Court has recognized as traditionally and exclusively a governmental task, *Flagg Bros. v. Brooks*, 436 U.S. 149, 158 (1978).

Wright argues that *Janus* created a constitutional "duty" for the State to ensure that the employees listed in SEIU's certification had duly authorized dues deducted from their salaries. 138 S. Ct. at 2486. As we recognized in *Belgau*, *Janus* "in no way created a new First Amendment waiver requirement for union members before dues are deducted pursuant to a voluntary agreement." *Belgau*, 975 F.3d at 952. While Wright challenges whether she is a duly authorized union member, *Janus* imposes no affirmative duty on government entities to ensure that membership agreements and dues deductions are genuine. As discussed above, Oregon state law only authorizes the State to deduct and remit union dues from authorized union members. Or. Rev. Stat. §§ 165.007, 165.013, 243.806. Contrary to Wright's argument, *Janus* does not require that Oregon

ensure the accuracy of SEIU's certification of those employees who have authorized dues deductions. The district court did not err in rejecting Wright's public function argument.

At bottom, in light of *Belgau* and the state action analysis, SEIU does not qualify as a state actor. Therefore, Wright's claim for retrospective relief against SEIU fails for lack of state action.

IV.

We affirm the district court's dismissal of Wright's claims for prospective relief against all Defendants for lack of jurisdiction and her claims for retrospective relief against SEIU for failure to allege state action under § 1983.

AFFIRMED.