UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

International Union of Operating Engineers of Wisconsin, Local 139, AFL-CIO, Karen Erickson, and Heath Hanrahan,

Plaintiffs,

v.

Case No. 2:19-cv-01233-JPS

James J. Daley, in his official capacity as Chairman of the Wisconsin Employment Relations Commission,

Defendant.

THE WISCONSIN LEGISLATURE'S PROPOSED REPLY MEMORANDUM IN SUPPORT OF ITS MOTION TO DISMISS

Defendant, James J. Daley, in his official capacity as Chairman of the Wisconsin Employment Relations Commission, filed a motion to dismiss this action because the constitutional claims against the challenged Act 10 provisions are defeated by the Seventh Circuit's rulings in *WEAC* and *Laborers Local*. (Doc.#9; Doc.#10). The Wisconsin Legislature has moved to intervene in this action (Doc.#13; Doc.#14), and filed a proposed motion to dismiss as an exhibit to its intervention motion. (Doc.#14-5; Doc.#14-6). Plaintiffs International Union of Operating Engineers, Local 139, AFL-CIO, Karen Erickson, and Heath Hanrahan oppose both motions to dismiss. (Doc.#26: 1). The Wisconsin Legislature's intervention motion is fully briefed, but not yet decided by this Court. Accordingly, the Wisconsin Legislature now files this reply in support of its proposed motion to dismiss as a proposed reply brief. The Wisconsin Legislature respectfully requests that, if the Court grants its intervention motion, the Court also consider this proposed reply brief as it decides the motions to dismiss.

ARGUMENT

As shown in the Wisconsin Legislature's initial dismissal brief (Doc.#14-6), the challenge to the Act 10 provisions fails as a matter of law. Defeating plaintiffs' claims, the Seventh Circuit and the Wisconsin Supreme Court have upheld the recertification requirements, collective-bargaining limitations, and payroll-deduction prohibition of Act 10 against First Amendment and Equal Protection challenges. *Wisconsin Educ. Ass'n Council v. Walker* ["*WEAC*"], 705 F.3d 640 (7th Cir. 2013); *Laborers Local 236 v. Walker* ["*Laborers Local*"], 749 F.3d 628 (7th Cir. 2014); *Madison Teachers, Inc. v. Walker* ["*Madison Teachers*"], 2014 WI 99, 358 Wis. 2d 1, 851 N.W.2d 337. Nevertheless, plaintiffs here have brought these same failed constitutional challenges against these Act 10 provisions. Because of this binding precedent from the Seventh Circuit, and the persuasive precedent from the Wisconsin Supreme Court, the Complaint should be dismissed, with prejudice.

Plaintiffs assert that these precedents should be revisited as a result of *Janus v. American Federation of State, County, & Municipal Employees, Council 31*, 138 S. Ct. 2448 (2018), a 2018 compelled-speech case of the United States Supreme Court. However, that case has no bearing on the Act 10 provisions challenged here and provides no basis for this action.

Plaintiffs claim that *Janus* "announced a sea-change in First Amendment jurisprudence," thus allowing the current challenge to Act 10 to "be well taken," despite *WEAC* and *Madison Teachers*. (Doc.#26: 4). Yet, *Janus* made clear that the compelled-speech principles upon which plaintiffs attempt to rest their case were longstanding. Indeed, plaintiffs' own quotations of *Janus* make this clear:

- the Supreme Court has reaffirmed the First Amendment's prohibition on compelled speak "time and time again" (Doc.#26: 4 (quoting *Janus*, 138 S. Ct. at 2463)),

- the rule against compelled speech is a "cardinal constitutional command" (Doc.#26: 4-5 (quoting *Janus*, 138 S. Ct. at 2463)), and
- it is supported in "a landmark free speech case[ ]" (Doc.#26: 5 (quoting *Janus*, 138 S. Ct. at 2464)).

Thus, *Janus* was not a "sea-change" in compelled-speech First Amendment jurisprudence generally, but rather a reaffirmation of this well-settled doctrine. It therefore cannot undermine *WEAC* and *Madison Teachers*—both decided well-after the Supreme Court's defining of the compelled-speech doctrine—so these decisions remain fully binding on this Court and dispositive of plaintiffs' case.

I. The Recertification Requirements are Constitutional and Thus Count I Must be Dismissed.

Plaintiffs argue that municipal employees' First Amendment rights are violated by Act 10's recertification requirements, which require an annual affirmative vote from 51% of all employees in a bargaining unit to recertify a union. Wis. Stat. § 111.70(4)(d)3.b. Act 10's recertification provisions merely specify the statutory requirements a certified representative must satisfy in order to exclusively negotiate on behalf of general employees in its bargaining unit. They outline the requirements certified representatives must meet to remain the certified representative and compel the government to participate in statutory collective bargaining. *Madison Teachers*, 2014 WI 99, ¶¶ 65-66.

Plaintiffs apparently concede that *WEAC* and *Madison Teachers* have rejected First Amendment challenges to the recertification requirements. (Doc.#14-6: 4-6). The recertification requirements merely act upon *unions*, setting statutory requirements to maintain the role of certified representative. (Doc.#14-6: 8, 10). They do not act upon *employees* to require them to say or do anything.

Clarifying their position, plaintiffs do not challenge the recertification statute itself, but claim a First Amendment violation in the indirect *effect* of the recertification requirements upon employees. "Plaintiffs are not challenging the annual recertification requirement; they are only challenging the infringement of employees' First Amendment rights caused by the way Act 10 treats non-voters." (Doc.#26: 6). Plaintiffs argue that the recertification requirements "should be struck down for violating employees' First Amendment rights to speak or not speak as they choose." (Doc.#26: 9). They argue that "[b]y treating a non-vote as a vote against representation, Act 10 has stripped individuals of the right not to speak and instead compels speech by non-voters in violation of their First Amendment rights." (Doc.#26: 2). By treating a non-vote as effectively a "no" vote for certification, plaintiffs argue, employees are denied the right to not speak and the statute's effect "instead compels speech by non-voters in violation of their First Amendment rights." (Doc.#26: 2). They argue this infringes on rights of non-voters who wish to remain neutral and also infringes on rights of those who did vote and spoke clearly that they wanted to be represented by the union. (Doc.#26: 2-3).

First Amendment freedom of speech is infringed by laws that: (i) tell people *what* they must say; (ii) tell them what ideas and beliefs they must hold or express; (iii) prohibit the dissemination of ideas; (iv) require persons to fund speech with which they disagree or which they do not wish to fund; and (v) require persons to express a message they do not wish to express. (Doc.#14-6: 7). *Janus* held that the First Amendment rights of non-union employees are infringed by requiring them to pay a portion of union dues when they object to supporting the union. (Doc.#14-6: 2, 10-11). The First Amendment protects " '[t]he right to eschew association for expressive purposes' " and it is infringed by requiring persons to " 'mouth

support for views they find objectionable.' " (Doc.#14-6: 11) (quoting *Janus*, 138 S. Ct. at 2463)).

The Act 10 recertification requirements do not infringe the First Amendment in any of these ways. They do not require employees to make a statement or express a message or fund speech with which they disagree. As for recertification elections, they leave an employee free to speak or not speak, to vote or not vote, and to vote how they wish. (Doc.#14-6: 8-10). It is the employee's choice whether to vote in the election or to stay home. The statute does not deny employees that choice, it is solely in the employee's hands. Plaintiffs are simply wrong in asserting that the recertification requirements compel employees to "speak" (*i.e.*, vote in the election) when they would prefer to remain "silent" (*i.e.*, not vote in the election). They do not act upon employees – there is no compelled speech.

The recertification requirements merely set the terms of the certification election, establishing the vote necessary to obtain recertification. Plaintiffs essentially argue that public employees have a First Amendment right to different certification requirements, ones that allow an employee to stay home from the vote and not have his or her abstention count as a "no" vote. Plaintiffs do not cite a single authority to support this assertion and it does not follow from compelled-speech jurisprudence or any other First Amendment theory. If the recertification requirements do not infringe the First Amendment rights of unions, the only persons they act upon, they certainly do not infringe the First Amendment rights of employees, who they do not touch.

WEAC and *Madison Teachers* upheld the constitutionality of the recertification requirements. (Doc.#14-6: 4-6). There is no conflict between those holdings and *Janus* or any other compelled-speech case law. Neither *Janus* nor the well-established law concerning

compelled speech support the argument that Act 10's recertification requirements compel employees' speech. (Doc.#14-6: 7, 8, 10).

Notably, the recertification requirements were upheld against an Equal Protection challenge. Since fundamental rights were not infringed, the rational basis test applied. (Doc.#14-6: 6 n.2). The recertification requirements were held to have a rational basis, furthering the interests of the state, and the policy determination that public sector unions are too costly for the state. (*Id.*) Plaintiffs now argue the Legislature should have made a different policy choice, and instead only required a 51% vote of all voting employees. (Doc.#26: 8). Plaintiffs may disagree with the policy choice, but that does not make it unconstitutional. As *WEAC* held, the recertification requirements have a rational basis and they do not violate Equal Protection.

Finally, plaintiffs cite two cases interpreting the Railway Labor Act and whether statutory language could be interpreted to require the majority vote of all unit employees or all voting employees to certify the union representative. *Virginia Railway Co. v. System Federation No. 30*, 300 U.S. 515 (1937); *Air Transportation Association of America, Inc. v. National Mediation Board*, 663 F.3d 476 (D.C. Cir. 2011) Those cases considered particular statutory language in the Railway Labor Act which is different than the plain language of Act 10. The Act 10 recertification statute provides for a 51% vote of all unit employees. Further, as the plaintiffs concede, *Virginia Railway* and *Air Transportation* did not consider the First Amendment rights of employees and they do not address employees' First Amendment rights in the context of a union election. (Doc.#26: 8). Those cases therefore are inapposite here. They do not support finding a First Amendment violation in Act 10's recertification requirements as to employees, particularly where the statute's constitutionality has been upheld.

II. Count II Fails to Establish Article III Standing for the As-Applied Challenge to the Collective-Bargaining Limitations and it Fails to State a Claim Upon Which Relief May be Granted.

Count II claims that the Wisconsin Employment Relations Commission ("WERC") is incorrectly interpreting Act 10 to prohibit agreements between unions and municipal employers outside the context of collective bargaining and that such interpretation is an arbitrary restriction on the ability to negotiate and contract, which is a violation of the First and Fourteenth[1] Amendments. (Doc.#26: 10-11). Plaintiffs have failed to plead sufficient facts to have standing to bring this claim, and such claim would fail as a matter of law in any event.

A. Count II Fails to Establish Article III Standing Regarding WERC's Alleged Interpretation and Application of the Collective-Bargaining Limitations.

Plaintiffs have not adequately alleged the necessary injury for Article III standing to assert this claim against defendant. *Ctr. for Individual Freedom v. Madigan*, 697 F.3d 464, 473 (7th Cir. 2012) ("[S]tanding is a jurisdictional requirement that is not subject to waiver.").[2] "A party has standing only if he shows that he has suffered an 'injury in fact,' that the injury is 'fairly traceable' to the conduct being challenged, and that the injury will likely be 'redressed' by a favorable decision." *Wittman v. Personhuballah*, 136 S. Ct. 1732, 1736 (2016).[3] This prong of the standing inquiry can be established if "the plaintiff has shown an injury to himself that is likely to be redressed by a favorable decision." *Simon*, 426 U.S. at 43. "Where, as here, a case

[1] *Laborers*, *WEAC*, and *Madison Teachers* all held that the collective-bargaining limitations do not violate Equal Protection as to unions or members. (Doc.#14-6: 16-17). Plaintiffs' response asserts no Equal Protection violation for any of the three asserted Act 10 provisions.

[2] Thus, the Court is bound to evaluate jurisdiction even when the parties do not raise it. *Buchel-Ruegsegger v. Buchel*, 576 F.3d 451, 453 (7th Cir. 2009).

[3] For an injury to be "fairly traceable," there must be a "causal connection between the injury and the conduct complained of—the injury has to be 'fairly ... trace[able] to the challenged action of the defendant, and not ... th[e] result [of] the independent action of some third party not before the court.' " *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992) (alteration in original) (quoting *Simon v. E. Ky. Welfare Rights Organization*, 426 U.S. 26, 41-42 (1976)).

is at the pleading stage, the plaintiff must 'clearly ... allege facts demonstrating' each element." *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1547 (2016).

On the collective-bargaining limitations claim (Count II), plaintiffs have failed to allege facts necessary to establish an injury to themselves caused by the defendant that is likely to be redressed by a favorable decision. For this claim, plaintiffs allege that WERC has interpreted and applied the collective-bargaining limitations to "preclude" any agreements between unions and municipalities over any issues besides wages, even outside the collective bargaining context. (Compl. ¶ 24; Doc.#1: 6). Plaintiffs allege that:

- "[O]ne municipal employer" sought Local 139's assistance with workforce training, which could be provided by Local 139's apprenticeship and training center in "an effective, cost efficient manner." (Compl. ¶ 25; Doc.#1: 6).
- "Another municipal employer" sought Local 139's assistance with workforce health insurance coverage, which could be provided by Local 139 sponsored fund that could provide coverage in "an effective, cost efficient manner." (Compl. ¶ 27; Doc.#1: 7).
- "Another municipal employer" sought Local 139's assistance to obtain "access to a skilled, temporary workforce to handle seasonal busy periods." (Compl. ¶ 26; Doc.#1: 6-7).

Plaintiffs allege that under WERC's interpretation of Act 10, the union and employers were "precluded" from entering into agreements on these subjects. (Compl. ¶ 28; Doc.#1: 7). They claim that WERC's interpretation and application of the collective-bargaining limitations "imposes an arbitrary restriction" on unions' abilities to negotiate and contract with employers "on matters of significant public concern" outside the collective bargaining context, "in violation of the First Amendment and/or Fourteenth Amendment." (Compl. ¶ 29; Doc.#1: 7).

These allegations fail to plead any constitutional violation or other cognizable claim for relief. They merely allege that WERC's interpretation of Act 10 has prevented unions from entering into agreements with unknown municipal employers and this is an "arbitrary restriction" on their ability to negotiate and contract. Plaintiffs have not sufficiently pleaded the elements of a constitutional claim to satisfy Article III standing for Count II. That claim therefore must be dismissed for lack of subject matter jurisdiction. Count II rests upon a hypothetical argument about agreements that will not be able to be reached. It is untethered to any actionable claim for relief. This claim must be dismissed for lack of Article III standing.

B. The As-Applied Challenge to the Collective-Bargaining Limitations Fails to State a Claim Upon Which Relief May be Granted.

Alternatively, even if plaintiffs had pleaded sufficient facts for standing for their as-applied constitutional challenge to the collective-bargaining limitations, plaintiffs still do not state a claim that WERC's allegedly overly-broad application of the collective-bargaining limitations infringes the First Amendment rights of unions or employees. Plaintiffs allege that WERC has interpreted this provision to preclude agreements between unions and municipalities even outside the collective bargaining context, and that WERC has said it will "strike" such agreements. (Doc.#26: 10). Plaintiffs allege that municipal employers and unions are precluded from entering into agreements on topics such as workforce training, seasonal temporary workforce assistance, and workforce health coverage due to WERC's allegedly broad interpretation of the collective-bargaining limitations. (Compl. ¶¶ 25-27; Doc.#1: 6-7).

Plaintiffs argue that defendant interprets the collective-bargaining limitations to extend more broadly than suggested by *Laborers Local*. They argue that the broad application of the collective-bargaining limitations infringes on union and members' right to enter into voluntary agreements with municipal employers without collective bargaining over such issues. (Doc.#26:

3). But plaintiffs do not establish that the First Amendment gives a right to enter into voluntary agreements outside of collective bargaining. Indeed, as held in *Laborers Local*, there is no "constitutional right" to negotiate with a municipal employer on any subject. (Doc.#14-6: 13-14.)

Plaintiffs do not claim "a right to compel municipalities to do anything" (such as enter a contract), but only the right to have "a meaningful interaction on a voluntary basis." (Doc.#26: 12). The collective-bargaining limitations have been interpreted to preclude such "voluntary interactions" "in clear violation of the First Amendment rights of Unions and their members to petition the government." (*Id.*) Plaintiffs do not provide any authority or analysis how the collective-bargaining limitations violate the First Amendment rights of unions or employees when they are applied to preclude voluntary agreements outside the collective bargaining context.

Regardless of whether the collective-bargaining limitations are applied more broadly than they need be, the collective-bargaining limitations as-applied still do not infringe the First Amendment rights of unions or union members. Whether applied correctly or too broadly, the collective-bargaining limitations only act upon and restrict *municipalities*, not unions or union members. Unions and their members are still free to speak, petition, and associate. (Doc.#14-6: 12-16.) They are free to attempt to persuade an employer to adopt a particular policy and they may collaborate informally. (Doc.#14-6: 13.) Plaintiffs do not dispute this holding of *Laborers Local* and they fail to show, based upon controlling authority, that the collective-bargaining limitations (as broadly applied) infringe unions or members' First Amendment rights.

In a brief footnote, plaintiffs argue that the *Janus* decision striking down mandatory union dues payments by non-members signals that the U.S. Supreme Court may be ready to

depart from the controlling law applied in *Laborers Local*. (Doc.#26: 11 n.2). These arguments are conclusory and undeveloped and they fail to show how *Janus*'s compelled-speech holding bears upon the collective-bargaining limitations (it does not) or to show that the controlling law applied in *Laborers Local* has been or is poised to be overruled by the U.S. Supreme Court. Such arguments must be rejected. *Harmon v. Gordon*, 712 F.3d 1044, 1053 (7th Cir. 2013) ("We have often said that a party can waive an argument by presenting it only in an undeveloped footnote."). The Court "is not obligated to research and construct legal arguments open to parties, especially when they are represented by counsel as in this case." *John v. Barron*, 897 F.2d 1387, 1393 (7th Cir. 1990) (citations omitted); *see also United States v. Hook*, 471 F.3d 766, 775 (7th Cir. 2006) ("[P]erfunctory and undeveloped arguments that are unsupported by pertinent authority, are waived (even where those arguments raise constitutional issues).")

III. The Payroll-Deduction Prohibition is Constitutional and Thus Count III Must be Dismissed.

In Count III, plaintiffs assert that Act 10 "infringes on the First Amendment rights of public employees through its absolute prohibition on voluntary dues deductions. Wis. Stat. § 111.70(3g)." (Compl. ¶ 31; Doc.#1: 8). The payroll-deduction provision prohibits municipal employers from deducting labor organization dues from paychecks of general employees. *Madison Teachers*, 2014 WI 99, ¶¶ 1, 7. Plaintiffs assert that the payroll-deduction prohibition "constitutes a[n] [impermissible] content based restriction on public employees' First Amendment rights" and also violates Equal Protection. (Compl. ¶¶ 33, 34; Doc.#1: 8).

Plaintiffs concede that the district court and the Seventh Circuit have upheld the payroll-deduction prohibition. (Compl. ¶ 35; Doc.#1: 8). Plaintiffs' claim challenging the constitutionality of the payroll-deduction prohibition is directly defeated by *WEAC*. *WEAC* rejected a First Amendment challenge to the prohibition, holding that the payroll-deduction

prohibition is a viewpoint-neutral withdrawal of a government subsidy of speech. (Doc.#14-6: 19).

Plaintiffs ignore this holding to argue that the prohibition is viewpoint-based discrimination. (Doc.#26: 3, 13). This assertion is unsupported and is directly contrary to *WEAC*. (Doc.#14-6: 19). Plaintiffs do not show how prohibition of payroll deductions for general employees discriminates on the basis of viewpoint. *WEAC* held that permitting payroll deductions to public safety employees but not general employees is not viewpoint-based discrimination. (Doc.#14-6: 19); *WEAC*, 705 F.3d at 648 ("On its face, Act 10 is neutral—it does not tie public employees' use of the state's payroll system to speech on any particular viewpoint."). *WEAC* is controlling on this issue and has not since been undercut or overruled. Plaintiffs argue that *WEAC*'s reliance upon speech-subsidy case law is "misplaced," suggesting that law is inapplicable. (Doc.#26: 13). This argument is undeveloped and without authority and therefore must be rejected.

Plaintiffs argue, again, without authority, that *WEAC*'s holding on the payroll-deduction prohibition under speech-subsidy case law must be "reconsidered in light of *Janus*." (Doc.#26: 13). It is not this Court's role to reconsider a controlling Seventh Circuit decision. *Design Basics LLC v. J & V Roberts Investments, Inc.*, 130 F. Supp. 3d 1266, 1282 (E.D. Wis. 2015) (This Court "is bound by the controlling case law of the Seventh Circuit."). Further, plaintiffs do not respond to, and therefore concede, the Legislature's showing that *Janus* is irrelevant to the examination of the withdrawal of a governmental speech-subsidy under the First Amendment. (Doc.#14-6: 20). *WEAC* correctly applies well-established speech-subsidy law and *Janus* involved no governmental speech subsidy. (Doc.#14-6: 20). Plaintiffs also provide no support or analysis for their leap that *WEAC*'s holding is undercut, disapproved, or in any way affected

by *Janus*. Again, that argument therefore must be rejected as undeveloped. *See Roundy's Inc. v. N.L.R.B.*, 674 F.3d 638, 650, n.3 (7th Cir. 2012) (Party's "argument, consisting of one sentence, is undeveloped and not supported by pertinent authority, and therefore waived."); *In re Grand Jury Proceedings of Special Apr. 2002 Grand Jury*, 347 F.3d 197, 206 (7th Cir. 2003) ("Where the brief does not raise a serious challenge to the constitutionality of a statute and does not supply the background necessary for thoughtful consideration, there is no need to reach the issue.").[4]

Plaintiffs also argue that *WEAC* applied governmental speech-subsidy authorities including *Ysura v. Pocatello Education Ass'n*, 555 U.S. 352 (2009), asserting that *WEAC* "failed to recognize the important differences between Act 10 and the statute at issue in *Ysura*, which is highlighted by the rationale behind *Janus*." (Doc.#26: 12). It is not this Court's role to question or critique *WEAC*, binding precedent of the Seventh Circuit. Further, this assertion is again not supported by any analysis or explanation and it must be rejected.

Oddly, plaintiffs insist that the Court must refuse to follow *WEAC* and instead review the payroll-deduction prohibition under *Citizens United v. Federal Election Commission*, 558 U.S. 310 (2010). (Doc.#26: 12-13). *Citizens United* is wholly irrelevant here. First, it was decided before *WEAC*, so it is irrelevant to application of *WEAC*, which is binding precedent directly on point. Second, *WEAC* considered and rejected an argument citing *Citizens United*, finding it irrelevant since it involved a speech ban rather than a "mere subsid[y]." *WEAC*, 705 F.3d at

[4] Plaintiffs' numerous underdeveloped and conclusory arguments must be rejected. To state a claim for a constitutional challenge, plaintiffs have the burden of fully setting forth the basis for their arguments, including each constitutional violation argument, its challenge to binding precedent such as *WEAC* and *Laborers Local*, and its argument that *Janus* undercuts those decisions. "Assessing the constitutionality of a statute is the most delicate task of a federal court. A litigant cannot require constitutional adjudication by incanting magic spells or pointing a finger at a particular clause. We decline to consider constitutional arguments that are offered undigested." *In re Grand Jury Proceedings*, 347 F.3d at 206.

648.[5] Third, as recognized in *WEAC*, *Citizens United* has no bearing upon the claims here. As the Seventh Circuit noted, *Citizens United* is not a speech-subsidy case. Rather, it deals with a ban on corporate speech in political elections. It held unconstitutional certain restrictions on corporations' financial support of political campaigns including a ban of certain independent expenditures in political elections and on certain electioneering communications.

In contrast, the payroll-deduction prohibition does not ban the speech of employees, it merely withdraws a vehicle for paying union dues, payroll deductions. (Doc.#14-6: 17, 19-20). The payroll-deduction prohibition does not ban employees from paying union dues, but rather withdraws the government's subsidy in the form of payroll deductions to pay dues. (Doc.#14-6: 17, 19-20).

CONCLUSION

Plaintiffs have failed to show that their First Amendment challenge to the Act 10 provisions plausibly states a claim for relief when the same challenges have been directly rejected by *WEAC*, *Laborers Local*, and *Madison Teachers*. There is no intervening case law that changes the result. The Wisconsin Legislature respectfully requests the Court to dismiss the Complaint with prejudice.

Dated this 8th day of November, 2019.

[5] As the Court explained in *WEAC*: "The cases cited by the Unions, which invalidated laws discriminating on the basis of speaker, confirm this principle. Each one—unlike Act 10—*involved a law that actively created barriers to speech rather than mere subsidies.* For example, *Citizens United v. FEC* involved a law that prohibited speech by forbidding certain speakers from spending money, akin to prohibiting speech altogether. 558 U.S. 310, 130 S. Ct. 876, 896–97, 175 L.Ed.2d 753 (2010)." 705 F.3d at 648 (emphasis added).

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