



## Governor Michael J. Dunleavy STATE OF ALASKA

### ADMINISTRATIVE ORDER NO. 312

I, Michael J. Dunleavy, Governor of the State of Alaska, under the authority of Article III, Sections 1 and 24, of the Constitution of the State of Alaska, issue this order to establish a procedure that ensures that the State of Alaska honors the First Amendment free speech rights of state employees to choose whether or not to pay union dues and fees through payroll deduction.

### BACKGROUND

On June 16, 2018, the United States Supreme Court in *Janus v. AFSCME Council 31*, 585 U.S. \_\_\_\_, 138 S. Ct. 2448 (2018), found that forcing public employees to pay agency fees to unions “violates the free speech rights of nonmembers by compelling them to subsidize private speech on matters of substantial public concern.” (*Janus* decision). The Court held that “[s]tates and public-sector unions may no longer extract agency fees from nonconsenting employees.” The Court further held that “[n]either an agency fee nor any other payment to the union may be deducted from a nonmember’s wages, nor may any other attempt be made to collect a payment, unless the employee affirmatively consents to pay.” A waiver of an employee’s First Amendment rights “cannot be presumed” and in order to be effective, “must be freely given and shown by ‘clear and compelling’ evidence.” Following the *Janus* decision, the Alaska Department of Administration immediately stopped the deduction of union fees from the wages of those employees who were not members of a union.

On August 27, 2019, the Attorney General of the State of Alaska issued an Opinion outlining the State’s duties and responsibilities in light of the *Janus* decision and the protections the decision affords all state employees. *See 2019 Op. Alaska Att’y Gen. (August 27) (Opinion)*. The Opinion explained that under *Janus*, the State of Alaska may no longer automatically deduct union dues and fees from an employee’s wages unless the employee affirmatively consents to waive his or her First Amendment rights. The Opinion also made clear that the State’s previous steps to implement the *Janus* decision did not go far enough. Specifically, the State did not implement a procedure to ensure that it had “clear and compelling” evidence that an employee freely consented to waive his or her First Amendment rights by authorizing the automatic deduction of union dues and fees from the employee’s paycheck.

### PURPOSE

This Order implements certain recommendations outlined in the Opinion, protects the First Amendment free speech rights of affected state employees, and ensures that future deductions of dues and fees from state employee paychecks meet the requirements laid out by the United States Supreme Court in the *Janus* decision. This Order will ensure that an employee clearly and

affirmatively consents before the State deducts union dues or fees from employee paychecks, and that the consent is “freely given” and reflected by “clear and compelling” evidence.

### **ORDER**

Under the authority of Article III, Sections 1 and 24, Constitution of the State of Alaska, I, Michael J. Dunleavy, Governor of the State of Alaska, order the following:

1. Effective immediately, the Department of Administration will work with the Department of Law to implement new procedures and forms for affected state employees to “opt-in” and “opt-out” of paying union dues and fees. These procedures and forms will ensure that waivers of First Amendment rights are freely given. The “opt-in” dues authorization form must clearly inform employees that they are waiving their First Amendment right not to pay union dues or fees and thereby not to associate with the union’s speech. To minimize the risk of undue pressure or coercion and to make the process simple and convenient for employees, I direct that the State collect these forms electronically, but include a process for submission of paper forms for those employees with little or no computer or Internet access.

Consistent with the Opinion, in order to comply with the U.S. Supreme Court’s mandate, the “opt-in” dues authorization form must, at a minimum, contain the following language, which may be augmented through the collective bargaining process:

#### **Union Dues/Fees Authorization Form**

I understand that I have a constitutional right to refrain from paying union dues and fees. I hereby freely and without any coercion whatsoever affix my signature to this form. By signing this form, I authorize my employer, the State of Alaska, to automatically deduct from my paycheck each pay period the regular monthly dues or fees as established by my union’s constitution or bylaws and the Collective Bargaining Agreement between the State of Alaska and my union. I also understand that I am waiving my First Amendment right not to pay union dues and fees, and am freely associating myself with my union’s speech activities.

I understand that I am not required to sign this form in order to obtain or maintain my job with the State of Alaska.

I further understand that I may revoke my consent to future union dues or fees withdrawal at any time and for any reason and that my request to revoke my consent will be processed not later than 30 days after receipt by the Department of Administration and will

become effective at the beginning of the next regularly scheduled pay period following the processing period.

2. Effective as soon as administratively feasible, the Department of Administration will develop a system for employees to electronically submit the required forms to the State. The State will also promptly develop a multi-factor authentication process that is easy to understand and administer, and which presents two levels of authorization to verify an employee's identity and intent.
3. After the forms and processes described above are completed, the State shall provide notice to all affected unions at least 30 days before implementation. The State will offer to meet with each union to discuss any additions or modifications the unions believe are compelled by the *Janus* decision or by Alaska law that are not otherwise in conflict with the First Amendment or the *Janus* decision.
4. The State will continue to authorize and process the deduction of union dues from the wages of current employees until the State is able to develop and implement the process identified in this Order. Once the new procedures and forms are implemented as described above, all dues and fees deductions made under prior procedures will be immediately discontinued, pre-existing employee authorizations will be deemed void, and any new dues deductions will follow the process implemented by this Order.
5. State employees can "opt-in" to pay union dues and fees at any time after this Order is implemented by submitting the appropriate form to the Department of Administration. An "opt-in" form will be processed not later than 30 days after receipt by the Department of Administration and will become effective at the beginning of the next regularly scheduled pay period following the processing period. The "opt-in" form will contain the waiver language as outlined above. State employees can also stop having union dues and fees deducted at any time after this Order is implemented by submitting an "opt-out" form to the Department of Administration. Any "opt-out" or withdrawal of dues deduction forms will be processed not later than 30 days after receipt by the Department of Administration and will become effective at the beginning of the next regularly scheduled pay period following the processing period.
6. The Department of Administration will work and engage with the unions, through the collective bargaining process, with guidance and assistance from the Department of Law, to address any remaining issues described in the Opinion, including developing appropriate contract language for other procedures and forms and determining the frequency of "opt-in" authorizations for state employees.

### **RESPONSIBILITY FOR IMPLEMENTATION**

The Department of Administration, with guidance from the Department of Law, is responsible for the implementation of this Order. The Department of Administration will work with the other departments as needed in order to comply with this Order. Department leadership and staff are expected to provide their complete cooperation in effecting this Order. Further, the Department of Administration will provide quarterly progress reports to the Office of the Governor that detail the steps taken to implement this Order. The frequency of those progress reports may be changed to be required more or less frequently, upon direction from the Governor.

### **DURATION**

This Order takes effect immediately and remains in effect until it is modified or rescinded.

DATED at Juneau, Alaska, this 26<sup>th</sup> day of September, 2019.

  
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Michael J. Dunleavy, Governor