In the
Supreme Court of Ohio

LUKAS DARLING, et al.,	)	**CASE NO.**
	)	
Plaintiffs/Appellants,	)	
	)	
vs.	)	**On Appeal from the Franklin County**
	)	**Court of Appeals,**
AMERICAN FEDERATION OF STATE, COUNTY, AND MUNICIPAL EMPLOYEES	)	
	)	**Case No. 23AP-645**
Defendants/Appellees.	)	

MEMORANDUM IN SUPPORT OF JURISDICTION OF APPELLANTS CHELSEA KOLACKI, KRISTY KOLACKI, LAURA LANGSDALE, STEVEN TULGA, AND RONNIE LEGG

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Other Authorities

INTRODUCTION

This case presents a substantial constitutional question and a question of public and great general interest. Namely, whether public employees can access Ohio courts to raise contractual challenges to the validity or enforceability of their union membership contracts. Indeed, this case asks whether there is any forum to adjudicate these claims. The courts below held that the Appellants' exclusive remedy is a complaint to the State Employment Relations Board ("SERB"). SERB, however, in a nearly identical case declined to address these contractual claims and held categorically that the enforcement of the union membership contracts—and the continued union dues deduction from public employees' paychecks attached to them—are not "unfair labor practices." In other words, the contractual claims raised by the Appellants are not the type of statutorily created claim over which SERB has exclusive jurisdiction. Thus, public employees seeking to assert their common law contractual rights are left with no forum in which to adjudicate their claims. This case therefore asks the Court to clarify the jurisdiction of common pleas courts to hear contractual disputes between a public union and its former members.

The U.S. Supreme Court's 2018 decision in *Janus* v. *Am. Fed'n of State, Cnty., & Mun. Emps., Council 31*, 585 U.S. 878, 885-886 (2018), upended the public employment landscape. In *Janus*, the Court held that the First Amendment protects public-sector employees from being compelled "to subsidize private speech on matters of substantial public concern" without their prior affirmative consent. The Court rejected the requirement that forced government employees to pay agency fees—typically in the same amount as their prior union dues—to support union policies and union lawyers, even when employees objected to those policies and actions. The *Janus* Court explained that "[c]ompelling individuals to mouth support for views they find objectionable violates [a] cardinal constitutional command, and in most contexts, any such effort

would be universally condemned." *Id*. at 891. *Janus* made clear that unions and governments cannot continue to compel "free and independent individuals to endorse ideas they find objectionable." *Id*. at 892.

Following the decision, public employees seeking to opt-out of union membership and the attendant compelled speech sued in district courts across the country. The public unions responded by arguing that unlike Mr. Janus, who was not a union member when he sued to enjoin the deduction of agency fees, current union members seeking to opt-out had entered into voluntary membership contracts with their unions, often spanning several years.

A majority of federal appellate courts have adopted the unions' view that the *Janus* rule applies only to non-union members who either never joined or had opted-out of union membership years earlier, but not to employees who had opted out of union membership but whose membership contract had not expired. In those cases, courts have held that an employee's ability to opt-out of union membership after he has signed a contract with the unions is governed solely by that contract and the applicable state contract law. *See Belgau v. Inslee*, 975 F.3d 940, 950 (9th Cir. 2020)("When 'legal obligations ... are self-imposed,' state law, not the First Amendment, normally governs."). Thus, while employees retained an absolute First Amendment right to resign from public union membership at any time, *see, e.g., Knox v. SEIU, Local 1000*, 567 U.S. 298 (2012), in *Belgau*—and cases like it—employees who leave the union before the contractual opt-out window are contractually required to continue to pay dues to a union to which they now longer belong. In essence, the federal courts have sent litigants back to state courts to hash out their contractual disputes there.

Following the federal courts' guidance, the Appellants sought relief in state court, raising state contract law claims and defenses. Specifically, they alleged that their individual contracts

with the Ohio Association of Public School Employees ("OAPSE" or the "Union") are invalid under well-established contract law, or to the extent that they are valid, the provision requiring the continued payment of dues after they have left the Union is an unenforceable penalty and not liquidated damages. Nevertheless, the trial court held, and the Tenth District affirmed, that the contractual rights asserted could constitute an unfair labor practice, and therefore those claims are subject to the exclusive jurisdiction of the SERB.

STATEMENT OF THE FACTS AND CASE

A. Procedural History

This is an appeal from the Tenth District's decision affirming the trial court's dismissal of the Appellants' complaint for lack of subject matter jurisdiction pursuant to Civ.R. 12(C). The Complaint asserted five causes of action, all sounding in Ohio's common law of contracts: (1) the contract between the employees and the unions were rescinded based on mutual repudiation, (2) the contracts were rescinded based on mutual mistake, (3) the contracts are unenforceable contracts of adhesion, (4) the continued assessment of Union dues after the Plaintiffs had resigned from the Union amounted to unreasonable liquidated damages, and (5) the Union had been unjustly enriched by renouncing the membership contracts, but continuing to take dues while providing no additional benefits beyond the statutory services that they are required to provide to members and non-members alike.

Many of the original plaintiffs settled their claims with their respective unions at the trial court level, leaving five plaintiffs (now Appellants, Chelsea Kolacki, Kristy Kolacki, Laura Langsdale, Ronnie Legg, and Steven Tulga) and one union (OAPSE) as parties to this case. On April 21, 2023, the remaining Appellants filed an Amended Complaint reflecting the various dismissals and clarifying the remaining parties. (Am. Compl., Apr. 21, 2023.) The trial court

granted the Motion to Amend. (Order, May 26, 2023). On June 9, 2023, OAPSE filed a Motion to Dismiss the complaint on the basis that the trial court lacked jurisdiction to hear the case, arguing that the State Employee Relations Board had exclusive jurisdiction. (Mot. to Dismiss, June 9, 2023). The Appellants opposed the Motion and OAPSE filed a Reply in Support. (Mem. Contra., June 26, 2023; Reply, July 3, 2023). On October 3, 2023, the trial court granted OAPSE's Motion to Dismiss. (Order, Oct. 3, 2023). The Appellants filed a timely Notice of Appeal on October 23, 2023. (Not. of Appeal, Oct. 23, 2023).

The Tenth District Court of Appeals affirmed the trial court's decision on June 6, 2024. (Decision, June 6, 2024).

B. Statement of Facts

1. The Post-*Janus* Legal Landscape and the *Belgau* Decision

While the factual background of this case is simple, the legal context and background in which the Appellants' contract claims arise is important to understanding those claims. In *Abood v. Detroit Bd. of Ed.*, 431 U.S. 209 (1977), the U.S. Supreme Court held that public employees have a First Amendment right not to associate with a union. The *Abood* Court held that while this right to disassociate from a union was absolute, the union could still charge an "agency fee" to non-union employees who the union represented in collective bargaining. *Id*. at 235-36. In *Janus,* 585 U.S. 878, the U.S. Supreme Court overruled *Abood* and held that the First Amendment protects public-sector employees from being compelled "to subsidize private speech on matters of substantial public concern" without prior affirmative consent. The *Janus* Court rejected the requirement that forced government employees to pay agency fees—used to support union policies and union lawyers—even when employees objected to those policies and actions. Non-payment of union membership dues would trigger employment termination. But "[c]ompelling individuals

to mouth support for views they find objectionable violates [a] cardinal constitutional command, and in most contexts, any such effort would be universally condemned." *Id*. at 891. *Janus* made clear that unions and governments cannot continue to compel "free and independent individuals to endorse ideas they find objectionable." *Id*. at 892. Notably, the plaintiff in *Janus* was not, and had never been, a union member.

A majority of federal appellate courts have relied on this distinction to hold that the *Janus* rule—that a public employee cannot be forced to pay dues or agency fees—does not apply to employees who have previously voluntarily entered into a contract with a union. In those cases, courts have held that an employee's ability to opt out of union membership after he has signed a contract with the union—typically a post-card-sized union membership card—is governed solely by that contract and the applicable state contract law. *See Belgau*, 975 F.3d at 950 ("When 'legal obligations ... are self-imposed,' state law, not the First Amendment, normally governs."); *see also Bennett v. Council 31 of the Am. Fedn. of State, Cnty. & Mun. Employees, AFL-CIO*, 991 F.3d 724 (2nd Cir. 2021) (following *Belgau*). As the Third Circuit explained, "[b]ecause *Janus* does not abrogate or supersede Plaintiffs' contractual obligations, which arise out of longstanding, common law principles of 'general applicability,' *Janus* does not give Plaintiffs the right to terminate their commitments to pay union dues unless and until those commitments expire under the plain terms of their membership agreements." (Citations omitted.) *Fischer v. Governor of New Jersey*, 842 Fed.Appx. 741, 753 (2021), *cert. denied sub nom. Fischer v. Murphy*, 142 S.Ct. 426 (2021).

In the wake of these decisions, many Unions began relying on these "opt-out windows" to continue to deduct union dues from public employees who were no longer union members. Thus, while union members retained an absolute right to resign from union membership at any time, *see, Abood; Knox,* 567 U.S. 298, those who did so outside of the contractual opt-out window could still

be compelled—as a matter of contract law—to continue to pay dues to a union to which they now longer belonged. Simply put, the *Belgau* line of cases held that the First Amendment concerns present in *Janus* were not present where the parties' relationship was governed by a contract. The Appellants therefore challenged the validity and enforceability of those contracts under state contract law.

2. The Appellants' Contract Law Challenges to the Membership Agreements.

Each of the Appellants in this case notified his or her respective union that he or she was opting out, and no longer wanted to be a member of or otherwise associated with his or her respective union. (Am. Compl., 4/21/23). Each Plaintiff specifically requested that he or she be removed from the union roll immediately and that union membership dues no longer be deducted from his or her paychecks. (Id.) All of these requests were made outside of each Appellant's respective contractual opt-out window. (Id.)

Each of the Appellants in this case notified his or her respective union that he or she was opting out, and no longer wanted to be a member of or otherwise associated with his or her respective union. (Am. Comp., Apr. 21, 2023). Each Plaintiff specifically requested that he or she be removed from the union roll immediately and that union membership dues no longer be deducted from his or her paychecks. (*Id.*) All of these requests were made outside of each Appellant's respective contractual opt-out window. (*Id.*)

In each case where the Appellants have correspondence from the union, the union acknowledged in writing that the Appellant was no longer a member of the union. *Id.* In the letter acknowledging each Appellant's termination of union membership, OAPSE urged the Appellants to reconsider and rejoin the union. The letters touted benefits available only to members, most notably the ability to vote in union elections. Upon the termination of the respective Appellant's

union membership, OAPSE terminated the Appellants' "membership-only" benefits. Importantly, these "membership-only benefits"—such as the right to vote in union elections—arise from the membership agreement and not from the collective bargaining agreement—which is an agreement between the union and the public employer. These "membership-only" benefits are distinct from OAPSE's duty, as the designated exclusive bargaining representative, to represent members and nonmembers alike in collective bargaining activities. *See* R.C. 4117.05.

Following their resignations from their respective unions, Appellants again demanded that the Union cease its unauthorized withdrawal of union membership dues and refund all union membership dues withdrawn from the date of the employee's resignation. OAPSE refused to cease withdrawing dues as of the date of resignation, stating that each Appellant continued to be bound by his or her alleged membership contract with the union which required the payment of dues for the entire term of the contract or until the next opt-out window.

Since courts have held that an employee's decision to resign from a union is governed by "longstanding, common law principles of 'general applicability'" to state contract law, the Appellants brought a state contract law case, alleging that the membership contracts that OAPSE relies on are invalid under several long-standing contractual defenses, or to the extent that they are valid and the Appellants have breached them by resigning, the provision requiring the continued payment of dues after they have left the Union is an unenforceable penalty and not liquidated damages.

Although the Appellants raised contractual claims, the trial court held that those claims, in essence, alleged unfair labor practices, and that exclusive jurisdiction rested with SERB. The Tenth District Court of Appeals affirmed, holding that the contractual challenges, were in essence unfair labor practice charges under R.C. 4117 and thus subject to SERB's exclusive jurisdiction.

THIS CASE RAISES SUBSTANTIAL CONSTITUTIONAL QUESTIONS AND INVOLVES A QUESTION OF PUBLIC AND GREAT GENERAL INTEREST

1. This Court should review the Tenth District's decision because the decision conflicts with the decisions of this Court and multiple appellate districts regarding SERB's exclusive jurisdiction and Ohioans access to the courts. This Court has held—time and again—that "SERB does not have exclusive jurisdiction over every claim that can somehow be cast in terms of an unfair labor practice." *Keller v. Columbus*, 100 Ohio St, 3d 192, 194 (2003); *E. Cleveland v. E. Cleveland Firefighters Local 500*, *I.A.F.F.,* 70 Ohio St.3d 125, 127–29 (1994); *Franklin Cnty. Law Enforcement Assoc. v. Fraternal Order of Police, Capital City Lodge No. 9*, 59 Ohio St. 3d 167*,* 171 (1991). Indeed, the Ohio Supreme Court has specifically rejected the Defendants' view of SERB's broad pre-emption power stating that "to hold that only SERB has jurisdiction to hear or determine anything that 'arguably' constitutes an unfair labor practice is neither a complete nor totally correct statement of the law set forth in R.C. Chapter 4117 or the decisions of this court." *E. Cleveland Firefighters,* 70 Ohio St.3d at 127–29. The Tenth District's decision presents a substantial departure from this established jurisprudence and in effect states a contrary rule: SERB's exclusive jurisdiction extends over every claim that might arguably be cast as an unfair labor practice. No other Ohio court has ever adopted this rule, and its implications in a world where remote work is likely to become more common raise significant constitutional as well as public policy questions.

2. In a recent decision in a nearly identical case, SERB declined to adjudicate the exact same contractual disputes raised in this case. It held that the conduct alleged here—enforcing opt-out windows and requiring public employees to continue to pay union dues after they have left the union was ***not*** an unfair labor practice. *See Littlejohn v. Ohio Council 8*, AFSCME, AFL-CIO, 2023-ULP-12-01146. SERB obliquely referenced *Belgau* and other federal cases—without

naming them—as a basis for its decision without explaining how they are relevant to the case.[1] *See Littlejohn v. Ohio Council 8*, AFSCME, AFL-CIO, 2023-ULP-12-01146. The decision, however, did not even mention charging party Littlejohn's contract claims. This highlights the confusion surrounding the state of the law of opt-out windows. The Tenth District holds that SERB has exclusive jurisdiction over contract claims regarding union membership because they may touch on an unfair labor practice; but SERB itself denies that it has jurisdiction to adjudicate the continued requirement to pay union dues. As it now stands, neither SERB nor the common pleas courts will adjudicate the Appellants' contract claims.

3. Roughly 250,000 Ohioans are members of public unions.[2] In the five years since *Janus* was decided, roughly 20% of public union members sought to resign from their unions. Jarrett Skorup, *Janus had Large Impact on Union Membership, Five Years Later*, Mackinac Center for Public Policy (Nov. 20, 2023).[3] In the five years since *Janus* was decided, roughly 20% of public union members sought to resign from their unions. Jarrett Skorup, Mackinac Center for Public Policy, *Janus had Large Impact on Union Membership, Five Years Later*, Nov. 20, 2023, *https://www.mackinac.org/blog/2023/janus-had-a-large-impact-on-union-membership-five-years-later*. Unlike the agency fees in *Janus*, which were earmarked for collective bargaining activity, union dues collected from former members can be used for political and ideological purposes far removed from public employment. More and more, public sector unions are engaging

[1] *Belgau* addressed First Amendment claims. Littlejohn's complaint raised only contract claims, not First Amendment claims.

[2]There are over 34,000 members of OAPSE, https://oapse.org/history/; more than 120,000 members of the OEA, *https://ohea.org/about/#:~:text=OEA%20represents%20approximately%20120%2C000%20teachers,the%20lives%20of%20Ohio's%20children*; over 33,000 members of AFSCME Ohio Council 8; *https://afscmecouncil8.org/afscme-ohio-council-8 officers#:~:text=Our%2033%2C000%20plus%20members%20provide,to%20fulfill%20the%20American%20dream*; close to 25,000 members of Ohio's FOP; *https://www.fopohio.org/?zone=/unionactive/view_page.cfm&page=FOP#:~:text=FOP&text=The%20Fraternal%20Order%20of%20Police,25%2C000%20and%20175%20local%20lodges*; 13,500 members of the Ohio Association of Professional Firefighters; *https://oapff.org/*; and 20,000 members of the Ohio Federation of Teachers; *https://www.oft-aft.org/about-ohio-federation-teachers*.

[3] https://www.mackinac.org/blog/2023/janus-had-a-large-impact-on-union-membership-five-years-later.

in advocacy for causes that have little or nothing to do with collective bargaining. For example, the National Education Association, the parent union of Ohio's OEA, has issued a statement calling for a ceasefire between Israel and Hamas. National Education Association Statement Calling for Israel-Hamas Ceasefire., *https://www.nea.org/about-nea/media-center/press-releases/nea-board-directors-takes-action-reaffirm-neas-call-ceasefire-between-israel-and-hamas*. AFSCME has decried "the militarization of federal law enforcement agencies against civilians protesting in the wake of George Floyd's murder," and recommended limitations on cash bail, diversion for drug offenses, and the creation of "a civilian corps of unarmed first responders who can work in partnership with police officers." AFSCME 44th Annual Convention, Resolution No. 4, *Policing and Criminal Justice*; *https://www.afscme.org/press/releases/2020/AFSCME-Resolution-04-Policing-and-Criminal-Justice.pdf*. Similarly, the AFL-CIO waded into abortion politics, condemning the U.S. Supreme Court's *Dobbs* decision. AFL-CIO President on Anniversary of Dobbs Decision, June 24, 2024; *https://aflcio.org/press/releases/afl-cio-president-anniversary-dobbs-decision*.

These political forays into issues unrelated to the workplace understandably frustrate the public employees who are forced to fund them. Surveys of union members show that 66% of union members would prefer that their union focus on workplace issues only rather than devoting resources, raised from their dues, used to wade into national political and social issues. *Not What They Bargained For: A Survey of American Workers*; American Compass, Sept. 6, 2021, *https://americancompass.org/not-what-they-bargained-for*. This data points to continued dissatisfaction among union members over the use of their dues for political purposes, and strong likelihood that Ohio's public employees will continue to seek to opt-out of union membership and will seek a remedy for the forced collection of dues after they have resigned from the union.

Like the gym membership that you can't escape or the subscription that keeps automatically renewing, a union membership agreement is a contract. Like any party to a membership contract with recurring payments, Ohio public employees with union membership contracts have contractual rights and defenses. The federal courts have instructed them to look to state courts and state law remedies. But with no forum in which to vindicate these rights, these contractual rights are worthless. This case therefore presents a case of substantial public and general interest.

ARGUMENT

Appellant's First Proposition of Law:

Common Pleas Courts Have Jurisdiction to Adjudicate Contractual Rights in Union Membership Contracts Because They Arise Independent of R.C. 4117.

A. Ohio's Public Employee Collective Bargaining Act, R.C. 4117.01, et seq., Does Not Divest Courts of Jurisdiction Over Private Contractual Disputes.

This Court has long held that "SERB does not have exclusive jurisdiction over every claim that can somehow be cast in terms of an unfair labor practice." *Keller*, 100 Ohio St.3d at 194. Indeed, this Court has specifically rejected the Defendants' view of SERB's broad pre-emption power stating that "to hold that only SERB has jurisdiction to hear or determine anything that "arguably" constitutes an unfair labor practice is neither a complete nor totally correct statement of the law set forth in R.C. Chapter 4117 or the decisions of this court." *E. Cleveland Firfighters,* 70 Ohio St.3d at 127–29 (1994).

While Ohio law grants SERB exclusive jurisdiction in disputes relating to the "new rights and remedies" created by R.C. 4117, "if a party asserts rights that are independent of R.C. Chapter 4117, then the party's complaint may properly be heard in common pleas court." *Franklin Cnty. Law Enforcement Assoc. v. Fraternal Order of Police, Capital City Lodge No. 9*, 59 Ohio St.3d

167, 171 (1991). Indeed, "common-law contractual rights that exist independently of R.C. 4117" is a specific example of claims where SERB's jurisdiction would not be exclusive. *Id.* That is exactly what the Appellants did here. They brought claims under the common law of contracts.

The test for whether SERB preempts a claim is whether the rights asserted in the claim "exist independently of R.C. Chapter 4117." *Id.* at 172. If so, "such claims may be raised in common pleas court even though they may touch on the collective bargaining relationships between employer, employee, and union." *Id.*; *see also, Ohio Assn. of Pub. School Emps./AFSCME Local 4, AFL-CIO v. Madison Local School Dist. Bd. of Edn.*, 2010-Ohio-4942, ¶ 47 (11th Dist.) ("It is well established that if a party asserts rights that are independent of R.C. Chapter 4117, then the party's complaint may be properly heard in common pleas court.").

1. Nature of the Contracts at Issue

First, though obvious, it bears repeating that the contracts in dispute are not collective bargaining agreements between public employers and the union. They are instead the private contracts of union membership between OAPSE and the Appellants. These contracts do not touch on any collective bargaining topic. Nor do they relate to any collective bargaining services that OAPSE is statutorily required to provide to all employees in the bargaining unit regardless of whether they are union members or nonmembers. They are instead limited to the relationship between the Union and the Appellants. Under the contracts, the Appellants agree to become Union members, exchanging consideration in the form of dues for some benefits or privileges from the union outside of the services that the union is already statutorily required to provide to all bargaining unit employees. *See* R.C. 4117.03-06.

OAPSE cannot disclaim those obligations or condition them on membership any more than the employees can opt out of the bargaining unit. *See Janus*, 585 U.S. at 885. The membership

contracts in question govern only the conditions under which employees join or resign from the Union and any additional benefits that are necessarily separate and apart from OAPSE's statutory obligations as the bargaining unit representative.

2. The Appellants' Claims Arise Under the Common Law of Contracts Established Long Before R.C. 4117's Enactment.

Ohio's enactment of R.C. 4117 was not intended to broadly preempt any claims that might relate to public employment. Instead, as the *Franklin Cnty. Law Enf't* Court made clear, "[t]hat chapter [R.C. 4117] was meant to regulate in a comprehensive manner the labor relations between public employees and employers." 59 Ohio St.3d at 170. It was not intended "to give SERB exclusive jurisdiction over claims that a party might have in a capacity other than as a public employee, employer, or union asserting collective bargaining rights." *Id.* While this dispute is tangential to their public employment, the Appellants are not asserting any rights related to collective bargaining or pursuing causes of action created by R.C. 4117. Indeed, OAPSE itself highlighted the contractual nature of the membership agreement when it told the Sixth Circuit Court of Appeals in *Littler v. OAPSE*—"whether a union can collect membership dues from a given employee turns on the 'private judgments' of the employee and the union.'" Brief of Appellee, OAPSE at 24, *Littler v. OAPSE*, 88 F.4th 1176 (6th Cir. 2023) (No. 22-4056), ECF No. 20, citing *Hoekman v. Education Minnesota*, 41 F. 4th 969, 978 (8th Cir. 2022).

Instead, the Appellants' contract-based claims arise entirely from common law independent of R.C. 4117. The claims have nothing to do with the union's statutory duties of fair representation or to "restrain or coerce" an employee's exercise of rights under 4117. In fact, R.C. 4117.11 (B)(1)—on which the Court of Appeals relied—carves out an exception to union activities related to the "acquisition or retention of membership therein." R.C. 4117.11 (B)(1). A plain

reading of that statute means that a union's enforcement of its own membership rules—as it seeks to do here—from ever being an unfair labor practice.

The Appellants' claims regarding the validity of their membership contracts with the Union all arise under theories that were ancient in Ohio law before R.C. 4117 (enacted in 1983) was a glimmer in the eyes of its drafters. *See, e.g., Irwin v. Wilson*, 45 Ohio St. 426 (1887) (rescission for mutual mistake); *Curtis v. Factory Site Co*., 12 Ohio App. 148 (8th Dist. 1919) (recission by repudiation); *Hummel v. Hummel*, 133 Ohio St. 520 (1938) (unjust enrichment); *Miller v. Blockberger*, 111 Ohio St. 798 (1924) (recognizing unenforceability of liquidated damages clauses that constitute a penalty); *Matson v. Marks*, 32 Ohio App.2d 319 (10th Dist. 1972) (Recognizing remedies for contract of adhesion). SERB, on the other hand, was not created until 1983. *See* 1983 S.B. No. 133.

In other words, if R.C. 4117 had never been enacted, the Appellants would still have the same claims under Ohio's common law of contracts. The Appellants' claims, thus, cannot be said to "arise from or depend on the collective bargaining rights created by R.C. Chapter 4117." *See Franklin Cnty. Law Enf't, Ass'n*, 59 Ohio St.3d at 171. Stated in the alternative, the question of whether the Appellants' claims "arise from or depend on" the collective bargaining statute can be answered by a simple thought experiment: If R.C. 4117 were repealed in its entirety tomorrow, could the Appellants' claims go forward? Because the membership contracts between the Union and the Plaintiffs could not be legislated out of existence, the answer is plainly yes.

And while the Tenth District suggests that the Plaintiffs might have sought relief under R.C. 4117.03(A)(1)'s right to "refrain from . . . assisting" the union, the fact that a statutory remedy might also exist does not oust the trial court from jurisdiction:

> Where a statute which creates a new right, prescribes the remedy for its violation, the remedy is exclusive; but when a new remedy is given by statute for a right of action existing

> independent of it, without excluding other remedies already known to the law, the statutory remedy is cumulative merely, and the party may pursue either at his option.

Fletcher v. Coney Island, Inc. 165 Ohio St. 150, 154 (1956), quoting *Zanesville v. Fannan*, 53 Ohio St. 605 (1895), paragraph two of the syllabus. Again, R.C. 4117 does not divest the courts of common pleas of jurisdiction simply because a claim can "somehow be cast in terms of an unfair labor practice." *Keller*, 100 Ohio St.3d at 194; *E. Cleveland,* 70 Ohio St.2d at 127–29. Public sector unions have insisted, in cases like *Belgau* and *Littler*, that opt-out disputes are matters of private contract law between the member-employee and the union. The Plaintiffs here have thus sought to pursue their private contract remedies, which do not arise from, depend upon, or otherwise implicate R.C. 4117. This Court should accept jurisdiction to direct the common pleas courts to recognize their jurisdiction over contractual matters such as those raised in this case. This would be consistent with this Court's prior decisions holding that SERB preemption applies only to the new rights created by R.C. 4117 and cannot be used to deprive Ohio public employee of a judicial forum to vindicate their common law contractual rights.

CONCLUSION

For the foregoing reasons, the Court should accept jurisdiction and reverse the judgment below.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing *Memorandum in Support of Jurisdiction of Plaintiffs-Appellants* was served by e-mail this 19th day of July 2024, upon the following counsel:

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