IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT
STATE OF OHIO

NECOLE LITTLEJOHN	:	Appellate Case No. C250020
	:	
Plaintiff-Appellant,	:	
	:	Trial Court Case No. A2403410
v.	:	
	:	
AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, OHIO COUNCIL 8, AFL-CIO	:	
	:	
Defendant-Appellee.	:	

ASSIGNMENTS OF ERROR AND MERIT BRIEF OF APPELLANT

ORAL ARGUMENT REQUESTED

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Other Authorities

Rules

Constitutional Provisions

ASSIGNMENTS OF ERROR

ASSIGNMENT OF ERROR NO. 1: The trial court erred by treating the Plaintiff's complaints, which related to her private contracts with the Defendant Union, as unfair labor practices subject to the exclusive jurisdiction of SERB.

ASSIGNMENT OF ERROR NO. 2: The trial court erred by denying the Plaintiff a forum in which to bring her contractual and declaratory judgment claims in violation of the Ohio Constitution's Open Courts Provision.

ISSUES PRESENTED FOR REVIEW

Ohio's Public Employee Collective Bargaining Act created the State Employee Relations Board and gave it exclusive jurisdiction to disputes arising out of the "new rights and remedies." *Franklin Cty. Law Enf't Assn. v. Fraternal Order of Police, Capital City Lodge No. 9*, 59 Ohio St.3d 167,171(1991). But where "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." *Id*. Here, the Appellant raised state law contractual challenges to her union-membership agreements. **Is Appellant's contractual rights independent of R.C. 4117 and thus cognizable in common pleas court?** Yes.

ISSUE PRESENTED FOR REVIEW: The Ohio Constitution provides that "All courts shall be open, and every person, for an injury done him in his land, good,

person, or reputation, shall have remedy by due course of law and shall have justice administered without denial or delay." Ohio Const., art. I, § 16. Federal courts have held that the claims that Ms. Littlejohn seeks to raise are state contract claims. The Tenth District Court of Appeals held that claims identical to Ms. Littlejohn's May Only Be Heard in SERB. SERB has declined to hear her claims because they do not allege unfair labor practices over which SERB has jurisdiction. **Does the Ohio Constitution's Open Courts Provision Require that Ms. Littlejohn Be Afforded a Forum in Which to Pursue Her Contractual and Declaratory Judgment Claims?** Yes,

I. STATEMENT OF THE CASE

A. Statement of Jurisdiction

This Court has jurisdiction over this matter pursuant to R.C. 2505.02. On December 16, 2024, the trial court issued a final appealable order granting the Defendant-Appellants' Motion to Dismiss (T.d. 17, Entry Granting Mot. to Dismiss, 12/16/24). Appellant Necole Littlejohn filed a timely Notice of Appeal on January 14, 2025. (T.d., 18, Not. of Appeal, 1/14/25).

B. Procedural Posture

On July 30, 2024, Appellant Necole Littlejohn filed a complaint in Common Pleas Court seeking declaratory relief relating to her membership contract with her former union, American Federation of State, County, and Municipal Employees,

Ohio, Council 8, AFL-CIO ("the Union"). (T.d. 3, Compl., 7/30/24). On August 8, 2024, the Union, Defendant-Appellee, filed a Motion to Dismiss the Complaint for lack of subject matter jurisdiction. (T.d. 5, Mot. to Dismiss, 8/27/24). On September 24, 2024, following an agreed motion for additional time to respond, Ms. Littlejohn filed a response in opposition to that motion. (T.d. 12, Brf. in Opp., 9/24/24). On October 10, 2024, following another agreed upon motion for additional time, the Union filed its Reply Brief in support of the Motion to Dismiss. (T.d. 15, Reply, 10/10/24). On December 16, 2024, the trial court issued an order granting the Union's Motion to Dismiss. (T.d. 17, Entry Granting Mot. to Dismiss, 12/16/24). On January 14, 2025, Ms. Littlejohn filed a timely Notice of Appeal. (T.d.,18, Not. of Appeal, 1/14/25).

C. Statement of Facts

The facts of this case are not in dispute. At its simplest, Ms. Littlejohn is seeking a declaration that her membership contract with the Union—the contract that permitted the Union to continue to withdraw dues from her paycheck even after her Union membership had ended—is invalid and imposes an impermissible penalty under Ohio law. More to the point, Ms. Littlejohn is seeking a forum in which she can bring her contractual claim. Ms. Littlejohn's case arrives in this Court now as a result of decisions by federal courts, Ohio courts, and SERB, which have each turned down similar claims and directed the plaintiffs in those cases to another forum.

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 Appellant's claims arise is important to understanding them. In *Janus v. Am. Fedn. of State, Cty., & Mun. Emps., Council 31*, 585 U.S. 878, 885–886 (2018), the U.S. Supreme Court 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 Court rejected the requirement that forced government employees either to pay monthly dues or agency fees, used to support union policies and union lawyers, even when employees objected to those policies and actions. Non-payment 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 892. *Janus* made clear that unions and governments cannot continue to compel "free and independent individuals to endorse ideas they find objectionable." *Id*. at 893. Notably, the plaintiff in *Janus* was not and had never been a union member when he sought to escape the agency fees forced upon him.

Several federal appellate courts have seized on this distinction to hold that the *Janus* rule does not apply to employees who have 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 v. Inslee*, 975 F.3d 940, 950 (9th Cir.2020) ("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, Cty. & Mun. Ems., AFL-CIO*, 991 F.3d 724 (2nd Cir. 2021) (following *Belgau*). As the Third Circuit explained, "Because *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." *Fischer v. Governor of New Jersey*, 842 Fed.Appx. 741, 753 (3d Cir. 2021), *cert. denied sub nom. Fischer v. Murphy*, 142 S.Ct. 426 (2021) (internal citations omitted).

In the wake of these decisions, many unions began relying on "opt-out windows" in their contracts with their members. Thus, while union members retained an absolute right to resign from union membership at any time, *see, e.g., Knox v. SEIU, Local 1000*, 567 U.S. 298 (2012), 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 no longer belonged.

In 2022, in light of the *Belgau* decision, a group of plaintiffs similarly situated to Ms. Littlejohn filed suit against their respective public sector unions in Franklin County, alleging state contractual theories and seeking a declaratory judgment regarding their right to a refund of dues paid after they had opted out. *See Darling v. Am. Fedn. of State, Cty., & Mun. Employees*, 2024-Ohio-2181 (10th Dist.). The trial court held that because those plaintiffs' contractual claims, which were substantively identical to those brought here by Ms. Littlejohn, might be cast as unfair labor practices under R.C. 4117.11, the State Employment Relations Board ("SERB") had exclusive jurisdiction over them. The plaintiffs in the *Darling* case appealed, and the Tenth District Court of Appeals affirmed the trial court's dismissal, holding that because the claims were essentially unfair labor practice claims, their only relief was in SERB.

2. Ms. Littlejohn's Contract Law Challenges to the Membership Agreements

Ms. Littlejohn is a public employee who was, at one time, a member of the Union. (T.d, Compl. at ¶37, 6/30/24). When she joined the Union, Ms. Littlejohn signed a "Checkoff Agreement" that served as her membership contract and authorized her employer to deduct union dues from her paycheck and pay them directly to the Union. (*Id.* at ¶38; Compl. Ex. A). On several occasions, most recently in June of 2022, Ms. Littlejohn notified the Union that she was resigning her

membership and instructed both the Union and her employer to stop deducting union dues from her paycheck. (*Id.* at ¶39; Compl. Ex B).

After receiving Ms. Littlejohn's notice, the Union acknowledged that Ms. Littlejohn was no longer a member of the Union and terminated any benefits to her that it was not statutorily obligated to provide as her exclusive bargaining unit representative under R.C. 4117.04. (*Id.* at ¶40; ¶55). In fact, in the letter acknowledging Ms. Littlejohn's termination of union membership, the Union urged her to reconsider and rejoin the Union. (*Id.* at ¶44; Compl. Ex. C). The Union, however, refused to honor her request to stop deducting dues from her paycheck and also continued to deduct vacation time from her for Union purposes, arguing that Ms. Littlejohn continued to be bound by her alleged contract with the Union and that the contract allowed her to opt-out of continued union membership dues payments only during certain times ("Opt-out Window") during the life of the contract. (*Id.* at ¶41, ¶48). The Union cited the Ninth Circuit Court of Appeals' decision in *Belgau* as the basis for its decision, arguing that while *Janus* applied to nonunion employees who sought relief from "fair share" fees, it did not apply to employees who had recently resigned their union membership and were bound by the terms of their alleged contracts with their unions. (*Id.*; Compl. Ex. C). The Union thus contended that under *Belgau*, Ms. Littlejohn had preemptively and contractually waived her rights under *Janus* when she joined the Union, or when she renewed her union

membership. Accordingly, notwithstanding Ms. Littlejohn's resignation from the Union, the Union contends that she continued to be bound by her alleged contract with the Union (even though the Union recognized that she was no longer a union member) and must continue to pay union membership dues until the next Opt-out Window.

In light of the Tenth District's decision in *Darling* and expressly reserving her right to seek redress in court, Ms. Littlejohn filed an unfair labor practice charge with SERB, including the various contractual theories for which she seeks relief here. (*Id.* at ¶26). SERB reviewed the charge and dismissed it, stating that based on federal court decisions[1], which it did not cite, the actions complained of were not an unfair labor practice. (*Id.* at ¶26; T.d., 12, Brf. in Opp., Ex. A (SERB Decision)). The SERB decision did not examine or even mention any of Ms. Littlejohn's contractual claims or defenses. (*Id.*). SERB's decision was not surprising, given that SERB's jurisdiction is limited to determining whether an unfair labor practice listed in R.C. 4117.11 occurred, and not determining common law contractual rights.

Following the SERB charge, the Union eventually agreed to stop its deductions, but the Union refused to refund union membership dues back to the date of Ms. Littlejohn's earlier resignations. (T.d. 3, Compl. at Ex. C. 6/30/24). Ms.

[1] SERB did not specifically cite to *Belgau* or any other case, but apparently relied on the *Belgau* line of cases, which address First Amendment issues, not unfair labor practices.

Littlejohn therefore sought relief under her contract theories in common pleas court, also noting her right to seek redress under Article IV, Section 4(B) of the Ohio Constitution—Ohio's Open Courts Provision. (*Id.* at ¶24). The Union moved to dismiss the Complaint, arguing that Ms. Littlejohn's exclusive remedy was in SERB and that since SERB had found no cause to investigate an unfair labor practice, Ms. Littlejohn had no remedy anywhere. Ms. Littlejohn responded in opposition, noting that she was bringing contractual and declaratory judgment claims over which SERB did not have exclusive jurisdiction, that in finding that her allegations did not state an unfair labor practice, SERB had essentially stated that it lacked jurisdiction, and again noting that the Ohio Constitution guaranteed that the courts should be open to her. The trial court granted the Union's Motion to Dismiss on December 16, 2024, and Ms. Littlejohn filed a timely Notice of Appeal on January 14, 2025. (T.d. 17, Entry, 12/16/24; T.d. 18, Not. of Appeal, 1/14/25).

II. LAW AND ARGUMENT

Assignment of Error No. 1: The trial court erred by treating the Plaintiff's complaints, which related to her private contracts with the Defendant Union, as unfair labor practices subject to the exclusive jurisdiction of SERB.

Issue Presented for Review

Did the trial court have jurisdiction to hear Ms. Littlejohn's contractual and declaratory judgment claims? Yes.

A. Standard of Review

An appellate court reviews a trial court order granting a motion to dismiss pursuant to Civ.R. 12(B)(6) under a de novo standard of review. *Perrysburg Twp. v. Rossford*, 2004-Ohio-4362, ¶ 5. In reviewing whether a motion to dismiss should be granted, an appellate court must accept as true all factual allegations in the complaint, and all reasonable inferences must be drawn in favor of the nonmoving party. *Id.*; *Mitchell v. Lawson Milk Co.*, 40 Ohio St.3d 190, 192 (1988). "To prevail on a Civ. R. 12(B)(6) motion to dismiss, it must appear on the face of the complaint that the plaintiff cannot prove any set of facts that would entitle him [or her] to recover." *O'Brien v. Univ. Community Tenants Union*, 42 Ohio St.2d 242, 245 (1975).

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

The Ohio Supreme 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 v. Columbus*, 2003-Ohio-5599, ¶ 14. Indeed, the Ohio Supreme Court has specifically rejected the Defendant's 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 v. E. Cleveland Firefighters Local 500*, *I.A.F.F.,* 70 Ohio St.3d 125, 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 Cty. Law Enf't Assn.*, 59 Ohio St.3d at 171. Indeed, the *Franklin Cty. Law Enf't Assn.* Court specifically noted "common-law contractual rights that exist independently of R.C. 4117" as an example of claims where SERB's jurisdiction would not be exclusive. *Id.* That is exactly what Ms. Littlejohn did here. She brought claims under the common law of contracts.

The test for whether SERB preempts the claims is whether the rights asserted "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.").

The trial court relied on *Murray v. Columbus*, 2014-Ohio-2790 (10th Dist.), for the proposition that a claim that essentially requires a trial court to rule on an unfair labor practice is subject to SERB preemption. As set forth below, *Murray*—which dealt with core collective bargaining and a union's duty of fair representation under R.C. 4117.11—is inapplicable to private contracts unrelated to bargaining activity. The trial court thus erred in treating Ms. Littlejohn's declaratory judgment claims regarding the validity of the membership contracts as unfair labor practices subject to SERB's exclusive jurisdiction.

1. Nature of the Contract at Issue

First, though perhaps obvious, it bears repeating the contract that is in dispute is not the collective bargaining agreement between Ms. Littlejohn's public employer and the Union. It is instead the private contract of union membership between Ms. Littlejohn and the Union. This contract does not touch on any collective bargaining topic. Nor does it relate to any collective bargaining services that the Union is statutorily required to provide to all employees in the bargaining unit regardless of whether they are union members or nonmembers. It is instead limited to the relationship between Ms. Littlejohn and the Union. Under the contract, Ms. Littlejohn agreed to become a union member, 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.

The Union cannot disclaim those obligations or condition those obligations on membership any more than the employees can opt out of the bargaining unit. *See Janus*, 585 U.S. at 885–887. The contract in question governs only the conditions under which an employee like Ms. Littlejohn can join or resign from the Union and any *additional* benefits that are necessarily separate and apart from the Union's statutory obligations as the bargaining unit representative.

2. Ms. Littlejohn's Claims Do Not Arise From or Depend On the Collective Bargaining Agreement or R.C. 4117.

Ohio's enactment of R.C. Chapter 4117 was not intended to broadly preempt any claims that might relate to public employment. Instead, as the *Franklin Cty. Law Enf't Assn* Court made clear, "[t]hat chapter was meant to regulate in a comprehensive manner the labor relations between *public employees and employers*." (Emphasis added.) *Id.* 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 may be tangential to her public employment, Ms. Littlejohn is not asserting any rights related to collective bargaining or pursuing causes of action created by R.C. 4117.

Rather, Ms. Littlejohn's contract-based claims arise entirely from common law independent of R.C. 4117. Specifically, her claims for declaratory judgment that the contracts have been repudiated, rescinded for mutual mistake, that the continued imposition of dues constitutes an unenforceable penalty for her breach of the contract, that the contract that does not disclose the price of the goods or services—in this case the dues to be collected—is unconscionable, and unjust enrichment. All of these contract-based theories and the legal remedies sought under them existed long before R.C. 4117's 1983 enactment.

Compare, for example, *Murray v. Columbus*, on which the trial court in *Darling* relied, which dealt with core collective bargaining activity—the union's settlement of a grievance without notifying the plaintiff. *Murray*, 2014-Ohio-2790, at ¶18. The grievance procedure was a creature of the collective bargaining agreement. The settlement of the grievance related directly to the union's duty to represent the plaintiff, which again, arose out of R.C. 4117.11(B)(6) and the collective bargaining agreement. The *Murray* court thus correctly held that it could not address the plaintiff's complaint without ruling on an "unfair labor practice."

There is no such danger here because issues like whether the membership contract fails for mutual mistake, fails as a contract of adhesion, or contains an impermissible penalty disguised as liquidated damages 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 Chapter 4117. In fact, R.C. 4117.11(B)(1)—on which the trial court appeared to have relied—carves out an exception to union activities related to the "acquisition or retention of membership therein." R.C. 4117.11(B)(1). Indeed, a plain reading of that statute precludes a union's enforcement of its own membership rules from ever being an unfair labor practice.

Instead, Ms. Littlejohn sought a declaratory judgment excusing her breach—that is, her early resignation of the membership contract from the union outside of an opt-out window. In other words, if the membership contract between Ms. Littlejohn and the Union is valid—and the Union insists that it is—Ms. Littlejohn breached that contract and the question is whether that breach can be excused, and if not, are the Union's damages in the form of continued payment of dues appropriate liquidated damages or an unenforceable penalty? This is plainly and purely a contract issue.

Similarly, Ms. Littlejohn's claims going to the validity of her membership contract with the Union all arise under theories that were ancient in Ohio law before R.C. 4117 was a twinkle 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. 133.

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

3. Ms. Littlejohn's Complaint Adequately States Claims for Declaratory Relief.

Ohio's declaratory judgment statute provides that

> [s]ubject to division (B) of section 2721.02 of the Revised Code, any person interested under a . . . written contract, or other writing constituting a contract . . . may have determined any question of construction or validity arising under the instrument, constitutional provision, statute, rule, ordinance, resolution, contract, or franchise and obtain a declaration of rights, status, or other legal relations under it.

R.C. 2721.03. The statute further provides that common pleas courts have jurisdiction to "declare rights, status, and other legal relations whether or not further relief is or could be claimed." R.C. 2721.02(A). Here, the Union received dues from

Ms. Littlejohn while she was a member and after she resigned from the Union based on the written agreement between Ms. Littlejohn and the Union. *See* (T.d. 3, Compl., at Exhibit B, 6/30/24). Ms. Littlejohn is challenging "the validity and construction" of that agreement.

Specifically, Ms. Littlejohn raises alternative claims for declaratory judgment, alleging that the parties mutually repudiated the contract, that the contract should be rescinded for mutual mistake, that the continued imposition of dues constitutes an unenforceable penalty for Ms. Littlejohn's breach of the contract, or that the contract does not disclose the price of the goods or services—in this case, the dues to be collected—is unconscionable.

Taking the claims one-by-one, the Complaint adequately pleads a declaratory judgment cause for each. For example, Ms. Littlejohn alleges that she resigned from union membership, that the Union acknowledged and accepted her resignation and expressly withheld any further benefits of membership to her. (T.d. 3, Complt at ¶¶ 79–82). In other words, Ms. Littlejohn has alleged that both parties have refused or otherwise refused to perform under the contract, and that it is therefore subject to rescission under Ohio law. *See, e.g.*, *Haman Ents., Inc. v. Sharper Impressions Painting Co.*, 2015-Ohio-4967, ¶ 19 (10th Dist.). The Union obviously has a different view. This is sufficient to state a claim.

Next, Ms. Littlejohn alleged that the contract should be rescinded (and her dues refunded) based on mutual mistake. Ms. Littlejohn and the Union originally entered into the contract before the Supreme Court decided *Janus*. Although Ms. Littlejohn had the option not to join the Union in the first place, in the pre-*Janus* world, she had no incentive not to join—she had a choice between paying agency fees as a nonmember or dues as a member. "A mutual mistake of fact or law regarding a material term of a contract is grounds for rescission." *Quesinberry v. Quesinberry*, 2022-Ohio-635, ¶ 36 (2d Dist.), *appeal not accepted*, 2022-Ohio-2490. Both parties were mistaken as to law when they entered into the contract. Ms. Littlejohn has adequately pled that both parties were mistaken as to the law and enforceability of agency fees, which was material to her membership.

Ms. Littlejohn next alleges that the Union's ability to keep receiving dues after she resigned membership is an unenforceable contractual penalty. Ohio law permits liquidated damages only when they represent a reasonable measure of compensation for the contract's breach. *Boone Coleman Constr., Inc. v. Piketon,* 2016-Ohio-628 at ¶¶ 17–19. Ms. Littlejohn alleges—and the Union does not dispute—that it kept receiving dues from her after she resigned membership and when the Union was no longer providing any services that it was not otherwise obligated to provide by statute as the exclusive bargaining unit representative under R.C. Chapter 4117. (Compl. at ¶¶ 102–110). If the membership contract between Ms. Littlejohn and the

Union are valid—and the Union seems to believe it is—then Ms. Littlejohn's resignation from the Union outside of their respective contractual window breached that contract. Despite no longer providing services, the Union continued to receive dues paid through forced paycheck deductions from her. Ohio courts have held that "[p]enalty provisions in contracts are held invalid on public policy grounds because a penalty attempts to coerce compliance." *Satterfield v. Adams Cty./Ohio Valley School Dist*., 1996 WL 655789, *7 (4th Dist. Nov. 6, 1996), citing *Lake Ridge Academy v. Carney*, 66 Ohio St.3d 376, 381(1993). Ms. Littlejohn thus adequately alleges that the continued withdrawal of dues subjected her to an unreasonable penalty. Construing the complaint's factual allegations as true, this is more than enough to withstand a motion to dismiss.

Count Four of Ms. Littlejohn's Complaint alleges that the membership contract was a contract of adhesion. The contract did not disclose the amount of the dues she would be required to pay and there was an "absence of a meaningful choice" considering that pre-*Janus* she would have been required to pay agency fees, combined with "contract terms that are unreasonably favorable" to the Union. *See Sabo v. Hollister Water Assn.*, 2007-Ohio-7178, ¶ 34 (4th Dist.), citing *Collins v. Click Camera & Video, Inc.*, 86 Ohio App.3d 826, 834 (2d Dist.1993). Ms. Littlejohn may or may not ultimately prevail on this claim when the court weighs evidence

regarding the choice she had or whether those terms were unreasonably favorable to the Union. But she has sufficiently pled the claim to withstand a motion to dismiss.

Count Five is a standard unjust enrichment claim, pled in the alternative in case the court determines that no valid contract was ever formed. Ms. Littlejohn pled that she paid the Union dues while she was not a member, that the Union was aware of her payments, she received nothing in return, and that under those circumstances, it is unjust to allow the Union to retain the dues. This satisfies the pleading requirement for an unjust enrichment claim. *See Barger v. Elite Mgt. Services, Inc.*, 2018-Ohio-3755, ¶ 15 (1st Dist.).

4. Ms. Littlejohn's SERB Charge Was Immaterial to the Trial Court's Jurisdiction.

As set forth in the procedural background, to the extent that Ms. Littlejohn initially filed a charge with SERB, which SERB found it had no cause to pursue—essentially disclaiming jurisdiction—she did so to avoid any claim that she had failed to exhaust her administrative remedies, or that SERB had exclusive jurisdiction over the case's subject matter. Here, Ms. Littlejohn agrees with the Union that SERB did not render an appealable adjudication. (See, T.d. 10, Mot. to Dismiss at 6-7, 8/27/24). This highlights her problem. The federal courts have held that her remedy is in state contract law. The state courts of Ohio have, thus far, held that her remedy is an unfair labor practice charge before SERB. SERB, in turn, issued a decision essentially disclaiming jurisdiction of the declaratory and contractual relief she seeks because

it is inherently different than the statutory unfair labor practices that SERB was created to address. Ms. Littlejohn's decision to try first at SERB to avoid procedural arguments before this Court should not be held against her. Indeed, because SERB's jurisdiction is limited to unfair labor practices and disputes arising out of the statutory 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 Cty. Law Enf't Assn.*, 59 Ohio St.3d at 171.

ASSIGNMENT OF ERROR NO. 2: The trial court erred by denying the Plaintiff a forum in which to bring her contractual and declaratory judgment claims in violation of the Ohio Constitution's Open Courts Provision.

ISSUE PRESENTED FOR REVIEW: Does the Ohio Constitution's Open Courts Provision Require that Ms. Littlejohn Be Afforded a Forum in Which to Pursue Her Contractual and Declaratory Judgment Claims? Yes.

C. The Ohio Constitution's Open Courts Provision Requires the Trial Court To Hear the Case.

In cases where the defendant has challenged the court's subject matter jurisdiction, the test is whether the complaint states *any* cause of action cognizable by the forum. *State ex rel. Bush v. Spurlock*, 42 Ohio St.3d 77, 80 (1989).

Further, Article IV, Section 4(B) of the Ohio Constitution provides that the courts of common pleas "shall have such original jurisdiction over all justiciable

matters . . . as may be provided by law." Ohio Const., art. IV, § 4. And by statute, common pleas courts have general original subject-matter jurisdiction over civil actions, including breach-of-contract actions. R.C. 2305.01; *State ex rel. Cleveland Elec. Illum. Co. v. Cuyahoga Cty. Court of Common Pleas*, 88 Ohio St.3d 447, 449 (2000). If that was not enough, the declaratory judgment statute, R.C. 2721.01, *et seq*., expressly provides that courts have jurisdiction to hear this type of dispute. There is plainly a justiciable controversy between the parties regarding the validity and enforceability of the contract between them and the post-membership dues that the Union has refused to refund.

More fundamentally though, the Ohio Constitution provides that "All courts shall be open, and every person, for an injury done him in his land, good, person, or reputation, shall have remedy by due course of law and shall have justice administered without denial or delay." Ohio Const., art. I, § 16. Since the federal courts have directed dissident union members to the state courts, and SERB has determined that Ms. Littlejohn's claims lay outside of their bailiwick, the common pleas court is the only forum in which Ms. Littlejohn can seek relief for her contractual claims. Yet, the trial court did not even examine this constitutional question. *See State ex rel. Cincinnati Enquirer v. Bloom*, 2024-Ohio-5029 (requiring a historical examination of Ohio's Open Courts Clause). In *Cincinnati Enquirer v. Bloom*, the Ohio Supreme Court held that the Open Courts Provision—as with other

protections of the Ohio Constitution—exceeds the protections offered by the federal Bill of Rights and should not be interpreted "in lockstep" with analogous federal provisions. *Id.* at ¶¶ 21-23. Federal court decisions like *Belgau* acknowledge that union membership is a contractual relationship and hold that the First Amendment issues present in *Janus* disappear in the context of a contract. But if union membership is a matter of contract, governed by state contract law, it ought to be subject to the same contractual claims and defenses as any other contract. Yet thus far, the courts of Ohio and SERB have left Ms. Littlejohn with no forum in which to raise her claims and defenses. This lack of forum stands at odds with the Ohio Constitution's guarantee of courts that shall be open to all persons for injuries done to them and that those injured "shall have remedy by due course of law." Dismissing her well-pled complaint deprived Ms. Littlejohn of her right to have the courts of Ohio—the entities specifically created to protect and preserve contractual rights—determine basic questions of contract law.

III. CONCLUSION

For the foregoing reasons, this Court should reverse the dismissal of the Plaintiff's case below.

Respectfully submitted,

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CERTIFICATE OF SERVICE

This is to certify that on the 17th day of March 2025, the forgoing Assignments of Error and Brief of Appellant was served on all counsel of record via the Court's electronic filing system.

/s/ Jay R. Carson
Attorney for Appellant
Necole Littlejohn

CERTIFICATE OF COMPLIANCE

I certify that this Brief complies with the word-count provision set forth in First District Local Rules 19(B)(1). This Brief is printed using the Times New Roman 14-point type face using Microsoft word processing software and contains 5,448 words.

/s/ Jay R. Carson
Attorney for Appellant
Necole Littlejohn

IN THE COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO

ENTERED
DEC 16 2024

NECOLE LITTLEJOHN,	:	**Case No.: A2403410**
	:	
Plaintiff,	:	
	:	**Judge Christian A. Jenkins**
v.	:	
	:	
AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, OHIO COUNCIL 8, AFL-CIO,	:	**ENTRY GRANTING MOTION TO DISMISS**
	:	
Defendant.	:	

This matter is before the Court upon Defendant American Federation of State, County and Municipal Employees' ("AFSCME") motion to dismiss for lack of subject matter jurisdiction, filed on August 27, 2024. Plaintiff Necole Littlejohn opposed AFSCME's motion on September 24, 2024. AFSCME replied on October 10, 2024. Upon review of the arguments and applicable law, the Court finds AFSCME's motion is well-taken and therefore **GRANTED.**

So Ordered.

COURT OF COMMON PLEAS
ENTER
HON. CHRISTIAN A. JENKINS
THE CLERK SHALL SERVE NOTICE TO PARTIES PURSUANT TO CIVIL RULE 58 WHICH SHALL BE TAXED AS COSTS HEREIN.

Judge Christian A. Jenkins

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