IN THE COURT OF APPEALS
SIXTH APPELLATE DISTRICT
STATE OF OHIO

CINDY DUPUIS, *et al.,*	)	
	)	
Plaintiffs-Appellants,	)	
	)	
v.	)	
	)	Appellate Case No. CL2025-00292
AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, LOCAL 2174 TOLEDO PUBLIC SCHOOL DISTRICT, *et al.*,	)	Trial Court Case No. CI2025-02488
	)	
Defendants-Appellees.	)	
	)	

ASSIGNMENTS OF ERROR AND MERIT BRIEF OF APPELLANTS

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ISSUES PRESENTED FOR REVIEW

Ohio's Public Employee Collective Bargaining Act created the State Employee Relations Board ("SERB") and gave it jurisdiction to hear disputes arising out of the "new rights and remedies" the Act created. *Franklin Cty. Law Enf't Assn. v. Fraternal Order of Police, Capital City Lodge No. 9*, 59 Ohio St.3d 167,171 (1991). But SERB's jurisdiction is limited *only* to the statutory claims created by R.C. Chapter 4117. The Ohio Supreme Court recently affirmed its longstanding holding that 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." *Ohio Council 8, AFSCME, AFL-CIO v. Lakewood*, 2025-Ohio-2052, ¶ 17, quoting *Franklin Cty Law Enf't* Assn., 59 Ohio St.3d at 171. Here, the Appellants raised state common law contractual challenges to her union-membership agreements. **Are Appellants' contractual rights independent of R.C. 4117 and thus cognizable in the common pleas court?** Yes.

The Ohio Constitution provides that "[a]ll 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 Appellants seek to raise are state contract claims. The Tenth District Court of Appeals held that claims identical to Mrs. Binder's belong in SERB. SERB has

declined to hear common law contract claims like Mrs. Binder's because they did not allege violations of R.C. 4117.11, over which SERB has jurisdiction. **Does the Ohio Constitution's Open Courts Provision require that Appellants be afforded a forum in in the common please courts to pursue their contractual and declaratory judgment claims?** Yes.

I. STATEMENT OF THE CASE

A. Introduction.

Appellants Cindy DuPuis and Tiffany Binder spent their careers serving students through the Toledo Public School District. Ms. Dupuis continues to work as a treasury specialist for the district, while Mrs. Binder, until April of 2024, worked as an accounting clerk. When each began working for the district—and periodically thereafter—they were asked to sign a pre-printed document titled "Authorization/Membership" and "Checkoff Agreement" (the "Dues Deduction Agreement"). These documents indicated their agreement to join AFSCME and authorized AFSCME to deduct membership dues from their paychecks. When Ms. DuPuis initially signed her Checkoff Agreement, the law presented her with no real options to decline membership or not authorize the dues deduction. But over the years that the Appellants worked for the district, the law regarding mandatory financial support of unions changed. And more importantly to the Appellants, AFSCME changed, often taking positions that the Appellants could not in good conscience support. So, the Appellants exercised their constitutional right to quit AFSCME and asked that AFSCME to stop taking membership dues from their paychecks since, as AFSCME itself acknowledged, they were no longer members..

AFSCME refused, saying the contracts they had she had signed years before required that unless the Appellants left AFSCME during a narrow, once a year, 15-day period, they were required to keep paying membership dues until the next 15-day window opened. The Appellants

reasoned that it is fundamentally unfair to continue to require them to pay a portion of their salary in the form of membership dues to an organization in which they are not members.

And to make matters worse, the contract on which AFSCME relied did not even meet the basic requirements of a contract—it did not say how much the union would charge members for dues and AFSCME never even signed the agreement. Thus, Ms. DuPuis and Mrs. Binder sued, asking the court to determine the validity and enforceability of the contract. But the court said that only SERB could decide their case as an "unfair labor practice." The Appellants contend that their request to the court involves common law contract claims between them and the Union—the type of dispute courts address everyday—not a challenge to a special right created by the Ohio Public Employees' Collective Bargaining Act. R.C. 4117. The Appellants ask this court to uphold their right to have their common law contractual dispute heard in court.

B. Statement of Jurisdiction and Procedural Posture.

This Court has jurisdiction over this matter pursuant to R.C. 2505.02. In July, 2025, Appellants Tiffany Binder filed a Complaint in Common Pleas Court seeking damages and injunctive relief relating to their membership contracts with their AFSCME. (Compl., 7/09/2025). On November 4, 2025, the trial court issued an order granting the AFSCME's Motion to Dismiss. (Entry Granting Mot. to Dismiss, 11/04/25). On December 4, 2025, Appellants filed a timely Notice of Appeal. (Not. of Appeal, 12/04/25).

C. Statement of Facts

This case's facts are not in dispute. Ms. DuPuis works for the Toledo School District as a treasury specialist. (R. 1, Compl. at ¶ 14). Mrs. Binder was formerly employed by the Toledo School District as an accounting clerk. (*Id.* at ¶15). The Appellants were, at all relevant times, members of a bargaining unit exclusively represented by AFSCME. The Appellants have no choice

regarding membership in the bargaining unit, but under the First Amendment, they do have a choice regarding union membership. *Janus v. Am. Fed'n of State, Cnty., & Mun. Emps., Council 31*, 585 U.S. 878 (2018). The Appellants signed Dues Deduction Contracts with AFSCME. (*Id.* at ¶¶ 28–29). Beginning in March 2024, the Appellants sought to resign from AFSCME and stop supporting it financially. The Appellants sent multiple letters to their designated AFSCME representatives stating that they were resigning their union membership and directing AFSCME to stop the automatic membership dues deduction from their pay. (*Id*. at ¶¶ 40–46).

AFSCME acknowledged their membership resignations but refused to stop taking the deductions or refund deductions for membership dues. (*Id.* at ¶¶ 48–50). AFSCME cited the Dues Deduction Contracts' terms that state that unless an employee leaves the union during a specific once-a-year "opt-out" window, he or she is required to continue paying membership dues until the next window opens—even though the employee is no longer a union member. The Appellants sought a declaration that their membership contracts with AFSCME—the Dues Deduction Contract—were invalid and imposed an impermissible penalty under Ohio law. Fundamentally, the Appellants seek a forum in which they can bring their contractual claims challenging the validity and enforceability of the Dues Deduction Contract. Their case arrives in this Court now because of decisions by federal courts, Ohio courts, and SERB, which have each turned down jurisdiction over similar claims and directed the plaintiffs in those cases to one of the other forums that have also rejected jurisdiction.

1. Federal Courts have directed plaintiffs like the Appellants to seek redress in state courts because their claims are rooted in the common law of contracts.

The Appellants brought their contract claims in state court in the wake of two momentous federal court decisions: the U.S. Supreme Court's 2018 decision in *Janus* case and the Ninth Circuit's 2020 *Belgau* decision. In 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. *Janus v. Am. Fed'n of State, Cnty., & Mun. Emps., Council 31*, 585 U.S. 878 (2018). The Court held that mandatory agency fees as a condition of public employment were unconstitutional.

Post-*Janus*, many public employees quit their unions and demanded that the unions stop taking their dues—asserting their First Amendment rights pursuant to *Janus*. The unions allowed employees to quit, but kept taking their dues, claiming that the unions' check-off cards required members to give notice of termination of dues collection during a narrow window. In 2020, the Ninth Circuit agreed with the unions, holding 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. *Belgau v. Inslee*, 975 F.3d 940 (9th Cir. 2020). The *Belgau* court held that since these cases do not implicate the First Amendment, state contract law governs these disputes. *Id.* at 950.

Federal appellate courts, including the Sixth Circuit, have thus far followed *Belgau*—holding that an employee's ability to opt out of membership dues after he or she has signed a contract with the union is governed solely by that contract and the applicable state contract law. *See, e.g.*, *Littler v. OAPSE*, 88 F.4th 1176 (6th Cir. 2023); *Bennett v. Council 31 of the Am. Fedn. of State, Cnty. & Mun. Employees, AFL-CIO*, 991 F.3d 724 (2d Cir. 2021) (following *Belgau*). 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 between the employee and the union.

2. The Tenth District directed plaintiffs like Appellants to bring their claims in SERB.

In 2022, considering the *Belgau* decision, a group of plaintiffs similarly situated to the

Appellants 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, 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 *Darling* 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.

SERB declined to address common law contract claims like Appellants' because they did not allege violations of R.C. Chapter 4117, over which SERB has jurisdiction. In 2023, another public employee, Nicole Littlejohn, found herself in a position like Appellants. Mrs. Littlejohn's union honored her request for resignation and sent her a letter acknowledging that she was no longer a member, but it refused to honor her request to stop deducting dues from her paycheck and continued to deduct vacation time from her for union purposes. The court found that Ms. Littlejohn continued to be bound by her alleged contract with her union and that the contract allowed her to opt-out of continued union membership dues payments only during certain very limited times ("Opt-out Window") during the life of the contract.

Considering the Tenth District's decision in *Darling,* Ms. Littlejohn—whose facts and claims for relief are substantively identical to Mrs. Binder's, filed an unfair labor practice charge with SERB, which alleged the union contract was invalid based on contractual theories identical to those alleged in this case (and to those in *Darling*). (A copy of Ms. Littlejohn's SERB charge is attached as Exhibit A.). SERB reviewed the charge and dismissed it, stating that based on federal

court decisions[1], which it did not cite, the union had not violated R.C. 4117.11. *In re Littlejohn v. AFSCME*, SERB Case No. 2023-ULP-12-0146. (Dismissal Entry). However, SERB's 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. Ms. Littlejohn subsequently filed her claims in Hamilton County Common Pleas Court, which, relying on *Darling*, granted the union's motion to dismiss. The First District affirmed the dismissal. *Littlejohn v. AFSCME*, Ohio First District Court of Appeals (Hamilton Co.) Case No. C-250020 (Dec. 10, 2025).

Appellants now find themselves with contractual rights, which the lower court declined to address and which SERB has declined to address in a substantially similar case.

II. LAW AND ARGUMENT

Assignment of Error No. 1: The trial court erred by declining to adjudicate the Appellants' common law contract claims.

Issue Presented for Review

Are Appellants' contractual rights independent of R.C. 4117 and thus cognizable in the common pleas court? 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

[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.

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. *Lakewood* re-affirmed that R.C. Chapter 4117, does not divest courts of jurisdiction over private contractual disputes and thus the common pleas court has jurisdiction over Appellants' case.

Common law challenges to employee-union contracts are legally different from allegations of union unfair labor practices. SERB has no jurisdiction over the former, just the latter. The Ohio Supreme Court recently reiterated that SERB has exclusive jurisdiction *only* over charges of unfair labor practices where (1) a complainant filed charges with SERB alleging an unfair labor practice under R.C. 4117.11 or (2) where a complaint in the common pleas court "alleges conduct that constitutes an unfair labor practice specifically enumerated in R.C. 4117.11." *Lakewood*, 2025-Ohio-2052, at ¶ 8. The Appellants did not file in SERB, so only the second path could possibly give SERB jurisdiction. But it fails because the Appellants are challenging the very validity of the Dues Deduction Contract under the common law. They did not allege a violation of 4117, or any other statute for that matter. The decision below ignores *Lakewood*, instead adopting an overly broad jurisdictional test, which recasts the Appellants common law challenge to the validity of the Dues Deduction Contract into a challenge under R.C. Chapter 4117. *See* (Opinion and Judgment Entry Case No. CI2025-02488 at 6–7). *Lakewood* allows no such thing.

Common pleas courts have jurisdiction over civil cases. R.C. 2305.01. R.C. Chapter 4117 carves out a very narrow exception. It grants SERB exclusive jurisdiction only for statutory disputes relating to the "new rights and remedies" created by R.C. Chapter 4117. *Franklin Cnty.*

Law Enf't Assn., 59 Ohio St.3d at 171. But "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." *Id*. "[C]ommon-law contractual rights that exist independently of R.C. 4117" are a specific example of claims beyond SERB's exclusive jurisdiction. *Id.* That is exactly what 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.").

While the trial court suggests that the Appellants *could 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.

R.C. Chapter 4117 does not divest the courts of common pleas of jurisdiction simply because the facts involved in a lawsuit can "somehow be cast in terms of an unfair labor practice."

Keller v. Columbus, 2003-Ohio-5599, ¶ 14; *State, ex rel. Griffin v. Krumholtz*, 70 Ohio St.2d 125, 127–29 (1982).

1. The Appellants' contract dispute with AFSCME is not based on the collective bargaining agreement.

The Dues Deduction Contract is *not* the collective bargaining agreement between the Appellants' public employer and AFSCME, nor does it arise from that agreement. It is instead the private contract of union membership and deduction authorization between Appellants and AFSCME. It is, thus, even farther afield any collective bargaining issues than the grievance arbitration provision in *Lakewood*. *See Lakewood* at ¶ 3. It does not touch on any collective bargaining topic. Nor does it relate to any collective bargaining services that AFSCME is required to provide under R.C. Chapter 4117 to all employees in the bargaining unit regardless of whether they are union members or nonmembers.

It is instead limited to the relationship between the Appellants and AFSCME. Under the contract, the Appellants agreed to become union members, exchanging consideration in the form of dues for some benefits or privileges from AFSCME outside of the services that it is already statutorily required to provide to all bargaining unit employees. *See* R.C. 4117.03–06. Indeed, a contract which required AFSCME to provide only these services which it was already statutorily required to provide would fail for lack of consideration.

AFSCME 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 885–87. The Dues Deduction Contract governs only the conditions under which the Appellants can join or resign from AFSCME and any *additional* benefits that are necessarily separate and apart from AFSCME's statutory obligations as the bargaining unit representative.

2. The Appellants' claims preexisted R.C. Chapter 4117's enactment and are thus independent of R.C. Chapter 4117.

Ohio's enactment of R.C. Chapter 4117 in 1983 did not preempt any or all claims that might relate to public employment. 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." *Franklin Cnty. Law Enf't Assn.*, 59 Ohio St.3d at 170. 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. Chapter 4117. They are asserting common law rights in their capacity as individuals as to their rights to challenge a contract, although they were at relevant times public employees.

AFSCME 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/AFSCME at 24, *Littler v. OAPSE*, 88 F.4th 1176 (6th Cir. 2023) (No. 22-4056), citing *Hoekman v. Education Minnesota*, 41 F.4th 969, 978 (8th Cir. 2022). Indeed, "[t]he source of the unions' right to collect these dues, however, is not state authority; it is the private agreement between the unions and the employees. The unions do not collect dues 'pursuant to' any state statute." *Hoekman* at 978. Likewise, the Appellants' claims do not rest on a state statute.

Their contract-based claims arise entirely from common law, independent of R.C. Chapter 4117. The claims are not based on AFSCME's statutory duties of fair representation or to its obligation to refrain from "restrain[ing] or coerc[ing]" an employee's exercise of rights under 4117, R.C. 4117.11(B)(1). In fact, R.C. 4117.11(B)(1)—on which the trial court relied—leaves to

the courts to address any disputes relating to a union's "acquisition or retention of membership therein." Opinion at 6.

The Appellants' claims regarding the validity of their contracts with OAPSE all arise under legal theories that were ancient in Ohio law before R.C. Chapter 4117 was a glimmer in the eyes of its drafters. *See, e.g., 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. Chapter 4117 had never been enacted, the Appellants would still have the same claims under Ohio's common law of contracts. Their 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, Assn.*, 59 Ohio St.3d at 171.

3. The Appellants' Claims Do Not Arise from or Depend on the Collective Bargaining Agreement or R.C. 4117.

Unlike *Lakewood* or other public union cases, the Appellants claims are beyond the realm of collective bargaining. Compare, for example, *Murray v. Columbus*, 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 created by the collective bargaining agreement and 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." *Id.* at ¶¶ 25–28.

There is no such danger here. Issues like whether the membership fails as a contract of adhesion, or contains an impermissible penalty disguised as liquidated damages do not depend on or grow out of the existence of an employee's created by R.C. Chapter 4117. The contract claims rest upon the common law of contracts, not R.C. Chapter 4117. Unlike *Murray*, a court could decide that the Dues Deduction Contract was mutually rescinded by the parties, and its terms create an unreasonable penalty, without ever examining a collective bargaining agreement or R.C. Chapter 4117. And if the collective bargaining agreement between Appellants' employer and AFSCME disappeared and R.C. Chapter 4117 were repealed while they were still employed, AFSCME could—and likely would—still argue that Appellants were nonetheless bound by the same agreement they signed.

The fact that Appellants' claims challenge rights and duties that arise independent of the AFSCME's statutory duties under R.C. Chapter 4117 is confirmed by SERB's dismissal of identical claims in *Littlejohn*. SERB determined that the very contractual claims brought here are not statutory unfair labor practices as described by R.C. 4117.11. *See Littlejohn v. AFSCME*, Case No. 24-03410 (Hamilton Cty. 2024). Again, SERB does not have jurisdiction other than what R.C. Chapter 4117 grants it. *See generally Lakewood*, 2025-Ohio-2052, at ¶ 30.

Instead of futilely perusing their claims in SERB, the Appellants sought a declaratory judgment excusing their breach—that is, their early resignations of the membership contract from the union outside of an opt-out window. Stated differently, if the membership contracts between the Appellants and AFSCME are valid—and AFSCME insists they are—the Appellants breached that contract by resigning. The questions therefore are whether breaching the contract by resigning outside of the proscribed opt-out window can be excused, and if not, are AFSCME's damages in the form of continued payment of dues appropriate liquidated damages or an unenforceable

penalty? These are plainly and purely contract issues that arise from Ohio's common law of contracts, not R.C. 4117.

C. The Appellants' Complaint adequately states claims for declaratory relief because they are seeking a declaration of their legal obligations under a contract.

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, AFSCME received dues from the Appellants while they were a members and after they resigned from AFSCME based on the written agreement between them and AFSCME. *See* Compl., at ¶ 9 (Exhibit B). The Appellants are challenging "the validity and construction" of that agreement.

Specifically, they raise alternative claims for declaratory judgment, alleging that the parties mutually repudiated the contract (i.e., their resignations from AFSCME), that the continued imposition of dues constitutes an unenforceable penalty for the Appellants' 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, the Appellants allege that they resigned from union membership, that AFSCME acknowledged and accepted their resignations and expressly withheld any further benefits of membership to them. (Compl. at ¶¶ 39, 44–49). In other words, they have 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.). AFSCME obviously has a different view. There is thus a present-day controversy sufficient to state a claim.

Count Two, brought only by Ms. DuPuis, alleged a mutual mistake of law. When Ms. DuPuis joined AFSCME, the law at the time required her to pay a fair-share fee even if she was not a union member. *Janus* changed that. Thus, both Ms. DuPuis and AFSCME were mistaken about what the law required which materially affected Ms. DuPuis decision to join AFSCME. "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. As such, the contract should be rescinded because of this mutual mistake.

The Appellants next allege that AFSCME's ability to keep receiving dues after they 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. The Appellants allege—and AFSCME does not dispute—that it kept receiving dues from them after they resigned membership. (Compl. at ¶¶ 39, 44–49). They further allege that AFSCME 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 following their resignation. (Compl. at ¶ 104).

If the membership contract between the Appellants and AFSCME is valid—and again, AFSCME seems to believe it is—then their resignation from AFSCME outside of the narrow contractual window breached that contract. Despite no longer providing services, AFSCME continued to receive dues paid through forced paycheck deductions from the Appellants. 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). The Appellants thus adequately allege that the continued withdrawal of dues subjected them 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 the Appellants' Complaint alleges that the membership contract was a contract of adhesion. The contract did not disclose the amount of the dues they would be required to pay and included "contract terms that are unreasonably favorable" to AFSCME. *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). But they have 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. The Appellants pled that they paid AFSCME dues while they were not members, that AFSCME was aware of their payments, the Appellants received nothing in return, and that under those circumstances, it is unjust to allow AFSCME 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.).

Assignment Error No. 2: The trial court erred by denying the Appellants a forum in which to bring their 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 the Appellants be afforded a forum in which to pursue their 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).

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).

B. The Ohio Constitution's Open Courts Provision Requires the Trial Court to Hear the Case Since it is Outside SERB's Jurisdiction.

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 AFSCME has refused to refund.

More fundamentally though, the Ohio Constitution provides that "[a]ll 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 the Appellants' claims lay outside of their bailiwick, the common pleas court is the only forum in which the Appellants can seek relief for their 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 employees like Ms. DuPuis and Mrs. Binder 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 the well-pled Complaint deprived the Appellants of their 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 Appellant's case below.

Respectfully submitted,

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CERTIFICATE OF SERVICE

This is to certify that on the 16th day of January 2026, the foregoing *Assignments of Error and Brief of Appellant* was served on all counsel of record by email addressed to:

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CERTIFICATE OF COMPLIANCE

I certify that this Brief complies with the word-count provision set forth in Sixth District Local Rule 10(A) and Ohio App.R. 19(A). This Brief is printed using the Times New Roman 14-point type face using Microsoft word processing software and contains 5,693 words.

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