

UNUNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MAINE

JONATHAN REISMAN,

Plaintiff,

v.

ASSOCIATED FACULTIES OF THE
UNIVERSITY OF MAINE,
UNIVERSITY OF MAINE AT
MACHIAS, and BOARD OF TRUSTEES
OF THE UNIVERSITY OF MAINE
SYSTEM,

Defendants.

Civil Case No.: _____

INJUNCTIVE RELIEF SOUGHT

COMPLAINT

Jonathan Reisman, for his Complaint against Associated Faculties of the University of Maine; the University of Maine at Machias; and the Board of Trustees of the University of Maine System (collectively, “Defendants”), alleges as follows:

Nature of the Action

1. The First Amendment protects the individual rights of free speech and association, including the rights *not* to speak and *not* to associate. For example, public employees who do not belong to a labor union “should not be required to fund a union’s political and ideological projects unless they choose to do so.” *Knox v. Serv. Employees Int’l Union, Local 1000*, 567 U.S. 298, 315 (2012). Furthermore, “[b]ecause a public-sector union takes many positions during collective bargaining that have powerful political and civic consequences, the compulsory fees constitute a form of compelled speech and association that imposes a significant impingement on First Amendment rights.” *Id.* at 311–12 (quotations and citations omitted). As the Supreme Court has now made clear in *Janus v.*

American Federation of State, County, and Municipal Employees, Council 31, 138 S. Ct. 2448 (2018), that type of burden is impermissible.

2. In violation of these principles, Maine law authorizes state-run universities and labor unions to require public employees who are not union members to associate with those unions and accept their status as “the sole and exclusive bargaining agent” for the employees’ interests. The Defendants in this case have done exactly that, agreeing that the Associated Faculties of the University of Maine will be the exclusive representative of employees of the University of Maine at Machias, like the Plaintiff, whether or not they want the Associated Faculties’ representation. The agreement the Defendants have executed provides that only the Associated Faculties may bargain as to terms and conditions of employment at the University of Maine at Machias, thereby depriving the Plaintiff and others the right to petition the government on their own behalf.

3. As the Supreme Court has now recognized, “[d]esignating a union as the employees’ exclusive representative substantially restricts the rights of individual employees. Among other things, this designation means that individual employees may not be represented by any agent other than the designated union; nor may individual employees negotiate directly with their employer.” *Janus*, 138 S. Ct. at 2460. For that reason, and because the union’s advocacy is attributed to employees, that designation violates employees’ speech and petitioning rights, as well as their associational rights, in contravention of the First Amendment.

Parties

4. The Plaintiff, Johnathan Reisman, is a professor of economics at the University of Maine at Machias. Mr. Reisman is a “state employee” within the meaning of Maine Revised Statute tit. 26, § 979-A(6); *see also id.* § 1022(8).

5. Defendant University of Maine at Machias (the “University”) is a public university in Maine. The University is part of the University of Maine System, and “an instrumentality and agency of the State,” Me. Rev. Stat. tit. 20-A, §§ 10901, 10903; *id.* at tit. 26, § 1022(10), which is governed and regulated by state statutes, *see, e.g.*, Me. Rev. Stat. tit. 20-A, § 10007, is overseen by trustees, including 14 appointed by the governor, reviewed by a joint committee of jurisdiction, and confirmed by the Maine Legislature, and funded from the state treasury.

6. Defendant Board of Trustees of the University of Maine System (the “Board”) is the Maine “instrumentality and agency of the State” charged with the superintendence of the University System, including University of Maine at Machias. Me. Rev. Stat. tit. 20-A, §§ 10901, 10903; *id.* at tit. 26, § 1022(10). The Board is the public employer of University employees within the meaning of Maine’s public-employees labor-relations code. Me. Rev. Stat. Ann. tit. 20-A §§ 1022(3), (10).

7. Defendant Associated Faculties of the University of Maine (the “Union”) is a “bargaining agent” as defined in the Maine university-public-employees labor-relations code, Me. Rev. Stat. Ann. tit. 26, §§ 1022.1-B, and represents employees at the University.

Jurisdiction and Venue

8. This case raises claims under the First and Fourteenth Amendments of the federal Constitution, 42 U.S.C. § 1983, and the doctrine of *Ex Parte Young*, 209 U.S. 123 (1908). Jurisdiction is proper under 28 U.S.C. § 1331.

9. Mr. Reisman, the Board, the University, and the Union are all residents of Maine. Venue is proper in this District under 28 U.S.C. § 1391(b).

Factual Allegations

10. Under Maine law, a union may become the exclusive bargaining representative for public employees in a bargaining unit by showing that a majority of employees in the unit wish the union to represent them. Me. Rev. Stat. Ann. tit. 26, § 1025.

11. This showing may be made in two ways.

12. First, the union may obtain recognition simply by “alleging” that a majority of employees in the unit desire the union to be their representative. If the university does not contest this allegation, the union is recognized as the exclusive bargaining representative. Me. Rev. Stat. Ann. tit. 26, § 1025(1).

13. Second, if the university “desire[s] that an election determine whether the organization represents a majority of the members in the bargaining unit,” the Maine Labor Relations Board oversees an election, which occurs in two stages. Me. Rev. Stat. Ann. tit. 26, § 1025(1), (2).

14. At the first stage, the union may obtain a certification election by presenting proof to Maine’s Labor Relations Board that at least 30 percent of employees in a proposed bargaining unit wish to be represented by the union. Me. Rev. Stat. Ann. tit. 26, § 1025(2)(A).

15. At the second, if the union obtains at least a majority of votes of bargaining-unit employees in the election, it is certified as the exclusive representative of employees in the bargaining unit. Me. Rev. Stat. Ann. tit. 26, §§ 1025(2)(B).

16. A union certified as the exclusive representative of employees in a bargaining unit “is required to represent all the university, academy or community college employees within the unit without regard to membership in the organization certified as bargaining agent.” Me. Rev. Stat. Ann. tit. 26, §§ 1025(2)(E). Accordingly, such a union is the representative of employees who are not members of the union.

17. A public employer must bargain collectively with a union that obtains status as the exclusive representative of some or all its employees. Me. Rev. Stat. Ann. tit. 26, §§ 1026, 1027(1)(E), (2)(B).

18. The duty to bargain requires the university to “confer and negotiate in good faith with respect to wages, hours, working conditions and contract grievance arbitration.” Me. Rev. Stat. tit. 26 § 1026(1)(A).

19. Maine law authorizes a union and public university to deduct an agency fee from public employees who are not members of the unit to fund the union’s “representational activities.” Me. Rev. Stat. tit. § 1023(A)(2). This provision is now plainly unconstitutional in light of *Janus*.

20. The Board and the Union are parties to a collective bargaining agreement with a stated term from 2015 through 2017, which, on information and belief, is currently in force or is identical for all material purposes of this case to the one currently in force. *See* Exhibit A (the “Agreement”). The Union identifies this Agreement on its website as the “Current Contract.”

21. The Agreement establishes a bargaining unit of “University of Maine System employees.” Agreement, Art. 1.

22. The Agreement provides that the Union is the “sole and exclusive bargaining agent” of those persons. *Id.*

23. Accordingly, under Maine law and the Agreement, the Union is the representative and agent of University of Maine System employees who have declined to join the Union.

24. The Agreement requires that, even when dealing with individual employees, “[t]he Board or its officers and agents shall at all times be cognizant of the status of the Association as the sole and exclusive bargaining agent under the University of Maine System Labor Relations Act for unit members.” Agreement, Art. 3.

25. The Agreement provides the Union the right to “express its views at meetings of the Board of Trustees.” *Id.* Art. 3(D).

26. The Agreement provides for the appointment members of the Union to be a “designated grievance chairperson” to assist in “the implementation of this Agreement.” *Id.* Art. 4(A)(2). “Such representatives shall have the right...to investigate, consult and prepare grievance presentations and attend grievance hearings and meeting or participate in collective bargaining.” *Id.*

27. The Agreement requires the University to meet with a committee of Union representatives on the Union’s request “for the purpose of discussing matters necessary to the implementation of this Agreement.” *Id.* Art 5(A). Topics of discussion may include “University-wide” matters, matters “related to a particular campus,” and “[m]atters of common concern.” *Id.* Art 5(C), (D), (E).

28. The Agreement affords the Union the right to prepare “default student evaluation form and procedures for assessment of online and interactive television (ITV) courses,” which are used in evaluating faculty members. *Id.* Art. 10(B)(2).

29. The Agreement requires unit members to join the Union, pay a representation fee to the Union, or pay a fee to an “education fund.” *Id.* Art. 14(A). This provision is now patently unconstitutional under *Janus*.

30. The Agreement provides for a grievance procedure for resolving “any complaint that exists with respect to the interpretation or application of this Agreement.” *Id.* Art. 15. Although the Agreement allows any individual unit member to proceed through the first three steps of the grievance procedure, it afford only the Union the right to proceed past step three, including bringing the grievance to the University Chancellor and arbitration. *Id.* Art. 15(C). In other words, an individual may not proceed past step three or arbitrate a grievance unless the Union represents him or her.

31. The Agreement also provides the Union the right to have its representative attend and “state its views” at all grievance stages prosecuted by an individual not represented by the Union, whether or not that individual wishes the Union’s representative to attend. *Id.* Art. 15(E)(3).

32. In all of these activities, the Union speaks on behalf of the employees that it represents.

33. In addition to these Union-specific rights and roles, the Agreement records the Board’s and Union’s negotiated points of agreement, including those pertaining to wages, benefits, grievances, the school year, workload, personnel files, office hours,

severance, retirement, leaves of absence, and so on. These provisions bind all bargaining unit members, including non-union employees.

34. Dr. Reisman is a tenured faculty member at the University.

35. Dr. Reisman is not a member of the Union.

36. Dr. Reisman disagrees with the Union on many issues, including issues related to terms and conditions of employment and issues related to governance of the University.

37. Due to the Union's status as exclusive representative of University faculty, Dr. Reisman has no meaningful avenue to negotiate his own terms and conditions of employment with the University.

38. Due to the Union's status as exclusive holder of the statutory right to meet and confer, Dr. Reisman has no avenue to exercise the meet and confer rights the Union possesses.

**Count I: Designating a Union as Employees' "Exclusive Representative"
Violates the First Amendment**

39. The Plaintiff incorporates and re-alleges each and every allegation contained in the foregoing paragraphs of this Complaint, as though fully set forth herein.

40. By designating the Union as the Plaintiff's exclusive representative, Maine law and the Agreement violate the Plaintiff's rights under the First and Fourteenth Amendments to the United States Constitution.

41. That designation compels the Plaintiff to associate with the Union.

42. The designation compels the Plaintiff to speak and to petition government, because it authorizes and requires the Union to speak for him.

43. That designation attributes the Union's speech and petitioning to the Plaintiff.

44. That designation restricts the Plaintiff's speech and petitioning.

45. The Plaintiff has no adequate remedy at law.

46. The controversy between Defendants and the Plaintiff is a definite and concrete dispute concerning the legal relations of parties with adverse legal interests.

47. The dispute is real and substantial, as the Union continues to hold itself out as the Plaintiff's exclusive representative and its designation as such restricts the Plaintiff's rights.

48. The declaratory relief sought is not based on a hypothetical state of facts, nor would it amount to a mere advisory opinion, as the parties dispute the legality of the Union's designation as the Plaintiff's exclusive representative.

49. As a result of the foregoing, an actual and justiciable controversy exists between the Plaintiff and the Union regarding their respective legal rights, and the matter is ripe for review.

Costs and Attorneys' Fees

50. Pursuant to 42 U.S.C § 1988, the Plaintiff seeks an award of costs and attorneys' fees incurred in the litigation of this case.

Prayer for Relief

For these reasons, the Plaintiff requests that the Court:

- (A) Enter a judgment declaring that Maine's exclusive-representation law and the Agreement impermissibly abridge the Plaintiff's First Amendment speech, petitioning, and associational rights by designating the Union as the Plaintiff's exclusive representative;

- (B) Enter an injunction barring Defendants from recognizing the Union as the Plaintiff's exclusive representative or representative;
- (C) Enter an injunction barring Defendants from affording preferences to members of the Union;
- (D) An award of costs, including reasonable attorneys' fees, pursuant to 42 U.S.C. § 1988(b);
- (E) Grant the Plaintiff additional or different relief as the Court deems just and proper.

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Respectfully submitted,

/s/ Timothy C. Woodcock

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* Pro hac vice motions forthcoming