

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO**

Penny Wilson, Theresa Fannin,
and Kozait Elkhatib

Plaintiff,

v.

Lucas County Department of Job and
Family Services; American Federation of
State, County, and Municipal Employees,
Ohio Council 8.

Defendants.

Case No.:

**COMPLAINT FOR DECLARATORY
RELIEF AND MONEY DAMAGES**

INTRODUCTION

1. In *Janus v. AFSCME, Council 31*, 138 S. Ct. 2448 (2018), the Supreme Court held it violates the First Amendment for government employers and unions to seize union payments from employees without their consent. Notwithstanding *Janus*, Defendants Lucas County Department of Job and Family Services (“Lucas County JFS”) and the American Federation of State, County, and Municipal Employees, Ohio Council 8 (“AFSCME”) are seizing union payments from Plaintiff Penny Wilson (“Wilson”), Plaintiff Theresa Fannin (“Fannin”), and Plaintiff Kozait Elkhatib (“Elkhatib”) (together “Plaintiffs”) after they resigned their union membership and over their objections. Plaintiffs thereby file this suit to stop Lucas County JFS and AFSCME from seizing union payments from them without their consent and to receive compensation for violations of their First Amendment rights.

PARTIES

2. Wilson resides in and works in Lucas County, Ohio.

3. Fannin resides in and works in Lucas County, Ohio.
4. Elkhatib resides in Wood County, Ohio and works in Lucas County, Ohio.
5. Lucas County JFS is an agency of Lucas County, which is a municipal corporation that can sue and be sued in its own name. *See* Ohio Revised Code § 715.01. Lucas County JFS has an office located at 3737 W Sylvania Ave, Toledo, OH 43623.
6. Defendant AFSCME is a labor organization whose headquarters is located at 6800 North High Street, Worthington, Ohio, 43805, and that conducts business throughout the State of Ohio. AFSCME also has regional offices located at, among other locations, 420 South Reynolds Road, Toledo, Ohio, 43615.

JURISDICTION AND VENUE

7. This Court has jurisdiction to adjudicate this case pursuant to 28 U.S.C. § 1331 because it arises under the United States Constitution, and pursuant to 28 U.S.C. § 1343 because Plaintiff seeks relief under 42 U.S.C. § 1983. This Court has the authority under 28 U.S.C. §§ 2201 and 2202 to grant declaratory relief and other relief based thereon.

8. Venue is proper under 28 U.S.C. § 1391 because Defendants all reside in this judicial district, the Plaintiff resides in this judicial district, and events giving rise to the claims occurred within this judicial district.

FACTUAL ALLEGATIONS

9. Ohio's Public Employees' Collective Bargaining Act, Ohio Revised Code § 4117 *et seq.*, governs collective bargaining between Lucas County JFS and AFSCME.

10. AFSCME acts as the exclusive representative of certain Lucas County JFS

employees pursuant to Ohio Revised Code § 4117.04. Wilson is employed by Lucas County JFS in the bargaining unit exclusively represented by AFSCME and is subject to the terms of its collective bargaining agreements with Lucas County JFS.

11. Ohio Revised Code § 4117.09(b)(2) mandates that collective bargaining agreements between exclusive representatives and public employers “shall contain a provision that . . . [a]uthorizes the public employer to deduct the periodic dues, initiation fees, and assessments of members of the exclusive representative upon presentation of a written deduction authorization by the employee.”

12. Lucas County JFS and AFSCME are parties to a collective bargaining agreement effective from January 1, 2021, through December 31, 2022 (“CBA”). A relevant portion of the CBA is attached as Exhibit A and incorporated herein.

13. Lucas County JFS deducts union dues from its employees’ wages at AFSCME’s request pursuant to CBA Article 3.1, which states, in part: “[t]he Employer agrees to honor the agreement between the Union and its’ members as stated on its’ ‘Authorization for Payroll Deductions of Union Dues’ and deduct such dues from the wages of employees.”

14. Lucas County JFS’s policy of deducting union dues from employees’ wages is an official county policy under CBA Article 3.1. The foregoing policy also is a custom knowingly enforced by the Lucas County JFS, which systematically deducts union dues from employees’ wages for AFSCME. This policy was knowingly ratified by the Lucas County JFS Commissioners who executed the CBA.

15. Article 3.1(B) of the CBA is an indemnity clause that states “[t]he Union

hereby agrees to hold the Employer harmless from any and all damages and liabilities which may arise from the performance of its obligation under this Article, and the Union agrees to indemnify the Employer for any such damages or liabilities that may arise.”

16. On January 14, 2016, Wilson and Fannin signed a “checkoff agreement” that states:

CHECKOFF AGREEMENT

You are hereby authorized and directed to deduct from my wages, my membership fee, initiation fee if any, assessment or an equivalent amount or fee, which shall be remitted by you to a subordinate body of AFSCME, in accordance with the applicable collective bargaining agreement. This checkoff Authorization and Assignment may only be revoked by me by my giving and the appropriate subordinate body and my employer receiving written notice of revocation during the (30) to forty-five (45) day period prior to the expiration date of any collective bargaining agreement covering my employment. This Authorization and Assignment will continue after revocation and shall not terminate until thirty (30) days after receipt of said timely written notice by the employer and Union or termination of any current labor agreement, whichever is later. I understand that this checkoff commitment is separate from my membership agreement. This checkoff Authorization and Assignment supersedes all previous authorizations and assignments.

Dues, contributions or gifts to AFSCME are not deductible for federal income tax purposes. Dues paid to AFSCME, however, may qualify as business expenses and may be deductible in limited circumstances subject to various restrictions imposed by the Internal Revenue Service.

I understand that at times the labor agreement with my employer may vary the above agreed to terms of membership and/or checkoff or be silent. I agree that the above membership and checkoff authorization shall control in any and all circumstances absent a specific contrary checkoff or membership provision in the labor agreement covering my employment.

17. Elkhatib signed the same checkoff agreement on July 13, 2018.

18. When Wilson and Fannin signed the checkoff agreement, they had no

choice but to subsidize AFSCME and its speech because, if they did not sign the checkoff agreement, they would be compelled by Lucas County JFS and AFSCME to pay “fair share fees” to AFSCME.

19. When Wilson and Fannin signed the checkoff agreement, they did not know that they had a First Amendment right not to subsidize AFSCME and its speech because nothing on the form notified them of that right, the Supreme Court did not recognize that right until June 2018 in *Janus*, and Lucas County JFS and AFSCME required Wilson and Fannin at that time to subsidize the union and its speech. Plaintiffs do not want to financially support AFSCME or its speech.

20. When Elkhatib signed the checkoff agreement, she did not know that she had a First Amendment right not to subsidize AFSCME and its speech because, among other reasons, nothing on the form notified her of that right.

21. On or around February 07, 2022, and again on or around February 24, 2022, Wilson notified Lucas County JFS and AFSCME, by written letters, that she resigned her union membership and did not consent to the deduction of union dues or fees from her wages.

22. On or around October 2021, and again in December 2021, Fannin notified Lucas County JFS and AFSCME, by written letters, that she resigned her union membership and did not consent to the deduction of union dues or fees from her wages.

23. In January 2022, and again on or around July 22, 2022, Elkhatib notified AFSCME, by written letters, that she resigned her union membership and did not

consent to the deduction of union dues or fees from her wages. Elkhatib attempted to provide a copy of her January 2022 letter to Lucas County JFS human resource personal, but they refused to accept it, insisting the letter be sent to the union.

24. In response to each of their letters resigning their union membership and objecting to dues deductions, Wilson, Fannin, and Elkhatib received substantively identical response letters from AFSCME. Wilson received two response letters dated February 18, 2022 and March 31, 2022. Fanin received two response letters dated November 8, 2021 and December 28, 2021. Elkhatib received two response letters dated on January 31, 2022 and August 1, 2022. Copies of the letters are attached as Exhibit B and incorporated herein.

25. In each of its letters responding to Plaintiffs' requests to resign their union membership and stop dues deductions, AFSCME acknowledged Plaintiffs' resignations of union membership but refused to stop dues deductions. AFSCME informed each Plaintiff:

[U]nion dues deduction will not be stopped at this time because your letter does not revoke the dues checkoff authorization card which you signed and because any dues revocation request would need to be made and received by the union in accordance with the union's current procedures and within a window period which you agreed to when you signed the authorization card. Attached is a copy of the union's current revocation procedure and a copy of the authorization card you signed.

26. The referenced "current revocation procedure" is set forth in a January 25, 2019 letter that was attached to the letters found in Exhibit B. It states in relevant part:

Please be advised that Ohio Council 8, American Federation of State, County and Municipal Employees, AFL-CIO (hereinafter AFSCME) has agreed to waive its

contractual right to enforce its current dues checkoff revocation period, as set forth the collective bargaining agreement, the dues checkoff authorization card you signed or both, that allows dues revocation to be effective only if written notice of revocation is received from a bargaining unit employee during a 15-day window period tied to the expiration date of the collective bargaining agreement and has adopted instead the following dues revocation policy containing a annual revocation window period tied to the date the dues authorization card was signed:

Any voluntary dues authorization and assignment shall be irrevocable, regardless of whether an employee has revoked union membership, for a period of one year from the date of the execution of the dues checkoff authorization and for year to year thereafter, unless the employee gives the Employer and the Union written notice of revocation not less than ten (10) days and not more than twenty five (25) days before the end of any yearly period; provided however, if the applicable collective bargaining agreement specifies an annual revocation window period of longer than fifteen (15) days, then only that longer period shall apply.

To the extent the current collective bargaining agreement does not expressly limit the period for dues revocation to a particular window period or provides for revocation more frequently than the annual revocation period defined above, the collective bargaining agreement will control.

Hereinafter, the phrase “January 2019 revocation policy” shall be used to refer to the above stated policy.

27. As indicated in its January 25, 2019 letter, in January 2019 AFSCME ceased enforcing restrictions that prohibit employees from stopping dues deductions except during a 15-day window period prior to the expiration date of a collective bargaining agreement. AFSCME unilaterally replaced that restriction with the January 2019 revocation policy.

28. On information and belief, AFSCME enforces and requires Lucas County JFS and other public employers to enforce the January 2019 revocation policy.

29. Plaintiffs never consented to abide by the January 2019 revocation policy. Plaintiffs also did not agree to waive their First Amendment right to stop subsidizing

AFSCME and its speech for the time periods set forth in the January 2019 revocation policy.

30. To the extent it is relevant, Plaintiffs did not waive their First Amendment right to not subsidize AFSCME and its speech in the checkoff agreement. A valid waiver of First Amendment rights requires clear and compelling evidence that the putative waiver was knowing, intelligent, and voluntary and that enforcement of the waiver is not against public policy. Plaintiffs did not knowingly, intelligently, or voluntarily waive their First Amendment rights in the checkoff agreement for the reasons set forth in paragraphs 32-44. The restrictions on stopping government dues deductions set forth in the checkoff agreement also are unenforceable as against public policy because the restriction significantly impinges on employees' First Amendment rights and no countervailing public interest justifies that impingement.

31. Since March 2022, Lucas County JFS and AFSCME, acting jointly pursuant to CBA Article 3.1 and Ohio's Public Employees' Collective Bargaining Act, have been seizing union payments from Plaintiffs' wages after they became nonmembers and without their consent. On information and belief Lucas County JFS and AFSCME will continue to seize union payments from Plaintiffs unless and until they satisfy the restrictions set forth in the January 2019 revocation policy.

32. Since March 2022, Lucas County JFS and AFSCME have been compelling Plaintiffs to subsidize AFSCME and its speech as a condition of their employment and without their consent.

CAUSES OF ACTION

33. Plaintiffs reallege and incorporate by reference the paragraphs set forth above in each Count of their complaint.

34. In *Janus*, the Supreme Court held it violates the First Amendment for the government and unions to seize union payments from employees without their consent. 138 S. Ct. at 2486.

35. Defendants act under color of state law, including Ohio's Public Employees' Collective Bargaining Act and its provision at Ohio Revised Code § 4117.09(B)(2), when seizing union payments from Plaintiffs' wages and when restricting when Plaintiffs can stop those seizures.

36. AFSCME is a state actor because it acts jointly with Lucas County JFS, pursuant to CBA Article 3.1 and Ohio's Public Employees' Collective Bargaining Act, when seizing union payments from Plaintiffs' wages and restricting when Plaintiffs can stop those seizures.

Count I

37. Wilson notified the Defendants in February and March 2022 that she was no longer a member of AFSCME and did not consent to subsidize the union.

38. Fannin notified Defendants in October and December of 2021 that she was no longer a member of AFSCME and did not consent to subsidize the union.

39. Elkhatib notified AFSCME in January of 2022 and July of 2022 that she was no longer a member of AFSCME and did not consent to subsidize the union.

40. Plaintiffs did not consent to the provisions of the January 2019 revocation

policy that purport to require Plaintiffs to continue to subsidize AFSCME, even as nonmembers of that union, unless and until they provide a notice of revocation with a fifteen (15) day window period, and therefore there is no contractual basis for continued deduction of dues.

41. Defendants, by seizing union payments from Plaintiffs when they were nonmembers of AFSCME and without their consent, violate Plaintiffs' First Amendment rights to free speech and association, as secured against state infringement by the Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983.

42. Defendants cannot prove, by clear and compelling evidence, that Plaintiffs knowingly, intelligently, or voluntarily waived their First Amendment right to not subsidize AFSCME and its speech or that a purported waiver is enforceable as a matter of public policy.

43. Plaintiffs are suffering the irreparable harm and injury inherent in a violation of First Amendment rights for which there is no adequate remedy at law.

Count II

44. Defendants' maintenance of CBA Article 3.1(B), in which AFSCME agreed to indemnify Lucas County JFS for liabilities that arise from deducting union payments from employees' wages, provided and continues to provide Lucas County JFS with an incentive not to ensure that its deductions of union payments from employees conforms to the First Amendment and 42 U.S.C. § 1983.

45. Defendants maintenance of CBA Article 3.1(B) deprives Plaintiffs of their First Amendment rights to free speech and association, as secured against state infringement by the Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983.

PRAYER FOR RELIEF

Wherefore, Plaintiff request that this Court:

A. Issue a declaratory judgment that Defendants violate Plaintiffs' First Amendment right to free speech and association, as secured against state infringement by the Fourteenth Amendment and 42 U.S.C. § 1983, by seizing union payments from them without their consent and by maintaining CBA Article 3.1(B).

B. Permanently enjoin Defendants from seizing union payments from Plaintiffs and from maintaining or enforcing CBA Article 3.1(B).

C. Order AFSCME and Lucas County JFS to pay compensatory damages to Plaintiffs for the union payments it seized from them without their consent, plus interest, or alternatively award Plaintiffs restitution or nominal damages.

D. Award costs and reasonable attorneys' fees pursuant to the Civil Rights Attorneys' Fees Award Act of 1976, 42 U.S.C. § 1988; and

E. Grant other and additional relief as the Court may deem just and proper.

Dated: December 8, 2022

/s/ Jay R. Carson

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