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IN THE COURT OF APPEALS
SEVENTH APPELLATE DISTRICT
STATE OF OHIO

MATTHEW SHELDON	)	
	)	
Plaintiff-Appellant,	)	
	)	
v.	)	
	)	Appellate Case No. 2025CA00985
OHIO ASSOCIATION OF PUBLIC SCHOOL EMPLOYEES/AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, LOCAL 541 CARROLLTON EXEMPTED VILLAGE SCHOOLS, et al.,	)	Trial Court Case No.2025CVH30642
	)	
Defendant-Appellee.	)	

ASSIGNMENTS OF ERROR AND MERIT BRIEF OF APPELLANT

ORAL ARGUMENT REQUESTED

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ASSIGNMENTS OF ERROR

ASSIGNMENT OF ERROR NO. 1: The trial court erred by treating the Plaintiff's claims, which arose under the common law of contracts, as claims for unfair labor practices arising out of R.C. 4117 and subject to SERB's exclusive jurisdiction.

ASSIGNMENT OF ERROR NO. 2: The trial court erred by denying the Plaintiff a forum in which to bring his 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 hear 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 SERB's exclusive jurisdiction is limited to the statutory claims created by R.C. 4117. The Ohio Supreme Court recently affirmed its longstanding holding that 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." *Ohio Council 8, AFSCME, AFL-CIO v. Lakewood*, 2025-Ohio-2052 at ¶ 17 (quoting *Franklin Cty Law Enf't* Assn., 59 Ohio St.3d at 171). Here, the Appellant raised state common law contractual challenges to his union-membership agreements. **Are 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 "[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 Mr. Sheldon seeks to raise are state contract claims. In another case, the Tenth District Court of Appeals held that claims identical to Mr. Sheldon's may only be heard in SERB. Yet at the same time, SERB has declined to hear claims identical to Mr. Sheldon's claims, stating that they do not allege unfair labor practices over which SERB has jurisdiction. **Does the Ohio Constitution's Open Courts provision require that Mr. Sheldon be afforded a forum in which to pursue his 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 April 25, 2025, the trial court issued a final appealable order granting the Defendant-Appellee's Motion to Dismiss (R. 21). Appellant Matthew Sheldon filed a timely Notice of Appeal on May 7, 2025. (R. 22).

B. Procedural Posture

On March 13, 2025, Appellant Matthew Sheldon filed an Amended Complaint in Common Pleas Court seeking declaratory relief relating to his membership contract with his former union, American Federation of State, County, and Municipal Employees, Ohio, Council 8, AFL-CIO ("the Union"). (R. 8). On April 1, 2025, the Union, Defendant-Appellee, filed a Motion to Dismiss the Amended Complaint for lack of subject matter jurisdiction. (R. 13). On April 15, 2025, Mr. Sheldon filed a response in opposition to that motion. (R. 18). On April 22, 2025, the Union filed its Reply Brief in support of the Motion to Dismiss. (R. 20). On April 25, 2025, the trial court issued an order granting the Union's Motion to Dismiss. R. 21). On May 7, 2025, Mr. Sheldon filed a timely Notice of Appeal. (R. 22).

C. Statement of Facts

The facts of this case are not in dispute. At its simplest, Mr. Sheldon is seeking a declaration that his membership contract with the Union—the contract that permitted the Union to continue to withdraw dues from his paycheck even after his Union membership had ended—is invalid and imposes an impermissible penalty under Ohio law. Fundamentally, Mr. Sheldon seeks a forum in which he can bring his contractual claim. Mr. Sheldon'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 understand. In *Janus v. Am. Fedn. of State, Cty., & Mun. Emps., Council 31*, 585 U.S. 878, 885–86 (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. *Id.* at 886. Non-payment would trigger employment termination. *See id.* at 887. 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 a union member when he sued 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, "[b]ecause *Janus* does not abrogate or supersede Plaintiffs' contractual obligations, which arise out of longstanding, common law principles of 'general applicability,' *Janus* does not give Plaintiffs the right to terminate their commitments to pay union dues unless and until those commitments expire under the plain terms of their membership agreements." *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, public sector unions began relying on "opt-out windows" in their contracts with their members. Thus, while union members retained an absolute First Amendment 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 and engage political speech which they did not support.

In 2022, in light of the *Belgau* decision, a group of plaintiffs similarly situated to Mr. Sheldon 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 Mr. Sheldon, 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.

2. The Littlejohn Case

The following year, another former union member, Necole Littlejohn, found herself in a similar position. Ms. Littlejohn is a public employee who was, at one time, a member of the union. Ms. Littlejohn, resigned from her union.

But while the union honored her request for resignation and sent her a letter acknowledging that she was no longer a member, it 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 she 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).

In light of the Tenth District's decision in *Darling,* Ms. Littlejohn—whose facts and claims for relief are substantively identical to Mr. Sheldon's, filed an unfair labor practice charge with SERB, which alleged the contractual theories identical to those alleged in this case (and to those in *Darling*). (See SERB Decision, *Littlejohn v. Ohio Council 8, AFSCME, AFL-CIO*, Case No. 2023-ULP-12-0146.). SERB reviewed the charge and dismissed it, stating that based on federal

court decisions, which it did not cite[1], the actions complained of were not an unfair labor practice. Id. 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. Ms. Littlejohn subsequently filed her claims in Hamilton County Common Pleas Court, which, relying on Darling, granted the union's motion to dismiss. Her case is pending on appeal in the First District.

Mr. Sheldon thus found himself with contractual rights, as identified by the federal courts following *Belgau*, but with no forum in which he could enforce them. The federal courts have demurred, holding that union membership contracts are matters for state contract law. The *Darling* court held that such claims raised unfair labor practice claims and thus could be heard exclusively by SERB. But SERB subsequently found, on identical facts, that the continued payment of dues after resignation from a union was not an unfair labor practice. Mr. Sheldon therefore sued both the Union and SERB seeking to vindicate his contract claims and to establish the forum in which they could be brought.

LAW AND ARGUMENT

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

[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.

Issue Presented for Review

Did the trial court have jurisdiction to hear Mr. Sheldon'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. The Ohio Supreme Court's Recent Holding in *Ohio Council 8, AFSCME, AFL-CIO v. Lakewood*, Unambiguously Re-affirmed that 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 Mr. Sheldon did here. He brought claims under the common law of contracts.

The Ohio Supreme Court recently and unambiguously reaffirmed that SERB's exclusive jurisdiction does not apply to common law contractual claims, even when those claims arise out of collective bargaining agreements. *Ohio Council 8, AFSCME, AFL-CIO v. Lakewood*, 2025-Ohio-2052 at ¶ 2. at ¶ 17.

In *Lakewood*, the unanimous court reiterated that SERB's exclusive jurisdiction is limited:

> [e]xclusive jurisdiction to resolve unfair labor practice charges is vested in SERB in two general areas: (1) where one of the parties filed charges with SERB alleging an unfair labor practice under R.C. 4117.11 and (2) where a complaint brought before the common pleas court alleges conduct that constitutes an unfair labor practice specifically enumerated in R.C. 4117.11.

Id. a ¶ 13, quoting *State ex rel. Dept. of Mental Health v. Nadel*, 2003-Ohio-1632, ¶ 23. The court determined that "[i]f a party asserts rights that are independent of R.C. Chapter 4117, the party's complaint may properly be heard in common pleas court." *Id.* at ¶ 17, quoting *Franklin Cty. Law Enforcement Assn.*, 59 Ohio St.3d 167 (1991), paragraph two of the syllabus.

In *Lakewood*, the CBA at issue included a grievance procedure, which provided "that it is the 'exclusive method of reviewing and settling disputes' between the city and the union or employees and that in the event a grievance goes to arbitration, decisions of arbitrators are

'conclusive and binding.'" *Id.*

Where *Lakewood* addressed an arbitration agreement within the CBA, this case is even further afield from SERB's jurisdiction, arising out of a contract separate from the CBA *or* R.C. 4117. *Id.*

In 2020, the union filed a grievance on behalf of a fired employee and the parties began arbitration proceedings. *Id.* Before the arbitration hearing commenced, however, "the parties agreed to a last-chance agreement ('LCA'), under which the employee was reinstated." *Id.* Under the LCA, if the employee "were to violate any city work rule or policy 'pertaining to professional, respectful, and workplace appropriate behavior,' he would be 'subject to immediate termination without recourse to the grievance or arbitration provisions of the [CBA].'" *Id.* In 2021, the city again fired the employee and refused to arbitrate. *Id.* at ¶ 5. The union sued in the court of common pleas to compel arbitration and the city moved to dismiss. The trial court denied the motion and ordered the parties to arbitration. The city appealed and the Eighth District Court of Appeals reversed the trial court's decision on the basis that "while the union was not explicitly seeking relief under R.C. Chapter 4117, it was substantially alleging that the city had interfered with [the employee's] collective bargaining rights by refusing to arbitrate. *Id.*

The unanimous Ohio Supreme Court held that SERB did not have exclusive jurisdiction over the dispute, explaining that *"*the union is correct in its assertion that the right to arbitrate is a contractual right derived from the CBA that exists independently of R.C. Ch. 4117." *Id.* at ¶ 15. Because the union in *Lakewood* sued to enforce rights that arose out of its contract—rather than statutory rights arising out of R.C. 4117, the common pleas court had jurisdiction. *Id.* at ¶ 31. The Court noted that "[i]n its application and motion to compel arbitration, the union [did] not allege that the city engaged in an unfair labor practice or conduct that constitutes an unfair labor practice.

Therefore, SERB does not have exclusive jurisdiction over [the] case." *Id.* at ¶ 13.

In reaching its decision, the Court applied a simple test: If R.C. 4117 did not exist, would the plaintiffs still have a claim? The *Lakewood* Court concluded that

> the union's claims here do *not* arise from and are not dependent on collective-bargaining rights created by R.C. Ch. 4117, because even if R.C. Ch. 4117 did not exist, the parties would still have the right to include arbitration provisions in their collective-bargaining agreement and because the union does not claim that the CBA did not contain the required grievance procedure.

Id. at ¶ 27. (Emphasis in original).

This is essentially the same test prescribed in *Franklin Cty, Law Enf't Assn.*, which held 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." *Franklin Cty, Law Enf't Assn.,* 59 Ohio St. 3d at 171. Simply put, 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.").

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 Mr. Sheldon's public employer and the Union. It is instead the private contract of union membership between Mr. Sheldon and the Union and thus even farther afield of 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 the Union is required to provide under R.C. 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 Mr. Sheldon and the Union. *See Belgau*, 975 F.3d at 947-950 (describing Union membership contracts as private agreements). Under the contract, Mr. Sheldon 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. Indeed, a contract which required the Union to provide only these services which it was already statutorily required to provide would fail for lack of consideration.

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 885–87. The contract in question governs only the conditions under Mr. Sheldon 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. Mr. Sheldon'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 his public employment, Mr. Sheldon is not asserting any rights related to collective bargaining or pursuing causes of action created by R.C. 4117.

Rather, Mr. Sheldon's contract-based claims arise entirely from common law independent of R.C. 4117. Specifically, his 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 his 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*, 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. 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.

The fact that these claims have nothing to do with the union's statutory duties of fair

representation or to "restrain or coerce" an employee's exercise of rights under 4117 can be confirmed by SERB's dismissal of identical claims in Littlejohn. There, SERB determined that the 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). Further, SERB has admitted—and has continued to maintain—that "no statute involving SERB's legal duties is involved or being challenged." (R. 7).

Instead, Mr. Sheldon sought a declaratory judgment regarding his termination of the contract—that is, his early resignation of the membership contract from the union outside of an opt-out window. In other words, if the membership contract between Mr. Sheldon and the Union is valid—and the Union insists that it is—Mr. Sheldon breached that contract by resigning. The questions therefore are whether outside of the proscribed opt-out window 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? These are plainly and purely contract issues that arise from Ohio's common law of contracts, not R.C. 4117.

Similarly, Mr. Sheldon's claims going to the validity of his membership contract with the Union all arise under contract theories that were ancient in Ohio law before R.C. 4117 was a twinkle in its drafters' eyes. *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, Mr. Sheldon would still have the same claims under Ohio's common law of contracts. His 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, whether Mr. Sheldon'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 Mr. Sheldon's claims still go forward? The answer is yes.

3. Mr. Sheldon's Amended 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 Mr. Sheldon while he was a member and after he resigned from the Union based on the written agreement between Mr. Sheldon and the Union. *See* R. 8, at ¶ 18 Exhibit B. Mr. Sheldon is challenging "the validity and construction" of that agreement.

Specifically, Mr. Sheldon raises alternative claims for declaratory judgment, alleging that the parties mutually repudiated the contract (i.e., his resignation from the Union), that the contract should be rescinded for mutual mistake, that the continued imposition of dues constitutes an unenforceable penalty for Mr. Sheldon'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 Amended Complaint adequately pleads a declaratory judgment cause for each. For example, Mr. Sheldon alleges that he resigned from union membership, that the Union acknowledged and accepted his resignation and expressly withheld any further benefits of membership to him. (R. 8 at ¶¶ 53–60). In other words, Mr. Sheldon 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. There is thus a present-day controversy sufficient to state a claim.

Next, Mr. Sheldon alleged that to the extent any contract exists, it should be rescinded (and his dues refunded) based on mutual mistake. Mr. Sheldon and the Union originally entered into the contract before the Supreme Court decided *Janus*. Although Mr. Sheldon had the option not to join the Union in the first place, in the pre-*Janus* world, he had no incentive not to join—he 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. Mr. Sheldon has adequately pled that both parties were mistaken as to the law and enforceability of agency fees, which was material to his membership.

Mr. Sheldon next alleges that the Union's ability to keep receiving dues after he 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. Mr. Sheldon alleges—and the Union does not dispute—that the Union kept receiving dues from him after he resigned membership. (R. 8 at ¶¶ 53–56). Mr. Sheldon further alleges that 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 following his resignation. (R. 8 at ¶¶ 60–61).

If the membership contract between Mr. Sheldon and the Union are valid—and the Union seems to believe it is—then Mr. Sheldon'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 Mr. Sheldon. 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). Mr. Sheldon thus adequately alleges that the continued withdrawal of dues subjected him to an unreasonable penalty. Construing the Amended Complaint's factual allegations as true, this is more than enough to withstand a motion to dismiss.

Count Four of Mr. Sheldon's Amended Complaint alleges that the membership contract was a contract of adhesion. The contract did not disclose the amount of the dues he would be required to pay and there was an "absence of a meaningful choice" considering that pre-*Janus* he 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). Mr. Sheldon may or may not ultimately prevail on this claim when the court weighs evidence regarding the choice

he had or whether those terms were unreasonably favorable to the Union. But he 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. Mr. Sheldon pled that he paid the Union dues while he was not a member, that the Union was aware of his payments, he 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.).

ASSIGNMENT OF ERROR NO. 2: The trial court erred by denying the Plaintiff a forum in which to bring his 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 Mr. Sheldon Be Afforded a Forum in Which to Pursue His 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 Mr. Sheldon's claims lay outside of its bailiwick, the common pleas court is the only forum in which Mr. Sheldon can seek relief for his 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 Mr. Sheldon with no forum in which to raise his 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 his well-pled Amended

Complaint deprived Mr. Sheldon of his right to have the courts of Ohio—the entities specifically created to protect and preserve contractual rights—determine basic questions of contract law.

II. 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 22nd day of July 2025, the foregoing *Assignments of Error and Brief of Appellant* was served on all counsel of record by email to tdrabick@oapse.org and Lori.Friedman@OhioAGO.gov

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CERTIFICATE OF COMPLIANCE

I certify that this Brief complies with the word-count provision set forth in Seventh District Local Rule 19(A)(1). This Brief is printed using the Times New Roman 12-point type face using Microsoft word processing software and contains 5,754 words.

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