IN THE COURT OF APPEALS
SIXTH APPELLATE DISTRICT
STATE OF OHIO

KATRINA VANDERVEER Plaintiff-Appellant, v. **OHIO ASSOCIATION OF PUBLIC SCHOOL EMPLOYEES/AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, LOCAL 660 PIKE-DELTA-YORK LOCAL SCHOOL DISTRICT, et al.,** Defendant-Appellee.	)	Appellate Case No. 25FU000007 Trial Court Case No. 25 CV 000093 **APPELLANT'S REPLY TO APPELLEE OAPSE'S BRIEF**

I. Summary

Appellee Ohio Association of Public School Employees' ("OAPSE") arguments fail for multiple reasons, but fundamentally, OAPSE focuses on what it characterizes as the "style" of Appellant Katrina Vanderveer's ("Mrs. Vanderveer") claims rather than addressing their merits. In other words, OAPSE does not address *why* this case, which does not arise out of or seek to invoke R.C. 4117's protections or remedies, is something other than a garden variety contract case. Absent an invocation of the rights created by R.C. 4117, SERB does not have jurisdiction over Mrs. Vanderveer's claims. Instead, OAPSE confuses issues, focusing on the dues deductions, the symptom, and ignores the actual disease—the enforceability of the membership contract. For these reasons, this Court should reverse the trial court's dismissal.

II. Facts

Katrina Vanderveer filed her Complaint in the common pleas court seeking declaratory relief relating to her membership and deduction authorization contract with her former union, Ohio Association of Public School Employees/American Federation of State, County, and Municipal

Employees, Local 660 Pike-Delta-York Local School District. (R. 1). Mrs. Vanderveer seeks a declaration that her contract with OAPSE is invalid and imposes an impermissible penalty under Ohio contract law. That contract permitted OAPSE to withdraw dues from Mrs. Vanderveer's paycheck, and OAPSE relies on it to continue withdrawing dues even after Mrs. Vanderveer's Union membership had ended. Fundamentally, Mrs. Vanderveer seeks a forum in which she can bring her contractual claims.

III. Law and Argument

A. Because Mrs. Vanderveer alleges common law contract claims—not conduct that would constitute a violation of R.C. 4117—SERB has no jurisdiction.

OAPSE claims that "[a]t its core, each of Plaintiff's claims alleges that OAPSE improperly instructed the School District to deduct union dues from her paychecks," OAPSE Br. at 9, and that Mrs. Vanderveer is attempting to circumvent SERB by styling her claims as common law contract claims instead of unfair labor practices. *See* OAPSE Br. at 13. OAPSE is wrong on both counts. At its core, Mrs. Vanderveer's claims are that her contract with OAPSE is void—in all aspects. As such, she has sought relief based on common-law contract principles. Therefore, Mrs. Vanderveer is pursuing her claims, which federal courts have labeled private contract claims, in common pleas court because only that court has jurisdiction to adjudicate common law contract claims. *See, e.g.,* R.C. 2721.03; *see also Belgau v. Inslee*, 975 F.3d 940, 950 (9th Cir. 2020) ("These facts speak to a contractual obligation, not a First Amendment violation.").

Assuming arguendo that OAPSE is correct that improperly taking Mrs. Vanderveer's funds could trigger an unfair labor practice, *see* OAPSE Br. at 10, SERB can only issue a cease and desist order—it has no jurisdiction to invalidate the contract in its entirety. Only the common pleas court has jurisdiction to do that. Indeed, while SERB has exclusive jurisdiction over unfair labor practices, certain actions can result in both an unfair labor practice and other legal claims. There

are multiple examples of this.

For example, a public employer's illegal discrimination against a unionized employee could be an unfair labor practice, violating R.C. 4117.11(A)(3), a violation of Title VI of the Civil Rights Act of 1964, 42 U.S.C.A. § 2000d, and a violation of Ohio's human rights law, triggering a claim in common pleas court. An employer punching a union organizer could be both an unfair labor practice, R.C. 4117.11(A) (1), (2), and a common law tort of assault and battery. A public employer forbidding discussion on its property of work conditions could be an unfair labor practice, R.C. 4117.11(A) (1) or (2), and a violation of the First Amendment, triggering a 41 U.S.C. § 1983 claim. If a union official threatens an employee to join the union, that would be an unfair labor practice, R.C. 4117(B)(1), and also constitute a criminal action, R.C. 2905.11, and a civil claim for extortion, R.C. 2307.60.

The Ohio General Assembly enacted R.C. 4117 to establish "a comprehensive framework for the resolution of public-sector labor disputes by creating a series of new rights and setting forth specific procedures and remedies for the vindication of those rights"—not to enforce previously existing common law contract rights between private parties. *Franklin Cty, Law Enforcement Assn. v. Fraternal Ord. of Police, Cap. City Lodge No. 9*, 59 Ohio St. 3d 167, 169 (1991). The U.S. Supreme Court recently applied this reasoning to the National Labor Relations Act, holding that the act did not preempt state tort claims even though the actions arose in the context of a strike, because the union did not take "reasonable precautions" to protect the employer's property. *Glacier Northwest, Inc. v. Internatl. Bhd. of Teamsters Local Union No. 174*, 598 U.S. 771 780 (2023). While the *Glacier Northwest* decision necessarily turned on statutory provisions of the National Labor Relations Act, the principle remains that labor preemption statutes do not necessarily bar other remedies simply because the dispute is somehow related to labor. *See also Smith v. Evening*

News Ass'n, 371 U.S. 195 (1962) (holding that a state court had jurisdiction over an action by an employee against an employer for damages resulting from an alleged violation of a collective bargaining agreement, even though the alleged conduct of the employer was an unfair labor practice within the jurisdiction of the National Labor Relations Board).

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." *Ohio Council 8, AFSCME, AFL-CIO v. Lakewood*, 2025-Ohio-2052, ¶ 8. The Ohio Supreme Court recently affirmed that the "test for SERB's jurisdiction has always been, and remains today," that two-part inquiry. *Id.* at ¶ 30.

Here, there is no dispute that Mrs. Vanderveer has not filed charges with SERB alleging an unfair labor practice, and contrary to OAPSE's claims, SERB has found that the alleged conduct does not constitutes an unfair labor practice specifically enumerated in R.C. 4117.11. *See Littlejohn v. Ohio Council 8, AFSCME, AFL-CIO*, 2023-ULP-12-0146 (SERB Charge, filed Dec. 7, 2023). And Mrs. Vanderveer's common law contract claims do not assert a violation of R.C. 4117.11 and so are not claims of an unfair labor practice.

OAPSE, citing *OCSEA, Local No. 11*, SERB No. 87-ULP-05-0217, 6 OPER 1 6627, 1989 WL 1703609 (May 12, 1989), adopted, 6 OPER 1 6627, 1989 WL 1703833, asserts that "SERB has squarely concluded that an allegation substantively identical to Mrs. Vanderveer's core allegation—that a union directed an employer to deduct union dues from individuals who had not validly authorized deductions is an unfair labor practice." OAPSE Br. at 10.

But *OCSEA, Local No. 11* is inapposite for two reasons. First, it holds that a public union's misleading statements regarding members' ability to withdraw and cease dues deductions

constitutes "restraint or coercion and a failure to fairly represent public employees in violation of §§ 4117.11(B)(1) and (B)(6)." *Id.* Mrs. Vanderveer has not alleged that she was misled or deceived. Instead, she has relied on Ohio's declaratory judgment statute to obtain a declaration of her rights in exiting the membership contract. Second, in that case, the union's illegal conduct occurred after the union's ratification of a collective bargaining agreement, and before the employer's ratification of the agreement. *Id.*

The proper SERB decision to review is the one that OAPSE attempts to distinguish. As OAPSE admits, in *Littlejohn v. Ohio Council 8, AFSCME, AFL-CIO*, 2023-ULP-12-0146 (SERB Charge, filed Dec. 7, 2023), the complainant "raised the same 'contractual theories' that Plaintiff Vanderveer has raised in this case." OAPSE Br. at 19. SERB ruled that "the Union has not violated R.C. 4117.11(B)(1) or (2)." *Littlejohn v. Ohio Council 8, AFSCME, AFL-CIO*, SERB No. 2023-ULP-12-0146 (June 20, 2024).[1] But critically, SERB dismissed the charge "for lack of probable cause to believe *the statute has been violated.*" *Id.* (emphasis added). And that is the crux of the matter—this is a contract claim, not a violation of statute claim.

Likewise, SERB does not have exclusive jurisdiction to address the facts here. OAPSE readily admits that (1) Mrs. Vanderveer's Complaint raises claims and requests relief identical to ones that SERB dismissed and (2) that SERB dismissed such claims because there was no probable cause to believe that "those rights [set out in R.C. 4117] have been violated." OAPSE Br. at 1. SERB's jurisdiction depends on—and is in fact limited to—remedying violations of R.C. 4117. But just because there is no remedy at SERB for conduct that does not violate or even implicate R.C. 4117 does not mean that no other remedies are available.

Because Mrs. Vanderveer has not filed an unfair labor practice charge with SERB, and her

[1] Affirmed in *Littlejohn v. Ohio Council 8, AFSCME, AFL-CIO*, No. 250020 (1st Dist. 2025).

Complaint alleges a common law contract claim, R.C. Chapter 4117 does not deprive the court of common pleas of jurisdiction, and OAPSE's motion to dismiss should have been denied.

B. Mrs. Vanderveer's common law contract rights do not arise from, and are independent of, R.C. Chapter 4117, because those rights existed before the enactment of R.C. Chapter 4117.

SERB does not have jurisdiction over claims that do not arise from and are not dependent on collective-bargaining rights created by R.C. Ch. 4117. *See Ohio Council 8, AFSCME, AFL-CIO v. Lakewood*, 2025-Ohio-2052, ¶ 17. The common pleas courts do have jurisdiction over "rights that exist independently of R.C. Chapter 4117, 'even though they may touch on the collective bargaining relationships.'" *State ex rel. Ohio Civ. Serv. Emps. Assn. v. State*, 2016-Ohio-478, ¶ 54, citing *Franklin Cnty. Law Enf't Ass'n*, at 172. *Ohio Council 8, AFSCME, AFL-CIO v. Lakewood*, 2025-Ohio-2052, ¶ 30 (confirming that the "test for SERB's jurisdiction has always been, and remains today," the two-part inquiry discussed above). At its simplest, the question is whether a plaintiff would still have the rights she claims if R.C. Chapter 4117 did not exist.

In this case, Mrs. Vanderveer's contractual rights existed before the enactment of R.C. Chapter 4117 and would continue to exist if R.C. Chapter 4117 were repealed today. Counts One through Four of the Complaint are common law contract claims.[2] (R. 1). Those rights and claims exist independent of *any* statute, let alone R.C. 4117.

OAPSE's reliance on the Tenth District's non-binding opinion in *Darling v. Am. Fed'n of State, Cnty., & Mun. Emps.*, 2024-Ohio-2181 (10th Dist.), is unpersuasive, for two reasons. First, the opinion improperly expands the Ohio Supreme Court's test, and second, the plaintiff in *Darling*

[2] The Union's brief, OAPSE Br. at 6–7, mistakenly says that Mrs. Vanderveer brought a fifth contract claim—repudiation by mutual mistake of law—but that is not a claim Mrs. Vanderveer included in her Complaint.

pleaded facts absent from Mrs. Vanderveer's Complaint.

Contrary to the Tenth District's decision, the Supreme Court of Ohio has not "broadly defined" SERB's jurisdiction. *State ex rel. Ohio Civ. Serv. Emps. Assn. v. State*, 2016-Ohio-478, ¶ 54 ("The principles announced in *Franklin Cty. Law Enforcement Assn.* are not so broad as to place *all* claims that touch on R.C. Chapter 4117 within SERB's exclusive jurisdiction."). The Ohio Supreme Court's previous cases are instructive.

In *Franklin Cty. Law Enforcement Assn.*, the Court noted that each of the plaintiff's claims specifically derived from R.C. Chapter 4117 and would not exist absent the statute. *Franklin Cnty. L. Enf't Ass'n* , 59 Ohio St. 3d at 171. The Court noted that "union members can have common-law contractual rights that exist independently of R.C. Chapter 4117," but the plaintiffs "did not specify" the contract provisions that were violated. Instead, they only referred to the contract to contend that "R.C. 4117.19(C)(4) imposed a duty on the [union] to provide in its constitution for 'the right of individual members to participate in the affairs of the organization . . . .'" *Id.* Before the enactment of R.C. Chapter 4117, there was no right to participate in union affairs.

Similarly, in *Sutula*, the plaintiff union claimed that the employer failed to abide by an agreement they reached "through their collective-bargaining negotiations, which were conducted in accordance with R.C. Chapter 4117." *State ex rel. Cleveland v. Sutula*, 2010-Ohio-5039, ¶ 17. Again, before to the enactment of R.C. Chapter 4117, there was no right to collectively bargain.

Contrary to the plaintiffs in *Franklin Cty. Law Enforcement Assn.* and *Sutula*, Mrs. Vanderveer has pled purely contractual claims. She does not allege that OAPSE violated any duty created by R.C. Chapter 4117, or that her Dues Deduction Contract is reliant on that chapter. As with any membership contract, for example, a gym membership, Mrs. Vanderveer has always had the right to freely enter into such contract and get out of it if the contract violates substantive law. That right

did not come into existence when R.C. Chapter 4117 was enacted and, as with her gym membership, it would not disappear if R.C. Chapter 4117 were repealed.

Second, *Darling* is distinguishable from this case for similar reasons. The *Darling* court's holding rests, in part, on allegations implicating R.C. 4117. The court cited the allegation that the plaintiffs averred that "they have been compelled by *law,*" i.e. R.C. 4117, to support the defendant union financially and to subsidize its speech. (Emphasis added.) *Darling*, 2024-Ohio-2181, ¶ 18, quoting (Am. Compl. at ¶¶ 64, 68, *Darling*, 2024-Ohio-2181). Such allegations regarding R.C. 4117 included in *Darling, Franklin Cty. Law Enforcement Assn.*, and *Sutula*, but not in Mrs. Vanderveer's allegations, create an arguable assertion of SERB's jurisdiction. Again, Mrs. Vanderveer has not so averred.

Because Mrs. Vanderveer's contractual rights existed before, and thus do not arise from, the enactment of R.C. Chapter 4117, they are independent of R.C. Chapter 4117. Therefore, this court has jurisdiction over Mrs. Vanderveer's claims.

C. The court of common pleas has jurisdiction over Mrs. Vanderveer's request for declaratory relief because Ohio law specifically grants the court such jurisdiction.

Ohio's declaratory judgment law grants any person interested in a written contract the right to have "any question of construction or validity" of the contract determined by a court, and the right to "obtain a declaration of rights, status, or other legal relations under it." R.C. 2721.03. The law 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, OAPSE received dues from Mrs. Vanderveer while she was a member, and after she resigned from OAPSE, based on the written membership and deduction authorization agreement. Mrs. Vanderveer challenged "the validity and construction" of that agreement. She was not required to file "the Mona Lisa of complaints," OAPSE Br. at 24, because the statute is clear—the court of common

pleas may "determine[] any question of construction or validity arising under" a statute. R.C. 2721.03. That includes determining whether Mrs. Vanderveer's claims belong before it or SERB.

IV. Conclusion

Affirming the lower Court will strip Mrs. Vanderveer of her constitutional right, as no other forum or court is available for her to seek redress. Since the federal courts have directed dissident union members to the state courts, and SERB has determined that their claims are not statutory unfair labor practices, Mrs. Vanderveer must bring her claims in state court. Affirming the lower Court's dismissal would deprive Mrs. Vanderveer of her right to have access to court to determine basic questions of contract law. For the above reasons, the court of common pleas' Dismissal should be reversed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

This will certify that a true and accurate copy of the above brief has been served by e-mail to counsel of record for Defendants this 11th day of December 2025.

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