

IN THE SUPREME COURT OF OHIO

MATTHEW SHELDON,)	Case No. 2025-1708
)	
Plaintiff-Appellant,)	
)	On Appeal from the Seventh
vs.)	District Court of Appeals,
)	Carroll County
)	
OHIO ASSOCIATION OF PUBLIC)	
SCHOOL EMPLOYEES/AMERICAN)	Court of Appeals Case No.
FEDERATION OF STATE, COUNTY)	25 CA 0985
AND MUNICIPAL EMPLOYEES,)	
LOCAL 541 CARROLLTON)	
EXEMPTED VILLAGE SCHOOLS,)	
et al.,)	
)	
Defendants-Appellees.)	

**AMICI CURIAE FREEDOM FOUNDATION'S, ET AL. MEMORANDUM IN
SUPPORT OF PLAINTIFF-APPELLANT MATTHEW SHELDON**

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STATEMENT OF INTEREST OF AMICI CURIAE

The Freedom Foundation is a 501(c)(3) nonprofit organization working to advance individual liberty, free enterprise, and limited government. The Foundation focuses on public sector labor reform, which it pursues through litigation, legislation, education, and grassroots activism. The Foundation has helped over 250,000 public employees in the United States opt out of public sector unions through its website www.OptOutToday.com. This includes over 11,000 public employees in Ohio alone. Foundation attorneys have represented hundreds of such employees nationwide, including in Ohio. This includes the undersigned attorney who litigated *Belgau v. Inslee*, 975 F.3d 940, 950 (9th Cir. 2020), in the Ninth Circuit and cases in Ohio before the Ohio State Employment Relations Board or U.S. district courts. *See, e.g., Lascano v. AFSCME, Ohio Council 8*, No. 1:22-cv-00102 (filed Feb. 24, 2022 S. Dist. of Ohio) (settled); *In Re Ohio Ass'n of Pub. Sch. Emps.*, SERB No. 2022-ULP-12-0148 (Dec. 7, 2023) (settled).

The National Right to Work Legal Defense Foundation, Inc. is a nonprofit organization that, since 1968, has provided free legal aid to individuals to protect their freedom to choose whether to associate with unions. To this end, Foundation staff attorneys have represented individuals in seminal cases involving individuals' First Amendment right to refrain from subsidizing unions, such as *Janus v. AFSCME, Council 31*, 585 U.S. 878 (2018) and *Harris v. Quinn*, 573 U.S. 616 (2014). This includes cases in Ohio such as *Smith v. AFSCME Council 8*, 2:18-cv-1226 (S.D. OH.) and *Allen v. Ohio Civ. Serv. Comm. Employees Ass'n, AFSCME Council 11*, 2:19-cv-3709 (S.D. OH.).

The Liberty Justice Center is a nonprofit, nonpartisan, public-interest litigation center that seeks to protect economic liberty, private property rights, free speech, and other fundamental rights. The Liberty Justice Center pursues its goals through strategic, precedent-setting litigation to revitalize constitutional restraints on government power and protections for individual rights. The Liberty Justice Center represented Mark Janus before the United States Supreme Court in *Janus v. AFSCME*, 585 U.S. 878 (2018), which held that the First Amendment protects government employees from being compelled to pay money to a public-sector union. Since then, the Liberty Justice Center has represented many public employees in Ohio and across the country who have been forced to continue paying union dues after they've ceased their union membership. See *Uniatowski v. OAPSE, Local 579*, No. 1:25-cv-479 (N.D. Ohio 2025); *Cogar v. OAPSE, Local 367*, No. 1:24-cv-00314, (N.D. Ohio 2024); *Hannay v. AFSCME, Council 8*, No. 5:19-cv-00951 (N.D. Ohio 2019).

The Mackinac Center for Public Policy is a Michigan based, nonpartisan research and educational institute advancing policies fostering free markets, limited government, personal responsibility, and respect for private property. The Center is a 501(c)(3) organization founded in 1987. It has played a prominent role in studying and litigating issues related to mandatory collective bargaining laws. Since 2013, the Center has experience in informing millions of public employees about their rights related to mandatory bargaining, agency fees, and now the United States Supreme Court's decision in *Janus v. AFSCME*, 585 U.S. 878 (2018). In this experience, the

Center has developed a particular expertise in identifying pockets of public employees and their membership and/or union coverage status. The United States Supreme Court cited some of the Center's work in *Janus. Id.* at 896 n. 3.

STATEMENT OF THE CASE

Amici curiae adopt by reference the Statement of the Case set forth in Appellant's Memorandum in Support of Jurisdiction.

ARGUMENT

Proposition of Law: R.C. Chapter 4117 does not divest common pleas courts of jurisdiction over common-law challenges to dues deduction agreements when the relief sought requires adjudication of contract rights and defenses that SERB is not authorized to resolve.

I. Introduction

This case presents a simple question: when an employee challenges the validity of a dues deduction agreement under ordinary principles of contract law, is there any tribunal authorized to decide that claim? Under the court of appeals' approach, the answer is no. The Ohio State Employment Relations Board ("SERB") cannot adjudicate the contract claims the employee asserts, yet the courts are deemed powerless to hear them. Ohio law should not be construed to create that remedial vacuum.

Public employees may have good reasons for believing a particular dues authorization agreement is not a valid, enforceable contract, as demonstrated by the Complaint in this case. The decision below would place this contract-law issue in a forum designed to remedy unfair labor practices. The result is not merely a change of forum. It is a change to a forum where questions of consent, formation, rescission,

and enforceability will not be meaningfully adjudicated at all. Neither the text of Chapter 4117 nor Ohio precedent supports transforming ordinary contract disputes into labor disputes merely because a union is involved.

II. SERB’s Statutory Mission Does Not Extend to Common-Law Contract Disputes.

Nothing in Chapter 4117 authorizes SERB to resolve common-law contract disputes. The statute instead assigns SERB a narrower task: investigating and remedying unfair labor practices. R.C. 4117.12. This statute does not confer general authority on SERB to adjudicate common-law questions concerning the validity and enforceability of private agreements.

This Court has repeatedly confirmed this limitation. The Court has found that Chapter 4117 “created a series of new rights and set forth the remedies and procedures to be applied regarding those rights.” *Franklin Cty. Law Enforcement Assn. v. Fraternal Order of Police, Capital City Lodge No. 9*, 59 Ohio St. 3d 167, 170 (1991). However, Chapter 4117 does not grant SERB jurisdiction to hear or determine everything that “arguably” constitutes an unfair labor practice. *E. Cleveland v. E. Cleveland Firefighters Local 500, I.A.F.F.*, 1994-Ohio-174, ¶ 11. Nor does it transform SERB into a forum of general jurisdiction over all disputes arising in the public-employment context. *Cleveland Police Patrolmen’s Assn. v. White*, 109 Ohio App.3d 329, 334 (1996).

These cases reflect a simple principle: SERB’s authority is tied to the statute that created it. It may adjudicate unfair labor practices enumerated in R.C. 4117.11, or complaints that actually allege such conduct. But where a party asserts rights

independent of Chapter 4117, “then the party’s complaint may properly be heard in common pleas court.” *Id.*

The statute defines a finite set of unfair labor practices applicable to public employers and labor organizations. R.C. 4117.11. Conduct that falls outside those enumerated categories is not within SERB’s remedial authority. *See Keller v. Columbus*, 2003-Ohio-5599, ¶ 14, citing *E. Cleveland*, 1994-Ohio-174, ¶ 6; *see also Franklin Cnty. Law Enf’t Assn.*, 59 Ohio St.3d at 171 (1991).

Appellant’s claims fall outside that statutory framework. Unlike the statutory rights enumerated in R.C. 4117, the claims arise instead under ordinary principles of contract law—principles that long predate Ohio’s public sector labor statute and that govern questions of consent, formation, enforceability, and rescission. *See Cheatham I.R.A. v. Huntington National Bank*, 127 N.E.3d 45, 51-52, 2019-Ohio-3342 (analyzing contractual rights established before the 17th century). Ohio recognizes freedom of contract as a fundamental principle of private ordering. *Eastwood Mall, Inc. v. Slanco*, 68 Ohio St.3d 221, 223, (1994).

The Court of Appeals, however, effectively adopted a label-based approach. It concluded that the complaint “clearly sets out that unfair labor practices are being alleged” based on the repeated use of the word “unfair” and references to labor law concepts. *Sheldon v. Ohio Ass’n of Pub. Sch. Emps.*, 2025-Ohio-5210, ¶ 22, *appeal allowed sub nom. Sheldon v. Ohio Assn. of Pub. Sch. Emps.*, 2026-Ohio-846. But jurisdiction turns on the legal theory asserted, not on isolated words appearing in a

pleading. A contract claim does not become an unfair labor practice charge because the complaint discusses labor law.

Even on the lower court's own terms, its analysis is mistaken. The term "unfair" appears in the complaint primarily in quotations from other cases or in discussions distinguishing common-law contract theories from statutory unfair labor practice claims. It appears once in describing quotes from *Porpora v. Gatliff Bldg. Co.* for the proposition that contract terms are unconscionable if they are "unfair and commercially unreasonable." 2005-Ohio-2410, ¶ 8 (9th Dist.). That does not transform the pleading into a Chapter 4117 claim.

Similarly, the court relied on Appellant's allegation that OAPSE violated Chapter 4117.03(A)(1), "which is the right of a public employee to refrain from assisting a labor organization," and therefore violated Chapter 4117.11(B)(1), "which is a catch-all provision." *Sheldon*, 2025-Ohio-5210 ¶ 8. The complaint alleges no interference with Appellant's right to refrain from assisting a labor organization. Appellant cites Chapter 4117.03 one time, when discussing the basic structure of Ohio's collective bargaining law. (Am. Compl. ¶ 67). Nowhere in the complaint does Appellant allege the Union interfered with his ability to refrain from supporting the Union.

The court of appeals construed "conduct that constitutes an unfair labor practice specifically enumerated in Chapter 4117.11" too broadly. Although the payment of union dues may, in some contexts, involve an employee's assistance to a labor organization, Appellant does not challenge any statutory right to refrain from

such assistance. He challenges instead the validity of a contract authorizing wage deductions and the remittance of those funds to the Union. *See generally* Am. Compl. That claim arises under ordinary principles of contract law, not under Chapter 4117. *See Belgau v. Inslee*, 975 F.3d 940 (9th Cir. 2020) (finding state contract law governs dues authorization agreements).

The court of appeals' reliance on *AFSCME, OCSEA Local No. 11* does not bridge that gap. *Sheldon*, 2025-Ohio-5210, ¶ 13. In that case, SERB concluded that a union had misled employees regarding their ability to withdraw membership and had failed to inform employees of the rules governing revocation of dues deductions. *AFSCME, OCSEA, Local No. 11*, SERB No. 87-ULP-05-0217, 6 OPER ¶ 6397, 1989 WL 1703609 (May 12, 1989). SERB ordered reimbursement of improperly withheld dues as a remedy for conduct it determined violated Chapter 4117. *Id.*

That example demonstrates that SERB can remedy unfair labor practices involving dues deductions. But it says little about SERB's authority to adjudicate common-law contract claims. The question before SERB in that case was whether the union's conduct violated Chapter 4117. The question in this case is whether a dues deduction agreement was void, rescinded, unenforceable, or otherwise invalid under Ohio contract law.

A tribunal's ability to order reimbursement after finding a statutory labor violation does not establish authority to resolve independent questions of contract formation, consent, rescission, or enforceability. Yet those are precisely the issues presented when an employee challenges the validity of a dues-deduction agreement

under ordinary principles of contract law. *AFSCME* therefore illustrates SERB's authority to remedy unfair labor practices; it does not establish that SERB may serve as the exclusive forum for common-law contract disputes.

Because Appellant's claims do not require proof of an unfair labor practice, they fall outside SERB's statutory mission. This Court has already rejected the proposition that SERB may hear or determine every dispute that "arguably" implicates Chapter 4117. *E. Cleveland*, 1994-Ohio-174, ¶ 11. The decision below effectively revives that rejected approach, treating a common-law contract dispute as a statutory labor claim based on labels rather than legal substance.

III. Expanding SERB's Exclusive Jurisdiction Would Create a Remedial Vacuum for Common-Law Contract Claims.

The Court of Appeals treated Appellant's claims as though they arose under Chapter 4117 merely because they concern union dues. But the nature of a claim is determined by the rights asserted and the relief sought, not solely by the identity of the parties or the factual setting in which the dispute arises. See *Lingo v. State*, 2014-Ohio-1052, ¶ 38. (finding "the substance of the party's arguments and the type of relief requested determine the nature of the action.").

The lower court's holding that SERB has jurisdiction over the claims in this case creates a mismatch between the rights asserted and the forum deemed exclusive. Appellant does not seek relief under Chapter 4117. He asserts common-law challenges to the validity and enforceability of a dues deduction agreement. Those claims depend on traditional questions of contract law, including consent, formation, rescission, and enforceability. Yet the Court of Appeals concluded that the mere

connection between those claims and a labor-relations dispute places them within SERB's exclusive jurisdiction.

That reasoning creates an asymmetry. The existence of facts that might also be relevant to an unfair labor practice charge does not transform every legal theory arising from those facts into an unfair labor practice claim. Otherwise, common-law rights would disappear whenever they arise in a labor-relations setting. A contract claim would become a labor claim not because of the rights asserted, but because of the identity of the parties. This Court has never adopted such a rule.

Nor was SERB designed to serve as the exclusive forum for these disputes. SERB's authority is limited to administering Chapter 4117 and remedying unfair labor practices. Its inquiry focuses on whether conduct violates that statute. Its remedial authority is likewise directed toward curing statutory labor violations and making affected parties whole. R.C. 4117.12(B)(3). Nothing in Chapter 4117 grants SERB the traditional powers associated with adjudicating common-law contract disputes, such as determining whether an agreement is void, voidable, rescinded, or otherwise unenforceable under longstanding principles of Ohio contract law.

That limitation is significant. A jurisdictional rule ordinarily presents no difficulty when it merely redirects a claim from one tribunal to another. But a different problem arises when the designated tribunal lacks authority to adjudicate the rights asserted or grant the relief traditionally associated with those rights. In that circumstance, the claim is not redirected; it is effectively extinguished.

SERB was designed to perform a different function than the court of common pleas. The question before the agency is whether a statutory labor violation occurred. The question before a court in a contract case is whether an agreement remains legally enforceable. Although the same facts may bear on both inquiries, the inquiries themselves are distinct.

Recent litigation demonstrates the practical consequences of conflating them. In *Littlejohn*, an employee filed a complaint with SERB asking it to declare that the deduction of union dues from her paycheck was an unfair labor practice. *Littlejohn v. AFSCME, Ohio Council 8, AFL-CIO*, 2025-Ohio-5492 (1st Dist.). SERB determined that the Union did not commit an unfair labor practice and dismissed her complaint. *Id.* at ¶ 7. The employee then filed an action in common pleas court alleging the deduction of union dues violated the common law of contracts. *Id.* at ¶ 8. The trial court dismissed the complaint for lack of subject matter jurisdiction. *Id.* at ¶ 15. The First District affirmed, finding that the trial court would have lacked jurisdiction because the employee's contractual claims could have constituted an unfair labor practice. *Id.* at ¶ 16. The result was a procedural dead end. The employee was directed to a forum that had already declined to adjudicate the substance of her contract claims.

The appellate court relied on *Littlejohn* to find that SERB remained an appropriate forum to vindicate Appellant's claims. But that application creates a remedial vacuum. SERB dismisses the charge because no unfair labor practice occurred, yet courts also dismiss the contract action because the same conduct

supposedly constitutes an unfair labor practice. Effectively, any legitimate contract claims become incidental to the case and optional for the court.

Whether *Littlejohn* was correctly decided is not the point. Its significance lies in what it reveals about the rule adopted below. An employee may be directed to SERB because the dispute concerns union dues, while SERB remains confined to determining whether an unfair labor practice occurred. The employee's contract claims never receive meaningful adjudication because the forum deemed exclusive is not designed to resolve them.

The difficulty is not that SERB lacks expertise in labor law. It is that the claims at issue are not labor-law claims. They are common-law contract claims seeking adjudication of rights and remedies that fall outside SERB's statutory mission. Expanding SERB's exclusive jurisdiction to encompass those claims would not merely change the forum in which they are heard. It would place them in a forum that was never designed to resolve them.

That distinction is critical. Jurisdictional rules ordinarily redirect claims from one tribunal to another. The rule adopted below does something different. It removes common-law contract claims from the courts while assigning them to an agency whose authority is confined to determining whether an unfair labor practice occurred.

Ohio law should not be construed to require such a result. A jurisdictional rule that channels claims into a tribunal incapable of resolving them does not merely redirect those claims—it effectively extinguishes them.

IV. Chapter 4117 Should Not Be Construed to Leave Employees Without a Forum to Litigate Common-Law Challenges to Dues Authorization Agreements.

This Court need not decide whether Appellant’s contract claims ultimately succeed. The question presented is narrower: whether Chapter 4117 deprives Ohio courts of jurisdiction to adjudicate them. As demonstrated above, the court of appeals’ interpretation would channel common-law contract claims into an administrative forum whose authority is confined to unfair labor practices. The issue, therefore, is whether the General Assembly clearly intended that absurd result.

Ohio law presumes that statutes do not silently extinguish longstanding common-law rights. Rights and remedies are ordinarily presumed to travel together. Courts therefore hesitate to construe statutes in a manner that extinguishes longstanding causes of action without a clear indication that the General Assembly intended that consequence. *See e.g. Bresnik v. Beulah Park Ltd. Partnership, Inc.*, 1993-Ohio-19, ¶ 8 (finding “[n]ot every statute is to be read as an abrogation of the common law.”).

For instance, in *Siltstone Res., L.L.C. v. Ohio Pub. Works Comm’n*, 2022-Ohio-483, the Ohio Supreme Court held that the statutory scheme implementing Article VIII, Section 20 of the Ohio Constitution did not prohibit the Ohio Public Works Commission (OPWC) from seeking remedies at law and in equity. *Id.* at ¶ 53. The court noted that the statutory language was unambiguous and did not preclude OPWC from availing itself of longstanding common-law remedies associated with contracts, easements, and executed instruments. *Id.*

That principle has particular force here. The question is not whether the legislature created a new administrative mechanism for resolving labor disputes. It plainly did. The question is whether the legislature also intended to eliminate judicial forums for common-law challenges to the validity of private agreements authorizing dues deductions. Nothing in Chapter 4117 suggests such an intent. Just as the Court refused to infer the displacement of traditional contract and equitable remedies in *Siltstone* absent clear statutory language, it should decline to infer the displacement of traditional judicial authority over common-law contract claims here.

The practical consequences of the contrary rule are substantial. For many public employees, a challenge to a dues-deduction agreement is the only practical means of obtaining judicial review of whether wage deductions are supported by a valid and enforceable contract. Those disputes frequently turn on familiar questions of contract law: whether consent was obtained, whether an agreement remains enforceable, whether a party has rescinded or repudiated the agreement, or whether traditional defenses render the agreement void or voidable. Because breaches of contract do not necessarily constitute unfair labor practices, a jurisdictional rule that bars any tribunal from adjudicating such questions effectively nullifies the underlying rights.

The concern is not merely theoretical. Under the approach adopted below, an employee may be told that his claims belong before SERB because they arise from a dispute involving union dues. But SERB's inquiry focuses on whether conduct constitutes an unfair labor practice, not whether a dues authorization agreement is

void, voidable, rescinded, or otherwise unenforceable under ordinary principles of contract law. The result is a mismatch between the rights asserted and the forum available to adjudicate them.

The better reading of Chapter 4117 respects both the limits of SERB's authority and the continued vitality of Ohio common law. Courts should not presume that the General Assembly silently displaced traditional judicial authority to adjudicate common-law contract disputes. Nor should courts construe SERB's jurisdiction so broadly that the mere involvement of a union transforms every dispute touching a dues authorization agreement into a labor dispute. The nature of the claim—not the identity of the parties—should determine the forum.

This Court can avoid creating a remedial vacuum by holding that employees retain access to the courts when they assert common-law challenges to the validity of dues deduction agreements. Such a holding would preserve SERB's authority over unfair labor practices while ensuring that traditional contract claims remain capable of judicial resolution. Nothing in Chapter 4117 requires a contrary result, and sound principles of statutory construction counsel against one.

CONCLUSION

This case concerns forum, not outcome. Appellant asks only for a tribunal capable of adjudicating his common-law challenge to the enforceability of the dues deduction agreement. Chapter 4117 does not assign that task to SERB, and nothing in the statute suggests that the General Assembly intended to eliminate judicial review of such claims. The Court should reverse the judgment below and hold that

common pleas courts retain jurisdiction over common-law challenges to dues deduction agreements.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the above memorandum in support of jurisdiction was served this 8th day of June 2026 via e-mail on:

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