IN THE SUPREME COURT OF OHIO

MATTHEW SHELDON,

Plaintiff-Appellant

v.

OHIO ASSOCIATION OF PUBLIC SCHOOL EMPLOYEES/AMERICAN FEDERATION OF STATE, COUNTY and MUNICIPAL EMPLOYEES, LOCAL 541 – CARROLLTON EXEMPTED VILLAGE SCHOOLS, et al.,

Respondent-Appellees

Case No. 2025-1708

On Appeal from the
Seventh District Court of Appeals
Carroll County

Court of Appeals
Case No. 25 CA 0985

BRIEF OF AMICUS CURIAE LANDMARK LEGAL FOUNDATION IN SUPPORT OF PLAINTIFF-APPELLANT MATTHEW SHELDON

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STATEMENT OF INTEREST OF AMICUS CURIAE

Amicus Curiae Landmark Legal Foundation ("Landmark") is a national public-interest law firm committed to preserving the principles of limited government, separation of powers, federalism, originalist construction of the Constitution, and individual rights. Landmark has a history of filing briefs in cases dealing with labor law issues such as *Glacier Northwest, Inc. v. Internatl. Bhd.of Teamsters Loc. Union No. 174*, 598 U.S. 771 (2023), *Boardman v. Inslee*, 978 F.3d 1092 (9th Cir. 2020), and *Janus v. Am. Fedn. of State, Cty., and Mun. Employees, Council 31*, 585 U.S. 878 (2018).

Landmark urges this court to hold that the present case presents a straightforward contract dispute and that jurisdiction properly lies in the Court of Common Pleas.

STATEMENT OF THE CASE

Amicus Curiae adopts by reference the Statement of the Case set forth in Plaintiff-Appellant's Brief.

I. Introduction

Regrettably, the legal framework designed to protect American workers from abusive employers is being used to shield a union's wrongful treatment of a school custodian. Plaintiff-Appellant Matthew Sheldon's contract claims are in jurisdictional limbo. This should not stand for several reasons.

First, the federal regulatory scheme is instructive here. Ohio's State Employment Relations Board (SERB), created by statute, was modeled in large part after the NLRB. The National Labor Relations Act (NLRA), 29 U.S.C. 151–169, sought to balance the unequal bargaining power between worker and employer. It did so through granting workers the rights to strike and to collective bargaining. And it channels disputes between management and labor towards peaceful resolution through the National Labor Relations Board (NLRB), which has the power to provide injunctive relief and awards of back pay to address unfair labor practices (ULPs).

The national framework under the NLRA, including *Garmon* preemption, is broad, but it still has specific exceptions for deeply rooted local issues or claims with peripheral concern to the statute. *San Diego Bldg. Trades Council v. Garmon*, 359 U.S. 236 (1959). In short, the national framework does not displace all common-law claims brought in state courts. This principle was most recently upheld in *Glacier Northwest, Inc. v. Internatl. Bhd. of Teamsters Local Union No. 174*, 598 U.S. 771 (2023). Despite the contention that the dispute was an unfair labor practice, the

U.S. Supreme Court held that an employer could seek redress in state court for the tortious destruction of its property by union-affiliated employees.

Glacier shows the importance of a perspective that should be brought to bear here. Many disputes between employer and employee could be deemed to be an unfair labor practice when framed broadly enough. But that does not justify ignoring a particularized injury, like the improper collection of money from Mr. Sheldon's paycheck. And SERB, like the NLRB in the federal system, has limited ability to provide relief. This shows the need to have another avenue for redress of Mr. Sheldon's claims to avoid injustice, namely, the courts.

Another reason in favor of a judicial review of Mr. Sheldon's claims is the importance of the constitutional matters this case implicates. The ongoing problem of compelled political speech and the waiver of First Amendment rights in public-sector unions led the Supreme Court to overturn a forty-one-year-old precedent in *Janus v. Am. Fedn. of State, Cty. & Mun. Emps., Council 31*, 585 U.S. 878 (2018). There is more at stake here than the dollars extracted from Mr. Sheldon's paycheck.

For these reasons, Amicus Curiae Landmark Legal Foundation urges this Court to grant the Plaintiff-Appellant's requested relief.

ARGUMENT

Proposition of Law: The Structural Similarities Between the NLRB and SERB Make Federal Precedent Relevant Here and Show That Ohio Courts Have Jurisdiction to Hear Plaintiff-Appellant's Contract Claims.

I: The agencies' founding statutes and scholarship imply that SERB was modeled after the NLRB in key respects.

The National Labor Relations Act, 29 U.S.C. 151–169, was passed in 1935 to address comprehensively the widespread unrest caused by labor disputes. The Act is the "product of a half-century of violent labor uprisings, judicial interference with the right to organize, the economic strife of the Great Depression, and New Deal experimentation" with the structure of government. Fred B. Jacob, *The National Labor Relations Act, the Major Questions Doctrine, and Labor Peace in the Modern Workplace*, 65 B.C. L. Rev. 1381, 1387 (2024). Given the NLRA's applicability almost exclusively to the private sector, states began to pass similar statutes covering their public-sector employees shortly after the Act's passage. *See, e.g.*, Wis. Stat. 111.70; N.Y. Civ. Serv. Law, 200–214; Pa. Stat. Ann., Title 43, 1101.101–1101.2301; Mass. Gen. Laws ch. 150E, 1–15. Beyond their similar aims, these acts created administrative boards that tend to have similar structures and functions as the NLRB. And also like their federal counterpart, the state boards primarily mediate disputes, offer injunctive and limited monetary forms of relief, and enforce collective bargaining agreements.

Many different contemporaneous and modern sources detail the extensive connections between the NLRA and the state statutes it spawned. For example, scholarly sources often refer to these state bills as Baby Wagner Acts or Little Wagner Acts to emphasize their similarity. Harry A. Millis & Harold A. Katz, *A Decade of State Labor Legislation 1937-1947*, 15 U. Chi. L. Rev. 282, 283 (1948); Nicholas Unkovic, *The Pennsylvania Labor Relations Act*, 44 Dick. L. Rev. 16, 16 (1939); Frederick A. Whitney, *Some Effects of the National Labor Relations Act on the Law of Contracts of Employment*, 18 St. John's L. Rev. 85, 92 (1944). And at least one state equivalent of the NLRB akin to Ohio's SERB (the Massachusetts Department of Labor Relations) still to this day refers to its founding statute with this same "Baby Wagner Act" phrasing on its website. Mass. Dept. of Labor Relations, *A Guide to the Massachusetts Public Employee Collective Bargaining Law* 12 (Feb. 24, 2022), https://www.mass.gov/doc/a-guide-to-the-massachusetts-public-employee-collective-bargaining-law-0/download (accessed June 7, 2026) [https://perma.cc/4JTH-NTWP]. The comparison makes sense. The similarity is so pronounced that while the federal NLRB lacks a quorum, states like Massachusetts, as well as California and New York, are considering laws to temporarily fold private sector ULP jurisdiction into their existing state structures. Mark G. Eskenazi, *States Pondering 'Trigger' Legislation to Enforce the National Labor Relations Act* (July 14, 2025), https://www.foxrothschild.com/publications/states-pondering-trigger-legislation-to-enforce-the-national-labor-relations-act (accessed June 6,

2026). Details vary state by state, but the inspiration and basis for each of these state boards is unmistakably the NLRB.

Ohio's is no different. Although Ohio's statute establishing SERB was not passed until decades after the NLRA, the clear overlaps between the two laws strongly indicate that Senate Bill 133 was likewise inspired by the NLRA. One law review article published shortly after its passage noted that "the Ohio Act is unmistakably modeled in many significant respects after the NLRA," one Ohio legislator who thought otherwise notwithstanding. Rebecca White, Robert E. Kaplan, & Michael W. Hawkins, *Ohio's Public Employee Bargaining Law: Can it Withstand Constitutional Challenge?*, 53 U. Cin. L. Rev. 1, 5 fn. 22 (1984).

Examples in the laws' text of major similarities abound, with several instances of exact or near-exact wording matches. For example, both laws include references to removal protections for board members, *compare* R.C. 4117.02 *with* 29 U.S.C. 153(a), and references to religious exemptions from union membership, *compare* R.C. 4117.09(C) *with* 29 U.S.C. 169. Both laws also empower the boards to provide back pay to workers alleging their firing to be a ULP, *compare* R.C. 4117.12(B)(4) *with* 29 U.S.C. 160(c), and to meet outside the capitals of their respective jurisdictions, *compare* R.C. 4117.02(J) *with* 29 U.S.C. 155. There are also sections like the elaboration of unfair labor practices and the types of remedies available for ULPs where the differences that are present do not defeat the comparison. And even when the text is not copied verbatim, the spirit of the NLRA is evident throughout the law.

For this reason, "it is probable the federal body of law construing that statute will be used to interpret the often ambiguous provisions of the Ohio law." White et al., *supra*, at 5. This makes sense. Although the federal caselaw does not formally control here, it provides a useful guide for Ohio courts looking to discern the original meaning of the statute. Addressing this point, this court has already affirmed the relevance of analogous federal caselaw. In 2015, it said that "[w]hat we can reasonably glean . . . is that the legislature desired to grant SERB and Ohio courts the discretion to interpret and apply R.C. Chapter 4117 consistent with NLRA and the decisions of NLRB and federal courts." *Greater Dayton Regional Transit Auth. v. State Emp. Relations Bd.*, 2015-Ohio-2049, ¶ 23 (10th. Dist.). This broad conclusion echoes an earlier decision which spoke specifically to venue disputes like the instant case. In 1993, the Supreme Court of Ohio held that "R.C. Chapter 4117's treatment of ULP cases is modeled to a large extent on the federal statutes that empower the NLRB to resolve ULP charges in cases within its jurisdiction." *State Emp. Relations Bd. v. Adena Local School Dist. Bd. of Edn.*, 1993-Ohio-118, ¶ 39. With this, we turn to the substance of the federal precedents.

II: The federal case law addressing similar jurisdictional questions should be instructive here, and it bolsters Plaintiff-Appellant's assertion that Ohio courts can hear this case.

The NLRA/NLRB regulatory framework does not displace all contract claims, as stated explicitly in the statute and as further interpreted in caselaw. Congress amended the NLRA in 1947 with the Labor Management Relations Act, 1947 (Taft-

Hartley), 29 U.S.C. 141 et seq., to provide that lawsuits over violations of collective bargaining agreements could be brought in federal courts under Section 301. 29 U.S.C. 185. *Compare* R.C. 4117.09 (granting parties to a collective bargaining agreement the right to sue in a court of common pleas).

Later, the U.S. Supreme Court extended the reach of the NLRA. It held that "[w]hen an activity is arguably subject to § 7 or § 8 of the [NLRA]," which define the rights of employees and the conduct that constitutes an unfair labor practice, respectively, "the States, as well as the federal courts must defer to the exclusive competence of the National Labor Relations Board." *San Diego Bldg. Trades Council v. Garmon*, 359 U.S. 236, 245 (1959). *Garmon* preemption is admittedly broad. However, Justice Frankfurter, writing for the majority, identified two important exceptions from this preemption: claims of a "peripheral concern" to the statute and claims touching "interests so deeply rooted in local feeling and responsibility . . . [the Court] could not infer that Congress had deprived the States of the power to act." *Id.* at 243, 244. As explained below, these exceptions include contract and tort claims.

The specific case cited in *Garmon* as an example of peripheral concern was *Internatl. Assn. of Machinists v. Gonzales*, 356 U.S. 617 (1958), another Frankfurter opinion, and one related to a union membership agreement. In this case, a marine machinist was expelled from his union. Under California law, membership created a contractual relationship governed by the union's constitution and by-laws, so wrongful termination created a breach of contract claim. *Id.* at 618. California state

courts could provide remedial relief, including reinstatement and damages for lost wages and physical or mental suffering. *Id.*

Although *Gonzales* involves the restoration and not revocation of union membership, the opinion made several points relevant here. The NLRA did not prevent state courts from addressing these types of claims. *Id.* at 619. The Court continued that the NLRA did not provide remedies for wrongful expulsion from union membership, so even if the union's conduct was an unfair labor practice, the NLRB might have been able to provide back pay but not damages for mental or physical suffering. *Id.* at 621. And "the possibility of partial relief from the [NLRB] does not, in such a case as is here presented, deprive a party of available state remedies for all damages suffered." *Id.* Finally, the Court noted that even though there was possible factual overlap between a state court claim and a claim brought to the NLRB, the risk that the state claim would interfere with national labor policy was "remote." *Id.* It did not involve "employer discrimination against an employee, the evil the Board is concerned to strike at as an unfair labor practice." *Id.* at 622.

Gonzales is thus relevant here. This case centers on the union membership agreement, not the CBA. As the Supreme Court later explained, *Gonzales* was a case "'focused on purely internal union matters' . . . a subject the [NLRA] leaves principally to other processes of law." *Amalgamated Assn. of St., Elec. Ry. & Motor Coach Emps. v. Lockridge*, 403 U.S. 274, 296 (1971), quoting *Local 100 of United Assn. of Journeymen and Apprentices v. Borden*, 373 U.S. 690, 697 (1963). And like

the NLRB in *Gonzales*, SERB has only a limited ability to provide relief in a breach of contract dispute.

Since *Garmon*, the Court has further explained what the "peripheral concern" and "local interest" exceptions entail and what the NLRA, as amended by Taft-Hartley, did not displace. Both tort and contract claims have been allowed to proceed in court. In *Smith v. Evening News Assn.*, 371 U.S. 195 (1962), the Court held that under Section 301 an individual employee could bring a breach of contract claim against the employer. The suit was not preempted by *Garmon* even though "the alleged conduct of the employer, not only arguably, but concededly, is an unfair labor practice within the jurisdiction of the National Labor Relations Board." *Id.* at 197. Thus, "[t]he authority of the Board to deal with an unfair labor practice . . . [was] not exclusive and does not destroy the jurisdiction of the courts in suits under § 301." *Id*. Likewise, "[t]he authority of the Board to deal with an unfair labor practice which also violates a collective bargaining contract [was] not displaced by § 301." *Id*. The Court recognized that jurisdiction was concurrent with the Board and the courts.

In *William E. Arnold Co. v. Carpenters Dist. Council*, 417 U.S. 12 (1974), the Court reaffirmed the logic of *Smith*. The Court asserted that as the NLRA did not explicitly grant to the NLRB exclusive jurisdiction over CBA disputes, it must be inferred that "Congress deliberately chose to leave the enforcement of collective agreements 'to the usual processes of the law.'" *William E. Arnold Co.*, 417 U.S. at 16, quoting *Charles Dowd Box Co. v. Courtney,* 368 U.S. 502, 513 (1962). And

actions brought under Section 301 could be heard in state as well as federal courts. 417 U.S. at 20.

In *Belknap, Inc. v. Hale*, 463 U.S. 491 (1983), replacement workers who were fired after a union strike was settled sued the employer for breach of contract and misrepresentation. The Court clarified that the local-feeling exception of *Garmon* included traditional common-law contract claims: "[t]he interests of the Board and the NLRA, on the one hand, and the interest of the State in providing a remedy to its citizens for breach of contract, on the other, are 'discrete' concerns." *Id*. at 512. Furthermore, the Court saw "no basis for holding that permitting the contract cause of action [would] conflict with the rights of either the strikers or the employer or would frustrate any policy of the federal labor laws." *Id*. The Court made clear that the "critical inquiry in applying the *Garmon* rules, where the conduct . . . is said to be arguably prohibited by the Act, and hence within the exclusive jurisdiction of the NLRB, is whether the controversy presented to the state court is identical with that which could be presented to the Board." *Id*. at 510.

Most recently, in *Glacier Northwest, Inc. v. Internatl. Bhd. of Teamsters Loc. Union No. 174*, 598 U.S. 771 (2023), the Court held that the NLRA did not preempt or deprive "a state court of its power to adjudicate a state-law tort claim." 598 U.S. at 787 (2023) (Thomas, J., concurring in judgment). The *Glacier* majority looked to the NLRB's precedents and found that the conduct in question—a strike that did not take reasonable steps to prevent foreseeable damage—was "neither protected nor prohibited by the [NLRA]" and, thus, within the jurisdiction of the courts to

redress. *Sears, Roebuck & Co.* v. *San Diego Cty. Dist. Council of Carpenters*, 436 U.S. 180, 199, fn. 29 (1978). The strike conduct at issue went beyond that which was protected by the NLRA. The matter of law to be adjudicated concerned traditional common law questions of trespass and conversion and not the specific, enumerated provisions of the statute which created the NLRB. Thus, the expertise and authority to answer these common law questions lay with judges, not those who are primarily "knowledgeable about labor relations or personnel practices," as is the bar set by R.C. 4117 for a member of the SERB. R.C. 4117.02(A).

The final relevant Supreme Court precedent that counsels in favor of rejecting the motion to dismiss is *Janus v. Am. Fedn. of State, Cty. & Mun. Emps., Council 31,* 585 U.S. 878 (2018). The court below dispensed with Mr. Sheldon's First Amendment claims by minimizing the impact of *Janus* on state law, claiming that "prohibited only the deduction of dues from employees who never consented to join the union." *Sheldon v. Ohio Assn. of Pub. Sch. Emps./Am. Fedn. of State, Cty. & Mun. Emps., Local 541*, 2025-Ohio-5210, ¶ 32 (7th Dist.).

But this interpretation preemptively closes the door to questions *Janus* left unaddressed. While *Janus* explicitly requires "clear[] and affirmative[] consent before any money is taken from [employees]" by unions, the majority notably does not foreclose claims about the revocation of consent. Scholars seemingly critical of the *Janus* decision have specifically made this point. Janus, 585 U.S. at 930. In their view, "[l]aws that restrict the revocation of dues authorizations to a window period . . . are potentially vulnerable to the same argument about compelled speech

and association that brought down fair share fees." Catherine L. Fisk & Martin H. Malin, *After Janus*, 107 Calif. L. Rev. 1821, 1859 (2019). This claim is not mere conjecture, either. They cite to a federal case in Pennsylvania where a maintenance-of-membership provision was enjoined, blocking it from forcing union members into paying dues until the expiration of a three-year collective bargaining agreement. *See McCahon v. Pennsylvania Tpk. Comm.*, 491 F. Supp. 2d 522 (M.D. Pa. 2007).

At the circuit-court level, *Belgau v. Inslee*, 975 F.3d 940 (9th Cir. 2020), is one of the first of these major post-*Janus* First Amendment cases to be heard in federal court. Although resolved unfavorably, it demonstrates the reasons claims like Plaintiff-Appellant's should be able to proceed. There remains uncertainty on the constitutional implications of *Janus* with respect to short opt-out windows for union membership that warrants consideration by judges, rather than labor relations experts. Mr. Sheldon's and similar contracts obligate the dues-payer to materially support whatever political speech the union decides to make in the upcoming year. It is certainly understandable for unions to desire to streamline the withdrawal process to better predict their financial situations, but this must be balanced with individuals' constitutionally protected rights of freedom of speech and of conscience.

This is quintessentially the work of common law courts. SERB is not equipped to act as a stand-in for a common law court to adjudicate viable and legitimate constitutional claims, and there is no requirement in R.C. 4117 for them to do so.

CONCLUSION

R.C. 4117 does not explicitly grant the SERB jurisdiction over this suit, nor can it be logically inferred to be in the legislature's design that common law contract claims must be heard by the Board. This Court should rule in favor of Mr. Sheldon and find that he has standing to bring this suit and that a common pleas court has jurisdiction to hear it.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certify that a copy of the foregoing Brief of Amicus Curiae Landmark Legal Foundation in Support of Appellants was served this 8th day of June, 2026, by Landmark Legal Foundation on the following:

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