

IN THE SUPREME COURT OF OHIO

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

MERIT BRIEF OF APPELLANT MATTHEW SHELDON

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INTRODUCTION

This case asks whether public employees can challenge the validity or enforceability of their union membership and dues deduction contracts in common pleas court, or if exclusive jurisdiction over those disputes lies with the State Employment Relations Board (“SERB”).

The courts below held that Mr. Sheldon’s exclusive remedy is to file an unfair labor practice charge with SERB. By contrast, SERB, in a nearly identical case, declined to address these contractual claims and, instead, addressed whether the union’s actions might have violated R.C. 4117.11, which neither the other plaintiff nor Mr. Sheldon ever alleged. It concluded that its “investigation revealed no probable cause existed to believe the Charged Party violated R.C. 4117.11,” with no reasoning other than a vague reference to unidentified federal cases. It is no surprise that SERB did not address the common law contract claims like Mr. Sheldon’s because it could not—that is for courts, not the limited jurisdiction SERB. In light of these conflicting decisions, public employees seeking to assert their common law contractual rights are seemingly left with no forum to adjudicate their claims.

At its simplest, Mr. Sheldon is seeking a declaration that his contract with OAPSE—the contract that permitted OAPSE to continue to withdraw dues from his paycheck even after his union membership had ended—is invalid and imposes an impermissible penalty under Ohio contract law. Mr. Sheldon seeks a forum in which he can bring his contractual claims. Mr. Sheldon’s case arrives in this Court because 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.

STATEMENT OF THE FACTS AND CASE

I. Statement of the Facts

A. Mr. Sheldon joined OAPSE via a “checkoff card.”

The material facts are undisputed. In 2016, Mr. Sheldon joined the Ohio Association of School Employees (“OAPSE”) by signing a pre-printed postcard-size checkoff card (the “Dues Deduction Contract”). The Dues Deduction Contract stated that he was joining the union and authorizing his employer to deduct union membership dues from his pay and give the dues to OAPSE. Mr. Sheldon agreed in the Dues Deduction Contract to the deduction of “State dues and Local dues as set forth herein or as increased from [his] salary or wages.” (Am. Compl. Ex. A). The Dues Deduction Contract limited Mr. Sheldon’s ability to withdraw his authorization to a 10-day period, or the contract automatically renews. *Id.*

In January 2024, Mr. Sheldon notified OAPSE that he was opting out of his membership and no longer wanted to be a member of, or otherwise associated with, OAPSE. *See* (Am. Compl. ¶ 55). Mr. Sheldon requested that OAPSE membership dues no longer be deducted from his paychecks. Mr. Sheldon’s request was outside of the ten-day opt-out window. OAPSE accepted Mr. Sheldon’s membership resignation and acknowledged in writing that he was no longer a member of OAPSE. (Am. Compl. Ex. B). OAPSE terminated his “membership-only” benefits. But OAPSE refused to terminate Mr. Sheldon’s dues deductions, because—according to OAPSE—Mr. Sheldon’s revocation did “not satisfy the requirements set forth on the membership application [he] signed.” *Id.*

B. Federal court decisions subsequent to Mr. Sheldon joining OAPSE directed disaffected public employees to challenge dues-deduction contracts through state common law contract claims.

After Mr. Sheldon joined OAPSE, two cases drastically changed the relationship between public employees and public sector unions: the U.S. Supreme Court's 2018 decision in *Janus v. Am. Fed'n of State, Cnty., & Municipal Employees, Council 31*, 585 U.S. 878 (2018) and the Ninth Circuit's 2020 decision in *Belgau v. Inslee*, 975 F.3d 940 (9th Cir. 2020).

In *Janus*, 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. *Janus* at 886. The Court held that mandatory agency fees as a condition of public employment were unconstitutional. *Id.* at 929. Specifically, 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. *Id.* at 888–89.

After *Janus*, public employees, upset that union funds were used to support

political opinions with which they disagreed, quit their unions and demanded that the unions stop taking their dues—asserting their First Amendment rights pursuant to *Janus*. See, e.g., *Thompson v. Marietta Educ. Ass’n*, 972 F.3d 809, 812 (6th Cir. 2020). And while many public sector unions, such as OAPSE here, recognized employees’ right to disassociate themselves from the union by terminating their union membership, the unions argued that they were still entitled to keep collecting dues because the unions’ dues deduction contracts required members to give notice of termination of dues collection during a narrow window. The unions distinguished resigning employees from the plaintiff in *Janus*, who never joined the union and never signed a Dues Deduction Contract.

In 2020, the Ninth Circuit agreed with the unions, holding that while *Janus* applied to nonunion employees who sought relief from “fair share” fees, its holding, rooted in the First Amendment right to avoid compelled speech, did not apply to employees who had voluntarily joined the union and signed a Dues Deduction Contract. *Belgau*, 975 F.3d at 952. The *Belgau* court held instead, that for employees who had voluntarily entered into a private contract with the union, state contract law governed their obligation to continue to pay dues during the contract period. *Id.* at 950. The *Belgau* court explained “[w]hen ‘legal obligations . . . are self-imposed,’ state law, not the First Amendment, normally governs.” *Id.* Other federal courts of appeals reached the same conclusion. See, e.g., *Littler v. Ohio Ass’n of Pub. Sch. Emps.*, 2022 WL 898767 (6th Cir. Mar. 28, 2022); *Bennett v. Council 31 of the Am. Fedn. of State, Cty. & Mun. Emps., AFL-CIO*, 991 F.3d 724,731 (7th Cir. 2021) (following *Belgau*).

C. Prior State Court Challenges and the SERB Preemption Question.

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. Emps.*, 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, conceivably could be cast as unfair labor practices under R.C. 4117.11, SERB had exclusive jurisdiction over them. *Id.* at ¶ 7. On appeal, the Tenth District Court of Appeals affirmed the trial court's dismissal, holding that because the claims were essentially unfair labor practice claims, the plaintiffs' only relief was in SERB. *Id.* at ¶ 22.

The following year, another former union member, Necole Littlejohn, found herself in a similar position. *Littlejohn v. Am. Fedn. of State, Cty., & Mun. Emps.*, 2025-Ohio-5492 (1st Dist.). Ms. Littlejohn is a public employee who was at one time a member of the union. *Id.* at ¶ 4. Ms. Littlejohn resigned from her union and demanded that the union immediately cease deducting her membership dues from her paycheck. *Id.* at ¶ 5.

The union immediately terminated her membership but continued to take her membership dues even though she was no longer a union member. *Id.* The union justified its actions pointing to the Dues Deduction Contract, which allowed Ms. Littlejohn to cancel her dues deduction only during a narrow ten-day opt out window.

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 (June 20, 2024). SERB reviewed the charge and dismissed it, stating that based on unspecified federal court decisions¹, the union’s continued membership dues collection did not constitute an unfair labor practice under R.C. 4117.11. *Id.* SERB’s 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. The First District affirmed on appeal. *Littlejohn*, 2025-Ohio-5492, ¶ 29.

II. Procedural History

Mr. Sheldon, following *Belgau’s* guidance, challenges the validity of the Dues Deduction Contract. Mr. Sheldon seeks a declaration that his Dues Deduction Contract is invalid or unenforceable under long-standing principles of Ohio contract law. Specifically, Mr. Sheldon’s Amended Complaint asserted five causes of action against OAPSE, all sounding in Ohio’s common law of contracts: (1) the Dues Deduction Contract was rescinded based on mutual repudiation; (2) the Dues

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.

Deduction Contract was rescinded based on mutual mistake; (3) the post-resignation collection of union dues amounted to unreasonable liquidated damages—i.e., an unenforceable penalty; (4) the contract is an unenforceable contract of adhesion; and (5) if the Dues Deduction Contract was invalid, OAPSE has been unjustly enriched by his continued payment of dues when OAPSE no longer provided him with the benefits of union membership. (Am. Compl. ¶¶ 89–133). Mr. Sheldon also sought a declaratory judgment regarding SERB’s jurisdiction over his contractual claims. (Am. Compl. ¶¶ 134–139). The trial court granted OAPSE’s motion to dismiss for lack of subject matter jurisdiction. (Entry Granting Mot. to Dismiss). He did not allege any violation of R.C. Chapter 4117.

Although Mr. Sheldon’s claims arose from the common law of contracts, the trial court held that those claims, if true, were unfair labor practices, and that exclusive jurisdiction rested with SERB. The Seventh District Court of Appeals affirmed the trial court’s decision on November 14th, 2025, on the same grounds as the common pleas court. (Opinion and Judgment Entry Case No. 25 CA 0985). This Court granted jurisdiction to determine whether common pleas courts have jurisdiction to adjudicate the validity of Mr. Sheldon’s Dues Deduction Contract with OAPSE.

III. 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). “In order for a court to dismiss a complaint for failure to state a claim upon which relief can be granted, it must appear beyond doubt from the complaint that the plaintiff can prove no set of facts entitling him to recovery.” (Internal citation omitted.) *O’Brien v. Univ. Community Tenants Union, Inc.*, 42 Ohio St.2d 242, paragraph one of the syllabus (1975).

ARGUMENT IN SUPPORT OF PROPOSITIONS OF LAW

Proposition of Law No. 1: Common pleas courts have jurisdiction to adjudicate the validity of dues deduction contracts between public employees and unions because the employees’ common law rights to challenge the validity of those contracts arise independent of R.C. Chapter 4117.

I. This Court’s decision in *Ohio Council 8, AFSCME, AFL-CIO v. Lakewood*, reaffirmed that Ohio’s Public Employee Collective Bargaining Act, R.C. Chapter 4117, does not divest courts of jurisdiction over private contractual disputes.

This 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 Court has specifically rejected OAPSE’s view of SERB’s broad preemption power: “[T]o 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 (1994).

While Ohio courts have held SERB has exclusive jurisdiction over 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 Cnty. L. Enft Ass’n v. Fraternal Ord. of Police, Cap. City Lodge No. 9*, 59 Ohio St. 3d 167, 171 (1991). Indeed, the *Franklin Cnty. Law Enforcement Ass’n* 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.

This 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. 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. at ¶ 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 Cnty. L. Enf’t Ass’n*, paragraph two of the syllabus.

Lakewood addressed an arbitration agreement within the collective bargaining agreement (“CBA”). The CBA at issue in *Lakewood* 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.* at ¶ 3. In *Lakewood*, the union filed a grievance on behalf of a fired employee and the parties began arbitration proceedings. *Id.* Before the arbitration hearing began, however, “the parties agreed to a last-chance agreement (‘LCA), under which the employee was reinstated.” *Id.* at ¶ 4. 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. *Id.* at ¶¶ 5–6. 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.*

This Court unanimously 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 ¶ 31.

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.

Lakewood, 2025-Ohio-2052 at ¶ 27.

The test articulated in *Lakewood* is essentially a clearer recitation of the test that the Court prescribed in *Franklin Cnty. Law Enforcement Ass’n*, 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 Cnty. L. Enft Ass’n*, 59 Ohio St.3d at 171. Applying the *Lakewood* test, if the rights asserted “exist independently of R.C. Chapter 4117,” “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.* at 172; *see also Ohio Ass’n 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 settled 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.”).

II. Based on *Lakewood*, courts have jurisdiction over Mr. Sheldon’s claims because the validity, rights, and obligations of the Dues Deduction Contract do not arise out of R.C. Chapter 4117.

This case is even further afield from SERB’s jurisdiction than *Lakewood*. The contract in dispute here is neither the collective bargaining agreement between a public employer and the union nor a contract regulated by R.C. Chapter 4117. It is, instead, a private contract for membership and dues deduction authorization between OAPSE and Mr. Sheldon, independent of their statutory relationship. The Dues Deduction Contract does not touch on any collective bargaining topic in the CBA, as

Lakewood did. Nor does it relate to any collective bargaining services that OAPSE is statutorily required to provide to all employees in the bargaining unit, regardless of whether they are union members or nonmembers. The Dues Deduction Contract has nothing to do with the parties' statutory relationship. Under the contract, Mr. Sheldon agreed to become an OAPSE member and pay membership dues in exchange for the benefits and privileges from OAPSE *beyond* the services that OAPSE 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 those services which it was already statutorily required to provide would fail for lack of consideration.

OAPSE cannot disclaim its statutory obligations—which it accepted in exchange for its status as the exclusive bargaining agent—or condition them on membership any more than the employees can opt out of the bargaining unit. *See Janus*, 585 U.S. at 885–86; R.C. 4117.03–06. The Dues Deduction Contract governs only the conditions under which employees join or resign from OAPSE and any additional benefits that are necessarily separate and apart from OAPSE's statutory obligations as the bargaining unit representative. As such, R.C. Chapter 4117 does not govern the validity of the Dues Deduction Contract.

Common law challenges to employee-union contracts are legally different from challenges to union unfair labor practices. SERB has no jurisdiction over the former, but it does over the latter. *Lakewood* reiterated the limits of SERB's exclusive jurisdiction to (1) ULP charges filed with SERB and (2) a complaint in the common pleas court that “alleges conduct that constitutes an unfair labor practice specifically

enumerated in R.C. 4117.11.” *Lakewood*, 2025-Ohio-2052, at ¶ 8. Mr. Sheldon did not file in SERB, so only the second path could possibly give SERB jurisdiction. But it fails because Mr. Sheldon is challenging the validity of the Dues Deduction Contract under the common law. He is not alleging a violation of R.C. Chapter 4117, or any other statute for that matter. The Seventh District’s decision ignores *Lakewood*, instead adopting an overly broad jurisdictional test, which recasts Mr. Sheldon’s common law challenge to the validity of the Dues Deduction Contract into a challenge under R.C. Chapter 4117. *See* (Opinion and Judgment Entry Case No. 25 CA 0985 at 9–10). *Lakewood* allows no such thing.

The Seventh District’s approach ignores the jurisdictional starting point that common pleas courts have jurisdiction over cases brought under Ohio’s Declaratory Judgment Act. “Article IV, Section 4(B) of the Ohio Constitution states that common pleas courts have ‘such original jurisdiction over all justiciable matters * * * as may be provided by law.’” *Highland Tavern, L.L.C. v. DeWine*, 2023-Ohio-2577, ¶ 22 (lead opinion). This Court has read that constitutional provision to mean that “the general subject matter jurisdiction of Ohio courts of common pleas is defined *entirely by statute*.” *Id.* (lead opinion), quoting *Ohio High School Athletic Ass’n v. Ruehlman*, 2019-Ohio-2845, ¶ 7. With respect to actions for declaratory judgment like Mr. Sheldon’s, a plurality of this Court has observed that “[t]he General Assembly exercised its power to define the subject-matter jurisdiction of the common pleas courts in enacting R.C. Chapter 2721, the Declaratory Judgment Act. * * * ‘[C]ourts of record may declare rights, status, and other legal relations,’ R.C. 2721.02(A).” *Id.*

(lead opinion), quoting *Cincinnati v. Fourth Natl. Realty, L.L.C.*, 2020-Ohio-6802, ¶ 22 (Kennedy, J., concurring). Here, the legislature specified in R.C. 2721.13 that “[t]he provisions of [the declaratory-judgment] chapter are remedial and shall be liberally construed and administered.” *Id.*

R.C. Chapter 4117 carves out a narrow exception to the general statutory jurisdiction of common pleas courts. It grants SERB exclusive jurisdiction only for statutory disputes relating to the “new rights” and remedies created by R.C. 4117. *Franklin Cnty. L. Enft Ass’n*, 59 Ohio St.3d at 171. But “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.” *Id.* “[C]ommon-law contractual rights that exist independently of R.C. 4117” is a specific example of claims where SERB’s jurisdiction would not be exclusive. *Id.* Indeed, as the Court noted in *Highland Tavern*, the General Assembly enacted the Declaratory Judgment Act specifically to allow parties to seek a determination of their common law rights under a contract. *Highland Tavern* at ¶¶ 21–22. That is exactly what Mr. Sheldon did here. He sought a declaration of his rights and the validity of the Dues Deduction Agreement.

While the Seventh District suggests that Mr. Sheldon *could have* sought relief under R.C. 4117.03(A)(1)’s right to “refrain from . . . assisting” OAPSE, the fact that a statutory remedy might also exist does not oust the trial court from jurisdiction:

Where a statute which creates a new right, prescribes the remedy for its violation, the remedy is exclusive; but when a new remedy is given by statute for a right of action existing independent of it, without excluding

other remedies already known to the law, the statutory remedy is cumulative merely, and the party may pursue either at his option.

Fletcher v. Coney Island, Inc., 165 Ohio St. 150, 154 (1956), quoting *Zanesville v. Fannan*, 53 Ohio St. 605 (1895), paragraph two of the syllabus. R.C. Chapter 4117 does not divest the courts of common pleas of jurisdiction simply because the facts involved in a lawsuit can “somehow be cast in terms of an unfair labor practice.” *Keller*, 2003-ohio-5599, at ¶ 14; *E. Cleveland*, 70 Ohio St.2d at 127–29.

III. Because Mr. Sheldon’s claims arise independent of R.C. Chapter 4117, applying *Lakewood*, the common pleas court has jurisdiction over them.

Ohio’s enactment of R.C. Chapter 4117 in 1983 did not preempt any and all claims that might relate to public employment. 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.” *Franklin Cnty. L. Enft Ass’n*, 59 Ohio St.3d at 171. While this dispute is 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. Chapter 4117. He is asserting common law rights to challenge a contract, regardless of the fact that he is a public employee.

OAPSE itself highlighted the contractual nature of the membership agreement when it told the Sixth Circuit Court of Appeals in *Littler v. OAPSE*—“whether a union can collect membership dues from a given employee turns on the ‘private judgments’ of the employee and the union.” Brief of Appellee, OAPSE at 24, *Littler v. OAPSE*, 88 F.4th 1176 (6th Cir. 2023) (No. 22-4056), citing *Hoekman v. Education Minnesota*, 41 F. 4th 969, 978 (8th Cir. 2022). Indeed, “[t]he source of the unions’ right to collect

these dues, however, is not state authority; it is the private agreement between the unions and the employees. The unions do not collect dues ‘pursuant to’ any state statute.” (Cleaned up.) *Hoekman* at 978.

Compare, for example, *Murray v. Columbus*, 2014-Ohio-2790 (10th Dist.), ¶ 18, which dealt with core collective bargaining activity—the union’s settlement of a grievance without notifying the plaintiff. *Id.* at ¶ 30. The grievance procedure was created by the collective bargaining agreement. *Id.* at ¶ 2. Settling the grievance related directly to the union’s duty to fairly represent the plaintiff, which in turn, arose out of R.C. 4117.11(B)(6) and the collective bargaining agreement. *Id.* at ¶¶ 27–31. The *Murray* court thus correctly held that it could not address the plaintiff’s complaint without ruling on an “unfair labor practice.” *Id.* at ¶ 32.

But Mr. Sheldon’s claims regarding the validity of his contract with OAPSE all arise under legal theories that were ancient in Ohio law before R.C. Chapter 4117 was a glimmer 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) (rescission 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. No. 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. Mr. Sheldon’s claims, thus, cannot be said to “arise from or depend on the collective bargaining rights created by R.C. Chapter 4117.” *See Franklin Cnty. L. Enf’t, Ass’n*, 59 Ohio St.3d at 171.

IV. R.C. Chapter 4117 specifically excludes membership disputes from being heard by SERB.

Mr. Sheldon’s contract-based claims arise entirely from common law, independent of R.C. Chapter 4117. The claims have nothing to do with OAPSE’s statutory duty of fair representation or its statutory duty to refrain from “restrain[ing] or coerc[ing]” an employee’s exercise of rights under 4117. R.C. 4117.11(B)(1). In fact, R.C. 4117.11(B)(1)—on which the court of appeals relied—carves out an exception to union activities related to the “acquisition or retention of membership therein.” *Id.* A plain reading of that statute prevents a union’s enforcement of its own membership rules—as it seeks to do here—from being an unfair labor practice. And if the statute exempts certain activity from the class of unfair labor practices over which SERB has jurisdiction, it necessarily reserves jurisdiction over disputes regarding those activities to the common pleas court.²

² The Seventh District erroneously relied on *OCSEA, Local No. 11*, SERB No. 87-ULP-05-0217, 1989 WL 1703609 (May 12, 1989), adopted, 1989 WL 1703833, for the proposition that SERB previously adjudicated claims like Mr. Sheldon’s as unfair labor practices. (Opinion and Judgment Entry Case No. 25 CA 0985 at 13). That case is factually and legally distinct from Mr. Sheldon’s. There, the union lied, deceived, and coerced the employees to join the union in violation of R.C. 4117.11(B)(1)’s prohibition on “coerc[ing] employees in the exercise of the” right to refrain from

SERB’s dismissal of identical claims in *Littlejohn*, where SERB determined that the contractual claims identical to those brought here are not statutory unfair labor practices as described by R.C. 4117.11, is consistent with R.C. 4117’s carve-out for membership activities. See SERB Decision, *Littlejohn v. Ohio Council 8, AFSCME, AFL-CIO*, Case No. 2023-ULP-12-0146 (June 20, 2024). Further, SERB has admitted—and has continued to maintain—that “no statute involving SERB’s legal duties is involved or being challenged.” (SERB Reply to Mem. in Opp’n to SERB’s Renewed Mot. to Dismiss at 3).

V. Although the Court can resolve this case under its current precedent, it can also clarify its test for future application.

Confusion by lower courts over SERB’s jurisdiction stems from the second *Lakewood* prong: Where a complaint in the common pleas court “alleges conduct that constitutes an unfair labor practice specifically enumerated in R.C. 4117.11.” *Lakewood*, 2025-Ohio-2052, at ¶ 8. Because the Court has stated that SERB decides what conduct constitutes an unfair labor practice, when it has not, courts must simply guess at what conduct SERB would have jurisdiction over. But the court should determine its own jurisdiction when a matter is presented to it that does not expressly allege an unfair labor practice.

R.C. Chapter 4117 grants SERB jurisdiction to decide unfair labor practices, not “conduct that constitutes an unfair labor practice.” *Contra Lakewood* at ¶ 1. To prevent any further confusion by the lower courts, and to align the Court’s test with

supporting the union. See generally *OCSEA, Local No. 11*. No such facts exist for Mr. Sheldon, and he does not allege that OAPSE coerced him.

the statutory language, the Court should adjust the second *Lakewood* prong to align with the first:

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 an unfair labor practice specifically enumerated in R.C. 4117.11.

Aligning the Court's test with R.C. Chapter 4117 does not invade SERB's legislatively granted jurisdiction. Suppose a union representative intentionally rear-ends an employee in the work parking lot. The employee could properly bring a battery claim in common pleas court, with no reference to R.C. Chapter 4117. The employee might separately—and properly—file an unfair labor practice charge against the union, alleging that the union representative restrained the employee in the exercise of his right to refrain from joining the union by rear-ending him as an intimidation technique. *See generally* R.C. 4117.11(B)(1) and R.C. 4117.03 (A)(1). The claims arise from the same conduct, but the employee is not required to forgo the first claim and only pursue the latter.

By aligning the Court's test with R.C. Chapter 4117, the Court gives (1) greater clarity to the lower courts, (2) proper meaning to the words and intent of the General Assembly that enacted R.C. Chapter 4117, and (3) courts back their proper rule in adjudicating common law causes of action that SERB does not have jurisdiction over.

Although Mr. Sheldon can prevail under the Court’s current test, clarity will help prevent future questions being raised for this Court to sort out.

VI. Mr. Sheldon’s Amended Complaint adequately states claims for declaratory relief relating to the construction and validity of the Dues Deduction Contract.

As discussed above, Ohio’s declaratory judgment statute provides that

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).

As a corollary to, and consistent with, its decision in *Highland*, the Court has held that “a common pleas court is entirely without subject-matter jurisdiction over a class of cases *only* when a statute explicitly removes the court’s jurisdiction, for example, by granting exclusive jurisdiction to another court or agency.” (Emphasis added.) *State ex rel. Kelleys Island School Dist. Bd. of Edn. v. Ohio Dept. of Edn.*, 2024-Ohio-285, ¶ 27 (6th Dist.), citing *Ohio High School Athletic Ass’n*, 2019-Ohio-2845, at ¶ 9; *State ex rel. Gray v. Kimbler*, 2022-Ohio-3937, ¶ 15; *Ostaneck v. Ostaneck*, 2021-Ohio-2319, ¶ 29.

Because the General Assembly has vested the common pleas courts with jurisdiction over declaratory judgment actions and common law contract claims, and

has not explicitly vested exclusive jurisdiction in another court or agency, neither the constitution nor the legislature has taken subject-matter jurisdiction over contract claims related to unions from the common pleas courts, so a common pleas court is not precluded from hearing such a case.

Here, OAPSE received dues from Mr. Sheldon while he was a member and after he resigned from OAPSE based on the written agreement between Mr. Sheldon and the Union. *See* (Am. Compl. ¶ 18); (Am. Compl. Ex. 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 OAPSE), 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, and 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 OAPSE acknowledged and accepted his resignation, and expressly withheld any further benefits of membership to him. (Am. Compl. ¶¶ 53–61). 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.). OAPSE 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 OAPSE originally entered into the contract before the Supreme Court decided *Janus*. Although Mr. Sheldon had the option not to join OAPSE 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.). 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 OAPSE’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. Village of Piketon*, 2016-Ohio-628 at ¶¶ 17–19. Mr. Sheldon alleges—and OAPSE does not dispute—that the Union kept taking membership dues from him after he was no longer a union member. (Am. Compl. ¶¶ 53–56). Mr. Sheldon further alleges that after his resignation, OAPSE ceased providing any services other than those that it was

otherwise statutorily obligated to provide as the exclusive bargaining unit representative under R.C. Chapter 4117. (Am. Compl. ¶¶ 60–61).

If the membership contract between Mr. Sheldon and OAPSE is valid—and OAPSE seems to believe it is—then Mr. Sheldon’s resignation from OAPSE outside of his respective contractual window breached that contract.³ Despite no longer providing services, OAPSE 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 Ass’n*, 2007-Ohio-7178, ¶ 34 (4th Dist.), citing *Collins v. Click*

³ Mr. Sheldon no longer works for the school district so he is not paying union dues anymore.

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 OAPSE. But he has sufficiently pled the claim to withstand a motion to dismiss.

Count Five is an 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 OAPSE dues while he was not a member, that OAPSE was aware of his payments, he received nothing in return, and that under those circumstances, it is unjust to allow OAPSE 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.).

CONCLUSION

For the above reasons, the Court should reverse the judgment of the Seventh District Court of Appeals and remand the case for consideration on the merits.

Respectfully submitted,

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June 8, 2026

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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