

IN THE SUPREME COURT OF OHIO

MATTHEW SHELDON,) Case No. 2025-1708
vs.)
Plaintiff-Appellant,)
OHIO ASSOCIATION OF PUBLIC)
SCHOOL EMPLOYEES/AMERICAN)
FEDERATION OF STATE, COUNTY)
AND MUNICIPAL EMPLOYEES,)
LOCAL 541 CARROLLTON)
EXEMPTED VILLAGE SCHOOLS,)
et al.,)
Defendants-Appellees.)

AMICI CURIAE FREEDOM FOUNDATION'S, ET AL. MEMORANDUM IN SUPPORT OF JURISDICTION

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STATEMENT OF INTERESTS 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 United States courts. *See, e.g.*, *Lascano v. AFSCME, Ohio Council 8*, No. 1:22-cv-00102 (S. D. Ohio filed Feb. 24, 2022) (settled); *In Re Ohio Ass'n of Pub. Sch. Emps. (OAPSE)*, 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*, No. 2:18-cv-1226 (S.D. Ohio filed Oct. 15, 2018) (settled) and *Allen v. Ohio Civ. Serv. Emps. Ass'n*, No. 2:19-cv-3709, 2020 WL 1322051 (S.D. Ohio Mar. 20, 2020).

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 filed Mar. 11, 2025) (settled); *Cogar v. OAPSE, Local 367*, No. 1:24-cv-00314 (N.D. Ohio filed Feb. 20, 2024) (settled); *Hannay v. AFSCME, Council 8*, No. 5:19-cv-00951 (N.D. Ohio filed Apr. 29, 2019) (settled).

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 the United States Supreme Court's decision in *Janus v. AFSCME*, 575 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. This 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: 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. Introduction

This appeal raises a question of public and great general interest: whether Ohio courts of common pleas have jurisdiction to adjudicate the validity of dues deduction contracts between unions and approximately 270,000 public employees.

Under existing Ohio precedent, public employees and their representatives are left without any forum to address this issue because both Ohio courts and the State Employment Relations Board (“SERB”) have disclaimed jurisdiction. As a result, employees lack a clear avenue to challenge restrictive contractual provisions that limit their ability to resign union membership and cease paying union dues. Clarity is urgently needed regarding where—and whether—employees may contest the legality of these provisions.

Amici organizations routinely advise public employees on their rights but have been unable to do so effectively under current Ohio law. Employees’ fundamental

rights—and millions of dollars in employees’ wages—are at stake. Guidance from this Court is necessary to resolve this jurisdictional “no man’s land” and to confirm that Ohio’s courts of common pleas may adjudicate these disputes. This Court should accept review to provide that guidance.

II. This Case Raises a Question of Public and Great General Interest.

The right to contract is fundamental under Ohio law. *Eastwood Mall, Inc. v. Slanco*, 68 Ohio St.3d 221, 223 (1994). This right is especially critical here because contract law provides the primary means by which public employees may seek to disassociate from an exclusive union representative they no longer wish to support, but which exercises immense leverage over them.

Exclusive union representation “significant[ly]” impinges employees’ First Amendment rights. *Janus*, 585 U.S. at 916 (2018). It also “confers many benefits on unions” that “result[] in a tremendous increase in [their] power” over individual employees. *Id.* at 898-99. This includes state law and collective bargaining agreements that require public employers to deduct union dues from employees’ wages.

Here, Ohio’s public sector labor law expressly requires that all collective bargaining agreements “shall contain a provision that: . . . [a]uthorizes the public employer to deduct the periodic dues, initiation fees, and assessments of members of the exclusive representative upon presentation of a written deduction authorization by the employee.” Ohio Rev. Code § 4117.09(B)(2). The “written deduction authorization” the statute requires—which is often called a “dues checkoff

agreement”—is a contract in which an employee authorizes their public employer to deduct monies from their wages and remit those monies to the union. *See Int'l Ass'n of Machinists Dist. Ten & Loc. Lodge 873 v. Allen*, 904 F.3d 490, 492 (7th Cir. 2018). And like any other type of contract, dues checkoff agreements are subject to contract law. *See, e.g., Belgau*, 975 F.3d at 950; *Bennett v. Council 31 of the Am. Fed'n of State, Cnty. & Mun. Emps., AFL-CIO*, 991 F.3d 724 (7th Cir. 2021); *Littler v. OAPSE*, No. 20-3795, 2022 WL 898767, at *5–6 (6th Cir. Mar. 28, 2022) (unpublished); *see also*, Mem. in Supp. of Jurisdiction of Appellant Matthew Sheldon (“Memo”), 2–3.

Yet in Ohio, public employees who want to contest the contractual validity of a dues checkoff agreement that is being enforced against them have nowhere to turn to adjudicate their contract-law claims. The lower courts have directed employees to SERB, while SERB has redirected them back to the courts. *See Memo*, 7–8.

This is deeply problematic because, as in the case here, unions often include restrictive terms in dues checkoff contracts whose validity is questionable at best. This includes narrow “opt-out windows” that prohibit employees from revoking dues checkoff agreements except by providing written notice during a short annual period. These revocation periods are often as short as ten days per year and vary based on when the employee first signed the agreement. *See, e.g., Memo*, 2.¹ In other words,

¹ *See also, e.g., Collective Bargaining Agreement Between Ohio Ass'n of Pub. Sch. Emps., Local 367, and Perry Bd. of Educ., 2022-2023 (as extended through June 30, 2026 and June 30, 2028), art. 4.05, <https://dam.assets.ohio.gov/image/upload/serb.ohio.gov/PDF/Contracts/2020/20-MED-02-0126.pdf> (last accessed Jan. 12, 2026); Collective Bargaining Agreement Between Kent State Univ. and Ohio Council 8, AFSCME, AFL-CIO, Oct. 1, 2022-Sept. 30, 2025, art. 7(E), <https://www-s3-live.kent.edu/s3fs-root/s3fs-public/file/2022-2025%20AFSCME%20Agreement%20->*

unions often include language in dues checkoff agreements that prohibit employees from revoking these contracts for 355 days of each and every year.

Based on Freedom Foundation's experience assisting over 11,000 Ohio employees revoke their dues checkoff cards, employees often do not know their opt-out window because it frequently varies based on when the card is signed and unions do not give employees a copy of the card after they sign it. *See supra* at n. 1. It is also common for unions to reject opt-out forms sent during the applicable window if the U.S. Postal Service delivers them after the narrow window closes, leaving employees at the mercy of USPS' unpredictable processing and delivery times, weather, and holidays.

The circumstances under which employees often sign dues checkoff agreements also make their contractual validity questionable. Most employees are presented with the contracts as part of their employers' required onboarding after being hired or during mandatory orientation meetings. Employees are frequently not informed that union membership is voluntary, and those unfamiliar with labor law understandably assume otherwise. *See e.g., Baro v. Lake Cnty. Fed'n of Tchrs. Loc. 504, IFT-AFT/AFL-CIO*, 57 F.4th 582 (7th Cir. 2023).

Here, Mr. Sheldon asserts the dues checkoff contract being enforced against him is invalid or unenforceable for no fewer than five reasons, all of which arise from the common law of contracts. *See Memo*, 4-5. It is imperative that this Court provide

%203NOV2022_2.pdf?VersionId=xKkLdwmQRNuVYcd7msOToS81n7jx3dv8 (last accessed Jan. 12, 2026).

Mr. Sheldon, and others like him, with a forum in which their common law claims can be adjudicated.

Mr. Sheldon is far from alone in having to deal with questionable dues checkoff agreements. As of 2024, there were approximately 302,000 public employees in Ohio subject to mandatory union representation, roughly 270,000 of whom were union members.² Many of these employees want to revoke their dues checkoff agreements, as illustrated by the 11,000 public employees the Freedom Foundation has assisted to date.

Unfortunately, at present public employees who want to revoke dues checkoff agreement have to navigate or challenge onerous and likely unlawful restrictions on revocation described above. Amici have often had to represent Ohio public employees

² See Barry T. Hirsch, David A. Macpherson & William E. Even, *Union Membership, Coverage, Density, and Employment by Sector and State: 1983–2024*, www.unionstats.com (click on “By Sector and State: 1983-2024” and select “Ohio” and “2024”) (last accessed Jan. 12, 2026), which contains union-related statistics compiled by professors Barry Hirsch of Georgia State University, David McPherson of Trinity University, and William Even at Miami University. These professors use cross cuts of the Current Population Survey run by the Census Bureau for the Bureau of Labor Statistics. From this survey they can isolate federal, state, and local unionized employees in a particular state and the number covered by a mandatory collective bargaining agreement. For 2024 in Ohio, those numbers were 270,000 unionized federal, state, and local employees with 302,000 federal, state, and local employees covered by a collective bargaining agreement. That leads to a public sector unionization percentage of 89% (270,000/302,000). In his Memo, Appellant Sheldon cited a study which used a different method of counting. See Memo, 5-6. He added various unions of state and local employees (not federal employee) claims about their membership and ended up “around 250,000.” *Id.* at 6, n.2. The exact number is not important, rather the overall scale of unionized state and local employees is. Under either method, a quarter of a million public sector employees that may wish to end financial support to a public sector union may be impacted by legal questions related to dues authorizations and to the preliminary jurisdictional matter of where those challenges should be brought that is directly at issue here.

in legal actions in federal court to effectuate or vindicate their desire to stop union deductions. *See, e.g., Uniatowski v. OAPSE*, Local 579, No. 1:25-cv-479 (N.D. Ohio filed Mar. 11, 2025) (settled) (Liberty Justice Center); *Cogar v. OAPSE*, Local 367, No. 1:24-cv-00314 (N.D. Ohio filed Feb. 20, 2024) (settled) (same); *Hannay v. AFSCME*, Council 8, No. 5:19-cv-00951 (N.D. Ohio filed, April 29, 2019) (settled) (same); *Smith v. AFSCME Council 8*, No. 2:18-cv-1226 (S.D. Ohio filed Oct. 15, 2018) (NRTW); *Allen v. Ohio Civ. Serv. Emps. Ass'n*, No. 2:19-cv-3709, 2020 WL 1322051 (S.D. Ohio Mar. 20, 2020) (same).

It is also common in the Freedom Foundation’s experience for unions to settle disputes only after employees retain representation. And the existing “no man’s land” employees are in regarding the lack of a judicial forum certainly favors unions’ already considerable leverage in settlement negotiations since there is no forum in which employees can recover contractual damages in a lawsuit or unfair labor practice complaint. It is also notable that employers have little incentive to entertain employees’ objections to dues deductions given unions nearly always indemnify employers for damages caused by unlawfully deducted dues.³

These experiences show why it is so important that the Court establish that state courts have jurisdiction to decide if and when enforcement of contractual restrictions on revoking dues checkoff agreements violates contract law or common

³ *See, e.g.* Collective Bargaining Agreement Between Kent State Univ. and Ohio Council 8, AFSCME, AFL-CIO, Oct. 1, 2022-Sept. 30, 2025, art. 7(D), https://www-s3-live.kent.edu/s3fs-root/s3fs-public/file/2022-2025%20AFSCME%20Agreement%20-203NOV2022_2.pdf?VersionId=xKkLdwmQRNuVYcd7msOToS81n7jx3dv8 (last accessed Jan. 12, 2026).

law. If a restriction is unlawful, hundreds of thousands of Ohio public employees should not be subject to it.⁴ And even if a restriction is permissible under common law, a state court decision to that effect will at least clarify the matter for employees and Amici attorneys who advise them.

But the limbo in which Mr. Sheldon and many other Ohio public employees currently find themselves is intolerable. They have good reason to believe they are bound to contractual terms that are unenforceable under the common law of contracts, but have no forum in which to adjudicate their claims. The Court should free Mr. Sheldon and many others from this legal limbo by accepting jurisdiction and recognizing that common pleas courts can hear their common law claims.

CONCLUSION

The Court should accept Appellant's Jurisdiction Appeal and reverse the judgment below.

⁴ If even 10% of Ohio's 270,000 employees opt out in the coming years (27,000), this means there is \$12 million a year in disputed monies being deducted from employees' wages pursuant to potentially unlawful contractual provisions. (This assumes an annual average dues of \$432. See James Sherk, *Unions Charge Higher Dues and Pay Their Officers Larger Salaries in Non-Right-to-Work States*, Heritage Foundation (Jobs and Labor Report), <https://www.heritage.org/jobs-and-labor/report/unions-charge-higher-dues-and-pay-their-officers-larger-salaries-non-right> (last accessed Jan. 12, 2026).

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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 12th day of January 2026 via e-mail on:

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