APPENDIX

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Appendix A

UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Everett McKinley Dirksen
United States Courthouse
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Chicago, Illinois 60604

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ORDER

April 15, 2021

Before

MICHAEL S. KANNE, *Circuit Judge*
DIANE P. WOOD, *Circuit Judge*
DAVID F. HAMILTON, *Circuit Judge*

No. 21-1525	JOANNE TROESCH and IFEOMA NKEMDI, on behalf of themselves and the putative class, Plaintiffs - Appellants v. CHICAGO TEACHERS UNION, LOCAL UNION NO. 1, AMERICAN FEDERATION OF TEACHERS and THE BOARD OF EDUCATION OF THE CITY OF CHICAGO, Defendants - Appellees
Originating Case Information:	
District Court No: 1:20-cv-02682	

Northern District of Illinois, Eastern Division District
Judge John Z. Lee

The following are before the court:

1. **MOTION TO DISMISS OR STAY**, filed on March 29, 2021, by counsel for Appellee Board of Education of the City of Chicago.

2. **APPELLEE CHICAGO TEACHERS UNION'S JOINDER IN MOTION TO DISMISS OR STAY**, filed on March 31, 2021, by counsel for Appellee Chicago Teachers Union.

3. **APPELLANTS' RESPONSE TO MOTION TO DISMISS OR STAY**, filed on April 5, 2021, by counsel for appellants.

JoAnne Troesch and Ifeoma Nkemdi appeal the dismissal of their complaint alleging that the Board of Education of the City of Chicago and the Chicago Teachers Union violated the First Amendment by permitting union members to stop their dues payments only during an annual escape period. The parties agree that the outcome of Troesch and Nkemdi's appeal is controlled by our recent decision in *Bennett v. Council 31 of the American Federation of State County and Municipal Employees*, 991 F.3d 724 (7th Cir. 2021), in which we held that it does not violate the First Amendment for a union to continue deducting dues that an employee voluntarily agreed to pay. Accordingly,

IT IS ORDERED that the motion is **GRANTED** and the judgment of the district court is summarily **AFFIRMED**.

form name: **c7_Order_3J** (form ID: **177**)

Appendix B

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

JOANNE TROESCH and IFEOMA NKEMDI, on behalf of themselves and the putative class,	)	
Plaintiffs,	)	
v.	)	
	)	No. 20 C 2682
CHICAGO TEACHERS UNION LOCAL UNION NO. 1, AMERICAN FEDERATION OF TEACHERS, and THE BOARD OF EDUCATION OF THE CITY OF CHICAGO,	)	Judge John Z. Lee
Defendants.	)	

MEMORANDUM OPINION AND ORDER

Joanne Troesch and Ifeoma Nkemdi, on behalf of themselves and a putative class of similarly situated employees (collectively, "Plaintiffs"), allege that the Chicago Teachers Union ("CTU") and the Chicago Board of Education ("the Board") (collectively, "Defendants") violated their First Amendment rights

under *Janus v. American Federation of State, County, and Municipal Employees, Council 31*, 138 S. Ct. 2448 (2018), by continuing to enforce their signed agreements to pay union dues until the annual August window for revoking their dues authorizations after they resigned their memberships in CTU in October 2019. Defendants have moved to dismiss the complaint with prejudice under Rule 12(b)(6), arguing primarily that Plaintiffs fail to state a First Amendment violation. For the following reasons, the motions are granted. This case is terminated.

I. Background[1]

The Illinois Educational Labor and Relations Act (the "IELRA") requires public-sector educational employers like the Board, which oversees Chicago Public Schools ("CPS"), to bargain over and enter into collective bargaining agreements ("CBAs") with unions that have been chosen by a majority of employees in a bargaining unit to serve as the employees' exclusive representative. *See* 115 Ill. Comp. Stat. 5/3, 5/7, 5/10; *About*, Chicago Board of Education, https://www.cpsboe.org/about (last accessed Nov. 23, 2020).[2] For employees of CPS, that exclusive bargaining representative is CTU, an

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[1] When considering a motion to dismiss, the Court "must accept as true all well-pleaded factual allegations and draw all reasonable inferences in favor of the plaintiff." *Heredia v. Capital Mgmt. Servs., L.P.*, 942 F.3d 811, 814 (7th Cir. 2019).

[2] The Court may take judicial notice over these and other relevant "matters of public record," that the complaint does not address. *See Newcomb v. Brennan*, 558 F.2d 825, 829 (7th Cir. 1977).

affiliate of the Illinois Federation of Teachers. Compl. ¶ 11, ECF No. 2.

Plaintiffs, along with roughly 24,000 other teachers and school personnel, are employees of the Board, and their employment terms are and have been governed by a series of CBAs that CTU has negotiated with the Board over the years. *Id.* ¶¶ 10–11. The current CBA is effective from July 1, 2019, through June 30, 2024, while the prior CBA was effective from July 1, 2015, through June 30, 2019. *Id.* ¶ 10.

Both CBAs contain an identical Section 1-6, entitled "Dues Checkoff." This section provides that the Board "shall deduct from the pay of each bargaining unit employee from whom it receives an authorization to do so the required amount of fees for the payment of UNION dues." *Id.* ¶ 12. Section 1-6 further states that any such "bargaining unit employee may terminate the dues check off," meaning the dues authorization, "during the month of August by submitting written notice to the BOARD and the Union." *Id.*

The authorization to which Section 1-6 of the CBAs refers is part of CTU's membership agreement, which employees may sign if they so choose. *See* Pls.' Ex. A, Chicago Teachers Union Membership Applications of J. Troesch and I. Nkemdi ("Membership Agreements") at 2–3, ECF No. 2-1. While becoming a member of CTU "is not a condition of . . . employment," *see id.*, doing so carries numerous benefits, including the ability to vote on contract demands, contract proposals, strike proposals, and union elections; to submit contract proposals; to influence political endorsements; and to obtain legal representation in

the event of a dismissal proceeding. *See* Pls.' Ex. C, 11/15/19 Letters from Union to J. Troesch and I. Nkemdi ("Resignation Acknowledgement Letters") at 2–3, ECF No. 2-1. Members also provide important financial support for CTU's bargaining efforts. *See id.*

In September 2017, Plaintiffs each signed agreements to become members of CTU. Compl. ¶ 14; *see* Membership Agreements at 2–3. In so doing, they each signed a "Membership" provision stating that their membership in CTU "shall be continuous unless I notify CTU President in writing of my resignation." Compl. ¶ 14; *see* Membership Agreements at 2–3. They also each subscribed to the aforementioned "Dues Authorization" section:

> During my employment, I voluntarily authorize and direct my Employer to deduct from my pay each period, regardless of whether I am or remain a member of the Union, an amount equal to the dues and assessments certified by the Union, and to remit such amount monthly to the Union. This authorization and direction shall become revocable by sending written notice to the Union by United States Postal Service postmarked between August 1 and August 31.

Id.; *see* Compl. ¶ 16. In other words, Plaintiffs agreed to restrict to the month of August their ability to revoke their authorizations to have union dues deducted from their pay, even if they resigned from CTU during another part of the year.

In October 2019, after becoming aware of the Supreme Court's 2018 decision in *Janus*, Plaintiffs each sent letters to the Board and CTU resigning their

membership in CTU effective immediately. *Id.* ¶ 21; *see* Pls.' Ex. B, 10/18/19 Resignation Letters from J. Troesch to Board and Union and 10/22/19 Resignation Letters from I. Nkemdi to Board and Union ("Resignation Letters") at 2–5, ECF No. 2-1. The letters, which were substantively identical, also sought to invoke Plaintiffs' purported rights under *Janus* to immediately revoke their dues authorizations, asserting that the revocability restrictions of their membership agreements had been signed "under a framework *Janus* declared unconstitutional." *Id.*

CTU responded to each of Plaintiffs' letters the following month. Compl. ¶ 23; *see* Pls.' Ex. C, 11/15/19 Resignation Acknowledgement Letters from Union to J. Troesch and I. Nkemdi at 2–4, ECF No. 2-1. CTU's response accepted Plaintiffs' resignations, but stated that their dues authorizations would remain valid until September 1, 2020—*i.e.*, after the August 2020 revocation period—pursuant to their membership agreements. Compl. ¶ 23; *see* Resignation Acknowledgement Letters at 2, 4. And the Board continues to deduct dues from their wages until September 1, 2020. *Id.* ¶ 25.

Plaintiffs filed this case in May 2020. Their complaint asserts two counts under 42 U.S.C. § 1983. Count I claims that Defendants violated Plaintiffs' First Amendment rights by enforcing the revocability restrictions contained in the dues authorizations, thereby compelling them to continue paying union dues through August 2020. Compl. ¶¶ 46–48. Relatedly, Count II claims that Defendants violated Plaintiffs' First Amendment rights by continuing to deduct dues from their wages, pursuant to those

authorizations, even after they had resigned from CTU and objected to such deductions in October 2019. *Id.* ¶¶ 49–50. Plaintiffs seek a variety of relief for these alleged deprivations, including declaratory relief that the revocability restrictions, together with Section 1-6 of the current and prior CBAs, are unconstitutional under the First Amendment.[3] *See id.* at 13–14.

Defendants have moved to dismiss the entire complaint with prejudice under Rule 12(b)(6). *See* Def. Board's Mot. Dismiss ("Board's Mot."), ECF No. 25; Def. Union's Mot. Dismiss, ECF No. 26.

II. Legal Standard

To survive a motion to dismiss under Rule 12(b)(6), a complaint must "state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). This standard "is not akin to a probability requirement, but it asks for more than a sheer possibility that a

[3] Plaintiffs also seek a declaration that 115 Ill. Comp. Stat. 5/11.1, which authorizes restrictions on employees' ability to revoke their dues authorizations, Compl. ¶ 9, violates the First Amendment, *id.* at 13. Defendants counter that Plaintiffs lack standing to challenge the constitutionality of this provision because it did not become effective until December 20, 2019, about two months after they resigned from CTU. *See* 115 Ill. Comp. Stat. 5/11.1. But because, as the Court explains, Plaintiffs fail to state a violation of the First Amendment in the first place, the Court need not assess whether they could seek relief as to this provision.

defendant has acted unlawfully." *Id.* (cleaned up). "Where a complaint pleads facts that are merely consistent with a defendant's liability, it stops short of the line between possibility and plausibility of entitlement to relief." *Id.* (cleaned up).

Determining whether a complaint states a plausible claim for relief is a "context-specific task that requires the reviewing court to draw on its judicial experience and common sense." *Id.* at 679. Moreover, while courts "must take all of the factual allegations in the complaint as true" for purposes of a motion to dismiss, they are "not bound to accept as true a legal conclusion couched as a factual allegation." *Papasan v. Allain*, 478 U.S. 265, 286 (1986). Accordingly, "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice" to state a claim on which relief can be granted. *Iqbal*, 556 U.S. at 678.

III. Analysis

Defendants raise two arguments in their motion to dismiss. Their principal argument is that the complaint fails to state any violation of the First Amendment, under *Janus* or otherwise. *See* Board's Mot. at 8–14; Def. Union's Mem. Supp. Mot. Dismiss ("Union's Mem.") at 6–11, ECF No. 27. They also argue that the complaint fails to render either of them liable under § 1983. *See* Board's Mot. at 5–8; Union's Mem. at 11–14. For the reasons below, the Court concludes that Plaintiffs' First Amendment claims are

foreclosed by controlling Supreme Court precedent, and the complaint is dismissed with prejudice.[4]

Both of Plaintiffs' First Amendment claims are based upon the same grievance: Defendants continued to deduct union dues from Plaintiffs' paychecks, through August 2020, even after they had resigned as members in CTU in October 2019. *See* Compl. ¶¶ 46–50. In Plaintiffs' view, the Supreme Court's ruling in *Janus* entitled them to stop paying dues when they resigned in October 2019, notwithstanding the expressed terms of their agreements. *See* Membership Agreements at 2–3.

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[4] In light of the doctrine of constitutional avoidance, it is worth noting that Defendants' non-constitutional arguments lack merit. Regarding § 1983, the Board argues that Plaintiffs fail to identify an "express municipal policy" or "widespread practice constituting a custom or usage" that caused their asserted injuries, as required to trigger municipal liability under *Monell v. Dep't of Soc. Servs. of City of N.Y.*, 436 U.S. 658 (1978), *see Simmons v. Chi. Bd. of Educ.*, 289 F.3d 488, 494 (7th Cir 2002); while CTU argues that Plaintiffs fail to identify a sufficient nexus between its conduct as a private actor and the conduct of a state actor, *see Hallinan v. Fraternal Order of Police of Chi. Lodge No. 7*, 570 F.3d 811, 815 (7th Cir. 2009). But the Board's position that Section 1-6 of the current and prior CBAs, in which it agreed to enforce dues authorizations outside of the annual August revocation period even where an employee has since resigned from CTU, does not constitute an express policy is unpersuasive. As for CTU, it overlooks that the Seventh Circuit has found state action where, as here, a union is "a joint participant" with state actors in an arrangement to have union fees deducted from employees' paychecks. *See Janus v. Am. Fed'n of State, Cty. & Mun. Emps., Council 31*, 942 F.3d 352, 361 (7th Cir. 2019), *cert. docketed*, No. 19-1104 (U.S. Mar. 10, 2020).

Plaintiffs' theory, however, finds no support in *Janus*. There, public sector employees brought a challenge to an Illinois law that "forced [them] to subsidize a union, even if they ch[o]se not to join and strongly object[ed] to the positions CTU t[ook] in collective bargaining and related activities." 138 S. Ct. at 2459–60. The Court held that such an "agency-fee" arrangement—so called because employees who declined to join CTU still had to pay an "agency" or fair-share fee[5]—violated the First Amendment rights of nonmember employees "by compelling them to subsidize private speech on matters of substantial public concern," overruling *Abood v. Detroit Board of Education*, 431 U.S. 209 (1977). *Id.* at 2460. In so doing, the Court reasoned that extracting fees from employees who had given "[n]o form of . . . consent" to subsidize union speech, *id.* at 2486, triggered at least intermediate scrutiny, which the challenged charges failed to meet. *See id.* at 2465–69, 2474–78.

By contrast, *Janus* treated *consenting* employees quite differently. The Supreme Court observed that agency fees and other payments to the union may not "be deducted from a nonmember's wages . . . *unless the employee affirmatively consents to pay*." *Id.* at 2486 (emphasis added). "By agreeing to pay," the Court explained, "nonmembers are waiving their First Amendment rights . . . ." *Id.* The Court further explained that, "[t]o be effective, the waiver must be freely given and shown by clear and compelling evidence." *Id.* (cleaned up). In other words, *Janus*

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[5] The 2015–2019 CBA between the Board and CTU contained a "fair share" clause as well, but Defendants stopped enforcing it once *Janus* was decided. Compl. ¶ 13.

excluded from its holding those nonmember employees who "clearly and affirmatively consent before any money is taken from them." *See id.*

Janus, thus, did not disturb the Supreme Court's conclusion in *Cohen v. Cowles Media Co.* that "[t]he First Amendment does not confer . . . a constitutional right to disregard promises that would otherwise be enforced under state law." 501 U.S. 663, 671 (1991). There, an informant challenged the state supreme court's holding that the First Amendment barred enforcement of a newspaper's promise to keep his identity confidential in publishing unflattering stories about a candidate in the 1982 state gubernatorial election. *Id.* at 665–67. The Supreme Court reversed, holding that "[t]he First Amendment does not forbid" the doctrine of promissory estoppel from applying to the press. *Id.* at 670. Any inhibition on "truthful reporting," the Court reasoned, was "no more than the incidental, and constitutionally insignificant, consequence of . . . generally applicable law that requires those who make certain kinds of promises to keep them." *Id.* at 671–72.

The Court need look no further than *Janus* and *Cohen* to dispose of Plaintiffs' First Amendment claims. Indeed, courts have universally recognized that *Janus* does not articulate a path "to escape the terms" of an agreement to pay union dues, which remain binding under *Cohen* even where an employee has resigned her membership in CTU. *Fisk v. Inslee*, 759 F. App'x 632, 633–34 (9th Cir. 2019); *accord Fischer v. Governor of N.J.*, --- F. App'x ---, Nos. 19-3914 and 19-3995, 2021 WL 141609, at *8 (3d Cir. Jan. 15, 2021) ("Because *Janus* does not abrogate or supersede Plaintiffs' contractual obligations, which

arise out of longstanding, common-law principles of 'general applicability,' *Janus* does not give Plaintiffs the right to terminate their commitments to pay union dues unless and until those commitments expire under the plain terms of their membership agreements." (quoting *Cohen*, 501 U.S. 670)); *Belgau v. Inslee*, 975 F.3d 940, 950 (9th Cir. 2020) ("These facts speak to a contractual obligation, not a First Amendment violation."), *cert. docketed*, No. 20-1120 (U.S. Feb. 16, 2021); *Oliver v. Serv. Emps. Int'l Union Local 668*, 830 F. App'x 76, 79 (3d Cir. 2020) ("It is difficult to imagine language that would be more clear and compelling as evidence of consent to . . . pay union dues."); *Loescher v. Minn. Teamsters Pub. & Law Enf't Emps.' Union, Local No. 320*, 441 F. Supp. 3d 762, 773 (D. Minn. 2020) ("[Plaintiff's] reliance on *Janus* is misplaced and does not establish a cognizable claim to relief."), *appeal dismissed*, No. 20-1540, 2020 WL 5525220 (8th Cir. May 15, 2020); *Hendrickson v. AFSCME Council 18*, 434 F. Supp. 3d 1014, 1023–24 (D.N.M. Jan. 22, 2020) ("[Plaintiff's] choice was voluntary, and he may not void his choice after *Janus*."), *appeal docketed*, No. 20-2018 (10th Cir. Feb. 21, 2020); *Bennett v. Am. Fed'n of State, Cty. & Mun. Emps., Council 31, AFL-CIO*, --- F. Supp. 3d. ----, No. 4:19 C 4087, 2020 WL 1549603, at *4 (C.D. Ill. Mar. 31, 2020) ("Plaintiff's obligation to pay union dues pursuant to the 2017 Card remains enforceable despite the new constitutional right identified in *Janus*."), *appeal docketed*, No. 20-1621 (7th Cir. Apr. 15, 2020); *Allen v. Ohio Civil Serv. Emps. Ass'n AFSCME, Local 11*, No. 2:19 C 3709, 2020 WL 1322051, at *8 (S.D. Ohio Mar. 20, 2020) ("Because Plaintiffs opted to join and pay dues to CTU, the

properly framed right at issue here is not whether Plaintiffs have the right to not subsidize OCSEA's speech but whether they have a right to tear up those contracts."), *appeal dismissed*, No. 20-3440, 2020 WL 4194952 (6th Cir. July 20, 2020); *see also LaSpina v. SEIU Pa. State Council*, 985 F.3d 278, 288 (3d Cir. 2021) ("[W]e decline to find any First Amendment violation under *Janus* for an employer's or union's failure to promptly process a member's resignation notice and terminate the associated dues deductions.").

The same result follows here. "By agreeing to pay" dues until they could revoke their dues authorizations during the annual August revocation period, regardless of whether they remained members of CTU, Plaintiffs waived their rights not to subsidize CTU's speech. *See Janus*, 138 S. Ct. at 2486. These waivers were "freely given," *see id.*, as Plaintiffs each attested, *see* Membership Agreements at 2–3 ("I understand that signing this card is not a condition of my employment."). And it is indeed "difficult to imagine" clearer and more compelling evidence of these waivers than their own signed agreements. *See Oliver*, 2020 WL 5946727, at *2.

Plaintiffs' arguments to the contrary are unavailing. They latch onto *Janus*'s language that "nonmembers" cannot be compelled to pay union fees, *see, e.g.*, 138 S. Ct. at 2467, but ignore the Court's exclusion of employees who "affirmatively consent[] to pay," *id.* at 2486. They contend that clear and compelling evidence of consent is absent here, but fail to explain how their agreements furnish anything less. Indeed, Plaintiffs do not identify "even a whiff of compulsion" that led them to sign the agreements in

the first place. *See Belgau*, 975 F.3d at 950. They suggest that their consent was terminated by their objections to the deductions when they resigned their union memberships, but point to nothing in *Janus* (or any other case) allowing them to "renege on their promise[s]" to pay dues until the following August revocation period. *See Belgau*, 975 F.3d at 950. Nor do Plaintiffs contend that their promises to pay dues are unenforceable under state law. *See Cohen*, 501 U.S. at 671; *cf. Kinkel v. Cingular Wireless LLC*, 857 N.E.2d 250, 260 (Ill. 2006) ("One party to a contract may not unilaterally modify a contract term . . . . ").

Plaintiffs also argue that their consent was not "voluntary, knowing, and intelligent" because, while they agreed to the terms of the membership agreements, they did not specifically agree to give up their rights under *Janus* not to subsidize union speech. *See* Pls.' Resp. Opp'n Mots. Dismiss at 10–11, ECF No. 34 (quoting *Erie Telecomms., Inc. v. City of Erie*, 853 F.2d 1084, 1094 (3d Cir. 1988)). But, this view of the law is much too myopic. As *Janus* makes clear, Plaintiffs "waiv[ed] their First Amendment rights" simply "[b]y agreeing to pay." *See* 138 S. Ct. at 2486. And *Janus* "had no effect" on employees' pre-existing obligations "to pay fees pursuant to voluntarily signed membership agreements." *Bennett*, 2020 WL 1549603, at *3. As a result, Plaintiffs' prior dues agreements are not invalidated by that mere "change[] in intervening law." *See Smith v. Bieker*, No. 18 C 05472, 2019 WL 2476679, at *2 (N.D. Cal. June 13, 2019) (citing *Brady v. United States*, 397 U.S. 742, 757 (1970)), *appeal docketed*, No. 19-16381 (9th Cir. July 12, 2019).

In sum, even when all of the well-pleaded factual allegations in the complaint are taken to be true, Plaintiffs' legal theory finds no support in First Amendment jurisprudence. The complaint is dismissed, and because "it is clear that any amendment would be futile," the dismissal is with prejudice. *See Bogie v. Rosenberg*, 705 F.3d 603, 608 (7th Cir. 2013).

IV. Conclusion

For the forgoing reasons, Defendants' motions to dismiss the complaint with prejudice are granted. This case is terminated.

IT IS SO ORDERED. ENTERED: 2/25/21

John Z. Lee
United States District Judge

Appendix C

IN THE UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF ILLINOIS

Joanne Troesch, Ifeoma Nkemdi	)	
Plaintiff(s),	)	
v.	)	No. 20 C 2682
	)	Judge John Z. Lee
Chicago Teachers Union, Board of Education of City of Chicago,	)	
Defendant(s).	)	

JUDGMENT IN A CIVIL CASE

Judgment is hereby entered (check appropriate box):

☐ in favor of plaintiff(s)
and against defendant(s)
in the amount of $

which ☐includes _____ pre-judgment interest.
☐does not include pre-judgment interest.

Post-judgment interest accrues on that amount at the rate provided by law from the date of this judgment. Plaintiff(s) shall recover costs from defendant(s).

☒ in favor of defendant(s) Chicago Teachers Union, Board of Education of City of Chicago and against plaintiff(s) JoAnne Troesch, Ifeoma Nkemdi

Defendant(s) shall recover costs from plaintiff(s).

☐ other:

This action was *(check one)*:

☐ tried by a jury with Judge _____ presiding, and the jury has rendered a verdict.
☐ tried by Judge _____ without a jury and the above decision was reached.
☒ decided by Judge Lee on a motion to dismiss.

Date: 2/26/2021

Thomas G. Bruton
Clerk of Court

Carmen Acevedo
Deputy Clerk

Appendix D

In the United States Court of Appeals For the Seventh Circuit

No. 20-1621

SUSAN BENNETT, *Plaintiff-Appellant*,

v.

COUNCIL 31 OF THE AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, AFL-CIO, *et al.*, *Defendants-Appellees*.

Appeal from the United States District Court for the Central District of Illinois.
No. 4:19-cv-04087 — Sara Darrow, Chief Judge.

ARGUED FEBRUARY 17, 2021 — DECIDED MARCH 12, 2021

Before SYKES, *Chief Judge*, and FLAUM and ROVNER, *Circuit Judges*.

FLAUM, *Circuit Judge*. When plaintiff–appellant Susan Bennett began working as a custodian for defendant–appellee Moline-Coal Valley School District (the "School District"), she had the choice

either to become a member of defendants–appellees American Federation of State, County, and Municipal Employees ("AFSCME") Local 672 and AFSCME Council 31 (collectively, the "Union") and pay union dues or to decline membership yet pay "fair-share" or "agency" fees.[6] She chose to join the Union. Following the Supreme Court's decision in *Janus v. American Federation of State, County, and Municipal Employees, Council 31*, 138 S. Ct. 2448 (2018), she notified the Union and the School District that she wished to resign her membership and terminate all payments to the Union. The Union allowed Bennett to resign her membership and opt out of payments, but only after the lapse of the window set forth in her union-membership agreement.

Bennett filed suit in federal district court, asserting that the deduction of union dues from her wages violated her rights under the First Amendment to the U.S. Constitution, as recognized in *Janus*. She also asserted that the Union's exclusive representation of her interests, even though she is no longer a member, violates her constitutional rights by allowing the Union to speak on her behalf. Bennett sought damages in an amount equal to the dues deducted from her paychecks up to the statute of limitations as well as various forms of declaratory and injunctive relief. The parties filed cross-motions for summary judgment, and the district court granted summary judgment in favor of all defendants–appellees. Bennett now appeals.

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[6] For simplicity, we use "fair-share fees" throughout to refer to these fees.

In a matter of first impression before this Court, Bennett cannot establish that the deduction from her wages of union dues she voluntarily agreed to pay in consideration for the benefits of union membership violated her First Amendment rights under *Janus*. Similarly, she cannot establish that *Janus* rendered the longstanding exclusive-bargaining-representative system of labor relations unconstitutional. We thus affirm the judgment of the district court.

I. Background

A. Statutory and Legal Background

The Illinois Educational Labor Relations Act ("IELRA" or the "Act"), 115 Ill. Comp. Stat. 5/1 *et seq.*, regulates labor relations between Illinois public-sector educational employers and employees. The Act provides public-sector educational employees with the right to choose to join a labor organization for purposes of representation. *Id.* § 5/3(a). A majority of employees in a bargaining unit may select a labor organization to serve as the unit's exclusive representative "with respect to wages, hours and other terms and conditions of employment." *See id.* §§ 5/8, 5/10(a). Employees need not become dues-paying members of a union that has been recognized as an exclusive representative, *id.* § 5/3(a), and a union recognized as an exclusive representative has the duty to represent all employees within the bargaining unit regardless of whether they are dues-paying members or not, *id.* § 5/3(b).

Prior to June 2018, a union certified as the representative of a bargaining unit could require nonmember employees to pay fair-share fees. *See id.* § 5/11. The Supreme Court ended that practice when

it decided *Janus*. The Court in *Janus* held that the First Amendment prohibits unions and public employers from requiring public-sector employees to subsidize a union unless an employee affirmatively consents to waive that right. 138 S. Ct. at 2486. This "waiver must be freely given and shown by 'clear and compelling' evidence." *Id.* (quoting *Curtis Publ'g Co. v. Butts*, 388 U.S. 130, 145 (1967) (plurality opinion)).

B. Factual Background

Bennett began her employment as a custodian with the School District in August 2009. Under the terms of the IELRA, the Illinois Educational Labor Relations Board had certified the Union as the exclusive representative of her bargaining unit of custodial and maintenance employees. Bennett joined the Union in November 2009 by signing a membership and dues-deduction-authorization card that stated: "I hereby authorize my employer to deduct the amount as certified by the Union as the current rate of dues. This deduction is to be turned over to AFSCME, AFL-CIO." In August 2017, Bennett signed another membership and dues-deduction-authorization card that stated:

> I hereby affirm my membership in AFSCME Council 31, AFL-CIO and authorize AFSCME Council 31 to represent me as my exclusive representative on matters related to my employment.
>
> I recognize that my authorization of dues deductions, and the continuation of such authorization from one year to the next, is voluntary and not a condition of my employment.

> I hereby authorize my employer to deduct from my pay each pay period that amount that is equal to dues and to remit such amount monthly to AFSCME Council 31 ("Union"). This voluntary authorization and assignment shall be irrevocable for a period of one year from the date of authorization and shall automatically renew from year to year unless I revoke this authorization by sending written notice … to my Employer and to the Union postmarked not more than 25 days and not less than 10 days before the expiration of the yearly period described above, or as otherwise provided by law.

Therefore, as a condition of her most recent union membership agreement, Bennett authorized the School District to deduct union dues from her paychecks and remit that amount to the Union until August 21 during each authorized year. On that date, her authorization would automatically renew for the following year unless she revoked it. The membership agreement also contained a provision establishing a fifteen-day window in which Bennett could revoke her authorization and stop the withholding of union dues from her wages. *See* 5 Ill. Comp. Stat. 315/6(f) (requiring—if the exclusive representative and public employer agree on an automatically renewing one-year period of irrevocability for dues authorizations—a minimum of "an annual 10-day period" during which employees may revoke their dues-deduction authorizations); 115 Ill. Comp. Stat. 5/11.1(a) (same).

On November 1, 2018, after the Supreme Court issued its *Janus* decision, Bennett sent a letter to AFSCME's national office stating that she wanted to resign her union membership and asking the Union to

stop collecting dues. On November 5, 2018, she wrote to the School District's chief financial officer, informing him that she intended to resign her union membership and requesting that the School District not honor any prior dues-deduction authorization she had signed. In their December 3, 2018 response, the School District told Bennett to contact the Union regarding her inquiries, as the School District has no role, authority, or discretion in determining union membership or dues deductions. Ten days later, on or around December 13, 2018, the Union sent a letter to Bennett advising her that it would accept her resignation from membership as soon as it received written notice that she wanted to resign but, regardless of whether she resigned from the Union, she could not revoke her dues-deduction authorization until a two-week window from July 17 to August 11, 2019.

Bennett resigned her union membership on March 4, 2019, but the School District continued deducting union dues. On July 29, 2019, Bennett sent another letter to the School District requesting to revoke her dues-deduction authorization. The Union learned of that letter and treated it as an effective revocation of her dues-deduction authorization under the membership agreement. The School District thus stopped deducting union dues from Bennett's wages in August 2019.

C. Procedural Background

While waiting for the arrival of her two-week revocation window, Bennett brought this action under 42 U.S.C. § 1983 and 28 U.S.C. § 2201(a) against the Union, the School District, and certain Illinois state

officials (the "state defendants"). In Count I of the two-count complaint, Bennett alleged that the Union and the School District violated her First Amendment rights to free speech and freedom of association by deducting dues from her wages without her affirmative consent. She alleged that the dues-deduction authorizations she had signed prior to the issuance of the *Janus* decision did not provide affirmative consent because they were the product of an unconstitutional choice between paying full union dues or a fair-share fee. As a remedy, Bennett sought damages from the Union in an amount equal to the dues deducted from her paychecks, both before and after *Janus* was decided. She also sought various forms of declaratory and injunctive relief against the Union and the School District. In Count II, brought against the Union and the state defendants, Bennett alleged that the system of exclusive representation set forth in the IELRA violates her free speech and associational rights. She sought a declaration that the Act is unconstitutional and injunctions barring its enforcement.

The state defendants moved to dismiss Count II under Federal Rule of Civil Procedure 12(b)(6). The remaining parties—Bennett, the Union, and the School District—submitted a joint stipulated record and filed cross-motions for summary judgment under Federal Rule of Civil Procedure 56(a) as to both counts. The district court granted the Union's and the School District's motions for summary judgment, as well as the state defendants' motion to dismiss, and denied Bennett's motion for summary judgment. The court dismissed Bennett's action with prejudice, thus disposing of all claims against all parties.

This appeal followed.

II. Discussion

We review de novo dismissals under both Rule 12(b)(6) and Rule 56(a). *See Degroot v. Client Servs., Inc.*, 977 F.3d 656, 659 (7th Cir. 2020) (motion to dismiss); *Skiba v. Ill. Cent. R.R. Co.*, 884 F.3d 708, 717 (7th Cir. 2018) (summary judgment). Per the parties' agreement, the district court treated the state defendants' 12(b)(6) motion as one for summary judgment under Rule 56(a). Accordingly, we will review all motions on appeal under the summary judgment standard. "Summary judgment is appropriate when there is no genuine dispute as to a material fact and the movant is entitled to judgment as a matter of law." *Est. of Jones v. Child.'s Hosp. & Health Sys. Inc. Pension Plan*, 892 F.3d 919, 923 (7th Cir. 2018). When, as here, the parties filed cross-motions for summary judgment, we construe all reasonable inferences in favor of the party against whom the motion was granted. *Gill v. Scholz*, 962 F.3d 360, 363 (7th Cir. 2020). Therefore, we will view the facts in the light most favorable to Bennett and draw all reasonable inferences in her favor.

A. Deduction of Union Dues

Bennett first challenges the dismissal of Count I of her complaint, which alleged that the Union and the School District violated her First Amendment rights by deducting union dues from her paychecks. She does not dispute that she voluntarily authorized the deduction of dues or that she was not required to join the Union as a condition of employment. Nor does she dispute that she voluntarily signed the revised union-membership agreement in 2017. Instead, Bennett's

appeal turns on the premise that the Supreme Court's *Janus* decision establishing the First Amendment right of public employees not to subsidize a union without first affirmatively consenting to waive that right applies to deduction of union dues. She contends that the district court erred because it did not apply *Janus*'s test for waiver, and under that test she did not waive her right. Bennett thus effectively argues that the *Janus* decision voided her dues-deduction authorization.

As the Union and the School District point out, however, the Ninth Circuit and a panel of the Third Circuit, as well as several district courts, have addressed this very argument that *Janus*'s waiver requirement applies to union members as well as nonmembers and found it unavailing. Although not precedential here, the cases before the courts of appeals bear similarities to the case at hand. In the Third and Ninth Circuit cases, the plaintiffs were public employees who had, prior to *Janus*, signed union-membership agreements authorizing their state employers to deduct union dues from their paychecks. *See Fischer v. Governor of New Jersey*, No. 19-3914, 2021 WL 141609, at *1–2 (3d Cir. Jan. 15, 2021) (nonprecedential decision); *Belgau v. Inslee*, 975 F.3d 940, 945 (9th Cir. 2020), *petition for cert. docketed*, No. 20-1120 (U.S. Feb. 16, 2021). After the Supreme Court issued its *Janus* decision, each group of plaintiffs requested to resign their union memberships and terminate their payments. *See Fischer*, 2021 WL 141609, at *2; *Belgau*, 975 F.3d at 946. Their unions allowed the plaintiffs to resign, but their state employers continued to deduct dues from their paychecks until the terms of their dues-

deduction authorizations expired as set forth in state law or the plaintiffs' membership agreements. *See Fischer*, 2021 WL 141609, at *2; *Belgau*, 975 F.3d at 946. The plaintiffs in each case sued their union and various state defendants, asserting that the defendants violated their First Amendment rights, as established in *Janus*, by collecting union dues from them without their consent and after they requested to terminate all such payments; by their formulation, *Janus* abrogated the commitments set forth in their membership agreements and required the state to obtain a constitutional waiver to deduct union dues from its employees' wages. *See Fischer*, 2021 WL 141609, at *3, *7; *Belgau*, 975 F.3d at 944, 950.

Both circuit court panels rejected the plaintiffs' *Janus* arguments. Relying on the Supreme Court's decision in *Cohen v. Cowles Media Co.*, 501 U.S. 663 (1991), they explained that "[t]he First Amendment [did] not support [the plaintiffs'] right to renege on their promise to join and support the union" because that "promise was made in the context of a contractual relationship between the union and its employees." *Belgau*, 975 F.3d at 950. *See also Fischer*, 2021 WL 141609, at *8 n.18 ("[E]nforcement of Plaintiffs' membership agreements does not violate the First Amendment given that those agreements are enforceable under laws of general applicability …."). Applying those First Amendment principles, the circuit court panels also agreed that "'*Janus* does not extend a First Amendment right to avoid paying union dues' when those dues arise out of a contractual commitment that was signed before *Janus* was decided." *Fischer*, 2021 WL 141609, at *8 (quoting *Belgau*, 975 F.3d at 951). Having determined that the

plaintiffs suffered no infringement upon their First Amendment rights, the Third Circuit panel and the Ninth Circuit rejected the argument that *Janus* requires a constitutional waiver before union dues are deducted. *See id.* at *8 n.18; *Belgau*, 975 F.3d at 952. In reaching this holding, both panels noted that they were joining a "swelling chorus of courts" recognizing that *Janus* did not create a new waiver requirement for union members. *See Fischer*, 2021 WL 141609, at *8; *Belgau*, 975 F.3d at 951.

We see no reason to disagree. The First Amendment "does not confer … a constitutional right to disregard promises that would otherwise be enforced under state law." *Cohen*, 501 U.S. at 672. Bennett authorized the deduction of union dues as part of her membership agreement with the Union—that is, "in the context of a contractual relationship." *See Belgau*, 975 F.3d at 950. The Illinois common law of contracts is a "law of general applicability" that applies broadly, rather than targeting any individual, and does not offend the First Amendment. *See Cohen*, 501 U.S. at 670. The First Amendment therefore does not, without more, render unenforceable any "legal obligations" or "restrictions that … are self-imposed" through a contract. *See id.* at 671.

Moreover, it is generally accepted that "the legal framework that existed at the time of a contract's execution must bear on its construction" and that "a subsequent change in the law cannot retrospectively alter the parties' agreement." *Fla. E. Coast Ry. Co. v. CSX Transp., Inc.*, 42 F.3d 1125, 1129–30 (7th Cir. 1994) (applying Florida law to settlement agreement). *See also* 11 Williston on Contracts § 30:23 (4th ed. 2020) ("[C]hanges in the law subsequent to the

execution of a contract are not deemed to become part of [an] agreement unless its language clearly indicates such to have been [the] intention of [the] parties."). Rather, "[b]y binding oneself [by agreement,] one assumes the risk of future changes in circumstances in light of which one's bargain may prove to have been a bad one." *United States v. Bownes*, 405 F.3d 634, 636 (7th Cir. 2005).[7] "That is the risk inherent in all contracts; they limit the parties' ability to take advantage of what may happen over the period in which the contract is in effect." *Id.* We see here no clear indication that the parties intended the terms of Bennett's membership agreements and dues-deduction authorizations to incorporate future changes in the law. Consequently, we agree with the reasoning of the Third and Ninth Circuit panels and conclude that the First Amendment does not provide Bennett with a right to renege on her bargained-for commitment to pay union dues.

We also agree that *Janus* does not require a different result. In that case, the Supreme Court held that the practice of automatically deducting fair-share fees from nonmembers who "need not be asked" and "are not required to consent before the fees are deducted" violated those nonmembers' First Amendment rights by compelling them to subsidize the union's speech. *Janus*, 138 S. Ct. at 2460–61, 2486. In contrast, *Janus* said nothing about union

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[7] Although *Bownes* involved a plea agreement, we made explicitly clear that the analysis applied equally to contracts. *See* 405 F.3d at 636 ("In a contract (and equally in a plea agreement) one binds oneself to do something that someone else wants, in exchange for some benefit to oneself.").

members who, like Bennett, freely chose to join a union and voluntarily authorized the deduction of union dues, and who thus consented to subsidizing a union. While Bennett tries to decouple the decision to join the Union from the decision to pay union dues by framing the right at issue here as the "right to pay no money to the Union" (as she claims was recognized in *Janus*), she cannot do so: "By joining the union and receiving the benefits of membership, [Bennett] also agreed to bear the financial burden of membership." *Belgau*, 975 F.3d at 951. *See also Oliver v. Serv. Emps. Int'l Union Loc. 668*, 830 F. App'x 76, 79 n.3 (3d Cir. 2020) (nonprecedential decision) (explaining that one "cannot simultaneously choose to both join the Union and not pay union dues"); *Allen v. Ohio Civ. Serv. Emps. Ass'n AFSCME, Loc. 11*, No. 2:19-CV-3709, 2020 WL 1322051, at *8 (S.D. Ohio Mar. 20, 2020) ("By joining the union, Plaintiffs simultaneously acquired all of the benefits and burdens of membership."), *appeal dismissed*, Nos. 20-3440 & 20-3495, 2020 WL 4194952 (6th Cir. July 20, 2020).

Nothing in *Janus* suggests that its holding regarding union-related deductions from nonmembers' wages also applies to similar financial burdens on union members. The *Janus* Court explicitly "dr[ew] the line at allowing the government to … require all employees to support the union." 138 S. Ct. at 2478. The Court also explicitly stated that "[s]tates can keep their labor-relations systems exactly as they are—only they cannot force nonmembers to subsidize public-sector unions." *Id.* at 2485 n.27. As we stated on remand in that case, the Court "was not concerned in the abstract with the deduction of money from employees' paychecks

pursuant to an employment contract." *Janus v. Am. Fed'n of State, Cnty. & Mun. Emps., Council 31* ("*Janus II*"), 942 F.3d 352, 357 (7th Cir. 2019). Nor did it provide "an unqualified constitutional right to accept the benefits of union representation without paying." *Id.* at 358. Stated differently, "[t]he only right … recognized is that of an objector not to pay *any* union fees." *Id.*

In a last-ditch effort to evade this conclusion, Bennett argues that *Janus*'s waiver requirement nonetheless applies to the deduction of union dues "[b]ecause all employees are nonmembers when they first sign a union membership card and authorize dues deductions." She seizes on language in *Janus* stating that an employee's affirmative consent is required before "an agency fee [or] any other payment to the union may be deducted from a nonmember's wages," and that "[b]y agreeing to pay, nonmembers are waiving their First Amendment rights, and such a waiver cannot be presumed." *Janus*, 138 S. Ct. at 2486. She argues that the second part of this passage must apply to employees in Bennett's position because, by definition, only union members have agreed to pay money to the union. In other words, she contends that it cannot apply to nonmember employees who have never agreed to pay the union and thus never waived their First Amendment rights.

Bennett, however, is not a nonmember as the term was used in *Janus*. Read as a whole, *Janus* distinguished between those who consented to join a union—as Bennett did—and those who did not. In the same passage on which Bennett relies, the Court made clear that a union may collect dues when an "employee affirmatively consents to pay." *Id.* As we

explained above, Bennett voluntarily signed the membership agreements, which "authorize[d] [her] employer to deduct" her union dues and remit them to the Union. In August 2017, she also agreed that this authorization would remain in effect for the duration of her employment unless she validly revoked the authorization. Having consented to pay dues to the union, regardless of the status of her membership, Bennett does not fall within the sweep of *Janus*'s waiver requirement. *See Belgau*, 975 F.3d at 952 (explaining that *Janus* "in no way created a new First Amendment waiver requirement for union members before dues are deducted pursuant to a voluntary agreement"). Having determined that Bennett did not suffer a violation of her First Amendment rights, we conclude that the district court appropriately granted summary judgment for defendants–appellees as to Count I.

B. Exclusive Representation

Bennett also appeals the dismissal of Count II of her complaint, which alleged that provisions in the IELRA providing for the Union's exclusive representation of her interests—even though she is no longer a member—violate her First Amendment free speech and associational rights. The First Amendment "forbids abridgment of the freedom of speech." *Janus*, 138 S. Ct. at 2463. It also "encompasses both the freedom to associate and the freedom *not* to associate." *Hill v. Serv. Emps. Int'l Union*, 850 F.3d 861, 863 (7th Cir. 2017) (citing *Knox v. Serv. Emps. Int'l Union, Loc. 1000*, 567 U.S. 298, 309 (2012)). "Mandatory associations are subject to exacting scrutiny, meaning they require a compelling state interest that cannot be achieved through

significantly less-restrictive means." *Id.* Bennett argues that the IELRA creates a mandatory association subject to heightened scrutiny. We agree with the district court that caselaw forecloses this argument.

In *Minnesota State Board for Community Colleges v. Knight*, 465 U.S. 271 (1984), the Supreme Court rejected a First Amendment challenge to a Minnesota law that provided for exclusive-bargaining-unit representation for purposes of collective bargaining and on matters outside the scope of mandatory negotiations. *See id.* at 273–78. The Court held that the challenged law "in no way restrained [the employees'] freedom to speak … or their freedom to associate or not to associate with whom they please, including the exclusive representative." *Id.* at 288. The Court explained that the employees' free speech rights had not been infringed because the law did not deny nonunion members access to a public forum, and public employees had no right to be heard by, or negotiate individually with, their government employer. *See id.* at 280–83, 286–87. Similarly, the Minnesota law did not violate the employees' associational rights because they remained "free to form whatever advocacy groups they like" and were "not required to become members of [the union]." *Id.* at 289.

We followed *Knight* to uphold the constitutionality of the exclusive-bargaining-representative provisions of the Illinois Public Labor Relations Act—the parallel statute to the IELRA—in *Hill v. Service Employees International Union*, 850 F.3d at 864–66. In that case, a group of home healthcare and childcare providers argued that these provisions violated their First

Amendment associational rights because the statute forced them into a mandatory association with the union that represented their bargaining unit. *Id.* at 862–63. We held that the exclusive representation statute did not infringe on the plaintiffs' freedom of association because, as in *Knight*, the plaintiffs "do not need to join … or financially support" the union[8] and could form their own groups or oppose the union if they chose. *Id.* at 864. We further rejected the plaintiffs' argument that the law created a mandatory association triggering heightened scrutiny because the exclusive-representation system of labor relations did not compel them to express a particular message, accept undesired members into their own associations, or modify their expressive conduct. *Id.* at 865.

Knight and *Hill* control here to foreclose Bennett's claims based on the alleged infringement of her First Amendment free speech and associational rights. Bennett contends that exclusive representation creates a mandatory association subject to exacting scrutiny because it compels her to both associate with the Union and endorse speech that she finds objectionable. She further argues that exclusive representation under the IELRA does not meet that heightened standard because it does not serve a compelling state interest. As we did in *Hill*, we again reject these arguments against the constitutionality of exclusive representation.

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[8] Although we decided *Hill* prior to *Janus*, at that time the Supreme Court had already struck down as unconstitutional the part of the Illinois Public Labor Relations Act that required the *Hill* plaintiffs to pay mandatory fees. *See Harris v. Quinn*, 573 U.S. 616, 656 (2014).

Moreover, we find Bennett's attempts to distinguish *Knight* and *Hill* from this case unavailing. First, Bennett argues that *Knight* is distinct because it did not involve a compelled-representation challenge but addressed only whether the plaintiffs could force the government to listen to their views. We considered and rejected that argument in *Hill* because *Knight* acknowledged that exclusive bargaining required the state to treat the union representatives as expressing "the faculty's official collective position" even though "not every instructor agrees with the official faculty view on every policy question." *Knight*, 465 U.S. at 276. The *Knight* Court nonetheless concluded that this system of labor relations "in no way restrained appellees' freedom to speak … or their freedom to associate or not to associate with whom they please, including the exclusive representative." *Id.* at 288.

Second, Bennett asserts that *Hill* itself is distinct because the plaintiffs there were "partial" public employees—and their union thus had a limited ability to collectively bargain on their behalf. Accordingly, she argues that the *Hill* plaintiffs experienced a lesser degree of forced association than Bennett does as a "full-fledged" public employee. As explained above, however, we based our decision in *Hill* on *Knight*, which considered the exclusive representation of full public employees. *Compare Knight*, 465 U.S. at 275–76 (explaining that the Minnesota State Board for Community Colleges, the plaintiff faculty members' employer, operated and retained final policy-making authority over the state's community college system), *with Harris*, 573 U.S. at 621–23, 645–46 (describing plaintiff care providers as "partial," as opposed to "full-

fledged," public employees because Illinois law established that private persons receiving homecare services are "employers" of and "control[] all aspects of the employment relationship" with care providers, while "the State's role is comparatively small").

We also disagree with Bennett's narrow reading of *Hill*; our reasoning in that case, rather than being specific to partial public employees, is equally applicable to Bennett because—like the *Hill* plaintiffs—she remains free to join or support a union and to associate or not associate with whomever she chooses. *See Hill*, 850 F.3d at 864–65. Nor must she modify her expressive conduct. *See id.* at 865. In any event, since *Hill*, we have stated that "*Knight* and its progeny firmly establish the constitutionality of exclusive representation" for full public employees. *Ocol v. Chi. Tchrs. Union*, 982 F.3d 529, 532 (7th Cir. 2020).

Finally, we remain unpersuaded by Bennett's argument in the alternative that *Janus* overturned *Knight* (and by extension *Hill*). She relies on a passage in *Janus* characterizing exclusive representation as "a significant impingement on associational freedoms that would not be tolerated in other contexts." 138 S. Ct. at 2478; *see also id.* at 2460 (explaining that exclusive representation "substantially restricts the rights of individual employees"). But *Janus* did not mention, let alone overrule, *Knight* or otherwise question the constitutionality of a system of labor relations based on exclusive representation. The same passage from *Janus* that Bennett relies on reaffirms that "[i]t is … not disputed that the State may require that a union serve as exclusive bargaining agent for its employees …. We simply draw the line at allowing

the government to go further still and require all employees to support the union irrespective of whether they share its views." *Id.* at 2478. After acknowledging this principle, the *Janus* Court concluded that "[s]tates can keep their labor-relations systems exactly as they are," other than charging fair-share fees. *Id.* at 2485 n.27.

In contrast, *Knight* speaks directly to the constitutionality of exclusive representation. "The [Supreme] Court's instructions in this situation are clear: 'If a precedent of this Court has direct application in a case, yet appears to rest on reasons rejected in some other line of decisions, the Court of Appeals should follow the case [that] directly controls, leaving to this Court the prerogative of overruling its own decisions.'" *Price v. City of Chicago*, 915 F.3d 1107, 1111 (7th Cir. 2019) (alteration in original) (quoting *Agostini v. Felton*, 521 U.S. 203, 237, (1997)). Consistent with that instruction, we apply *Knight*'s directly applicable precedent and hold that the IELRA's exclusive-bargaining-representative arrangement does not violate Bennett's First Amendment rights. We find further reinforcement for this conclusion in the fact that every circuit court to address this issue after the *Janus* decision has held that exclusive representation remains constitutional. *See Reisman v. Associated Facs. of Univ. of Me.*, 939 F.3d 409, 414 (1st Cir. 2019), *cert. denied*, 141 S. Ct. 445 (2020); *Oliver*, 830 F. App'x at 80–81 (Third Circuit panel decision); *Akers v. Md. State Educ. Ass'n*, No. 19-1524, 2021 WL 852086, at *5 n.3 (4th Cir. Mar. 8, 2021); *Thompson v. Marietta Educ. Ass'n*, 972 F.3d 809, 813–14 (6th Cir. 2020), *petition for cert. docketed*, 20-1019 (U.S. Jan. 28, 2021); *Bierman v.*

Dayton, 900 F.3d 570, 574 (8th Cir. 2018); *Mentele v. Inslee*, 916 F.3d 783, 786–89 (9th Cir. 2019).

The district court thus appropriately granted summary judgment for defendants–appellees as to Count II.

III. Conclusion

Bennett cannot establish the existence of a First Amendment violation on either of the counts in her complaint. We therefore AFFIRM the district court's grant of summary judgment for defendants–appellees and denial of summary judgment for Bennett.

Appendix E

RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS

U.S. Const. amend. I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Act 115 Ill. Comp. Stat. 5/11.1 (2019)

(a) Employers shall make payroll deductions of employee organization dues, initiation fees, assessments, and other payments for an employee organization that is the exclusive representative. Such deductions shall be made in accordance with the terms of an employee's written authorization and shall be paid to the exclusive representative. Written authorization may be evidenced by electronic communications, and such writing or communication may be evidenced by the electronic signature of the employee as provided under Section 5-120 of the Electronic Commerce Security Act.

There is no impediment to an employee's right to resign union membership at any time. However, notwithstanding any other provision of law to the contrary regarding authorization and deduction of dues or other payments to a labor organization, the exclusive representative and an educational employee may agree to reasonable limits on the right of the employee to revoke such authorization, including a

period of irrevocability that exceeds one year. An authorization that is irrevocable for one year, which may be automatically renewed for successive annual periods in accordance with the terms of the authorization, and that contains at least an annual 10-day period of time during which the educational employee may revoke the authorization, shall be deemed reasonable. This Section shall apply to all claims that allege that an educational employer or employee organization has improperly deducted or collected dues from an employee without regard to whether the claims or the facts upon which they are based occurred before, on, or after the effective date of this amendatory Act of the 101st General Assembly and shall apply retroactively to the maximum extent permitted by law.

(b) Upon receiving written notice of the authorization, the educational employer must commence dues deductions as soon as practicable, but in no case later than 30 days after receiving notice from the employee organization. Employee deductions shall be transmitted to the employee organization no later than 10 days after they are deducted unless a shorter period is mutually agreed to.

(c) Deductions shall remain in effect until:

(1) the educational employer receives notice that an educational employee has revoked his or her authorization in writing in accordance with the terms of the authorization; or

(2) the individual educational employee is no longer employed by the educational employer in a bargaining unit position represented by the same exclusive representative; provided that if such

employee is, within a period of one year, employed by the same educational employer in a position represented by the same employee organization, the right to dues deduction shall be automatically reinstated.

Nothing in this subsection prevents an employee from continuing to authorize payroll deductions when no longer represented by the exclusive representative that would receive those deductions.

Should the individual educational employee who has signed a dues deduction authorization card either be removed from an educational employer's payroll or otherwise placed on any type of involuntary or voluntary leave of absence, whether paid or unpaid, the employee's dues deduction shall be continued upon that employee's return to the payroll in a bargaining unit position represented by the same exclusive representative or restoration to active duty from such a leave of absence.

(d) Unless otherwise mutually agreed by the educational employer and the exclusive representative, employee requests to authorize, revoke, cancel, or change authorizations for payroll deductions for employee organizations shall be directed to the employee organization rather than to the educational employer. The employee organization shall be responsible for initially processing and notifying the educational employer of proper requests or providing proper requests to the employer. If the requests are not provided to the educational employer, the employer shall rely on information provided by the employee organization regarding whether deductions for an employee organization were properly

authorized, revoked, canceled, or changed, and the employee organization shall indemnify the educational employer for any damages and reasonable costs incurred for any claims made by educational employees for deductions made in good faith reliance on that information.

(e) Upon receipt by the exclusive representative of an appropriate written authorization from an individual educational employee, written notice of authorization shall be provided to the educational employer and any authorized deductions shall be made in accordance with law. The employee organization shall indemnify the educational employer for any damages and reasonable costs incurred for any claims made by an educational employee for deductions made in good faith reliance on its notification.

(f) The failure of an educational employer to comply with the provisions of this Section shall be a violation of the duty to bargain and an unfair labor practice. Relief for the violation shall be reimbursement by the educational employer of dues that should have been deducted or paid based on a valid authorization given by the educational employee or employees. In addition, the provisions of a collective bargaining agreement that contain the obligations set forth in this Section may be enforced in accordance with Section 10.

(g) The Illinois Educational Labor Relations Board shall have exclusive jurisdiction over claims under Illinois law that allege an educational employer or employee organization has unlawfully deducted or collected dues from an educational employee in

violation of this Act. The Board shall by rule require that in cases in which an educational employee alleges that an employee organization has unlawfully collected dues, the educational employer shall continue to deduct the employee's dues from the employee's pay, but shall transmit the dues to the Board for deposit in an escrow account maintained by the Board. If the exclusive representative maintains an escrow account for the purpose of holding dues to which an employee has objected, the employer shall transmit the entire amount of dues to the exclusive representative, and the exclusive representative shall hold in escrow the dues that the employer would otherwise have been required to transmit to the Board for escrow; provided that the escrow account maintained by the exclusive representative complies with rules adopted by the Board or that the collective bargaining agreement requiring the payment of the dues contains an indemnification provision for the purpose of indemnifying the employer with respect to the employer's transmission of dues to the exclusive representative.

(h) If a collective bargaining agreement that includes a dues deduction clause expires or continues in effect beyond its scheduled expiration date pending the negotiation of a successor agreement, then the employer shall continue to honor and abide by the dues deduction clause until a new agreement that includes a dues deduction clause is reached. Failure to honor and abide by the dues deduction clause for the benefit of any exclusive representative as set forth in this subsection (h) shall be a violation of the duty to bargain and an unfair labor practice. For the benefit of any successor exclusive representative

certified under this Act, this provision shall be applicable, provided the successor exclusive representative presents the employer with employee written authorizations or certifications from the exclusive representative for the deduction of dues, assessments, and fees under this subsection (h).

(i)(1) If any clause, sentence, paragraph, or subdivision of this Section shall be adjudged by a court of competent jurisdiction to be unconstitutional or otherwise invalid, that judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, or subdivision of this Section directly involved in the controversy in which such judgment shall have been rendered.

(2) If any clause, sentence, paragraph, or part of a signed authorization for payroll deductions shall be adjudged by a court of competent jurisdiction to be unconstitutional or otherwise invalid, that judgment shall not affect, impair, or invalidate the remainder of the signed authorization, but shall be confined in its operation to the clause, sentence, paragraph, or part of the signed authorization directly involved in the controversy in which such judgment shall have been rendered.