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In the United States Court of Appeals
For the Seventh Circuit

No. 22-1722

ARIADNA RAMON BARO,

Plaintiff-Appellant,

v.

LAKE COUNTY FEDERATION OF TEACHERS LOCAL 504, IFT-AFT/AFL-CIO and WAUKEGAN COMMUNITY SCHOOL DISTRICT NO. 60,

Defendants-Appellees.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.
No. 1:20-cv-02126 – **John F. Kness**, *Judge*.

ARGUED DECEMBER 6, 2022 – DECIDED JANUARY 6, 2023

Before ROVNER, HAMILTON, and ST. EVE, *Circuit Judges*.

ST. EVE, *Circuit Judge*. Ariadna Ramon Baro was an English-as-a-second-language teacher for Defendant Waukegan Community School District No. 60 ("the District") in August 2019 when she signed a union membership form – a contract to join Defendant Lake County Federation of Teachers Local 504,

IFT-AFT/AFL-CIO ("the Union"), the union that represents teachers in the District. This form authorized the District to deduct union dues from her paychecks for one year. Ramon Baro alleges she learned later that she was not required to join the Union and she tried to back out of the agreement. But the Union insisted that her contract was valid and the District continued deducting dues from her paychecks. In response, Ramon Baro filed this lawsuit, arguing that the dues deduction violated her First Amendment rights under *Janus v. American Federation of State, County, & Municipal Employees, Council 31*, 138 S. Ct. 2448 (2018). The district court dismissed the suit. Because Ramon Baro voluntarily consented to the withdrawal of union dues and the enforcement of a valid private contract does not implicate her First Amendment rights, we now affirm.

I. Background

A. Factual Allegations[1]

Ramon Baro worked as an English-as-a-second-language teacher in the District during the 2019–2020 school year. As part of orientation, she attended a presentation by the Union. A representative explained how much dues would be and gave each teacher a Union Membership Application. Although the Union's

[1] Because the district court dismissed this complaint at the pleading stage, the following allegations are taken from Ramon Baro's complaint and assumed true. *Proft v. Raoul*, 944 F.3d 686, 690 (7th Cir. 2019).

representative did not claim that membership was required – and no one from the district made any representations about union membership – Ramon Baro assumed it was mandatory and signed the application. It read, in relevant part:

> I hereby apply to be a member of the Lake County Federation of Teachers, AFT Local 504 and authorize the Lake County Federation of Teachers, AFT Local 504 to act as my exclusive representation with my employer[.]
>
> . . .
>
> I authorize you to deduct from my earnings on a regular pro rata basis, and time frame as set forth in my collective bargaining agreement, the following:
>
> 1. An amount equal to the current annual membership dues. . . . This voluntary authorization and assignment shall be irrevocable, regardless of whether I am or remain a member of the Union, 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 completing a revocation form between August 1 and August 31.
>
> 2. . . . This authorization is signed freely and voluntarily and not out of any fear of reprisal; I will not be favored or disadvantaged because I exercise this right. This authorization

> shall continue in effect from year to year unless terminated by me by written notification. . . .

A few days after she signed the contract, Ramon Baro learned that union membership was, in fact, optional. She sent letters to the District and the Union, trying to revoke her membership.

Nevertheless, the District began deducting dues from Ramon Baro's paychecks in January 2020. The following month, Ramon Baro contacted her union representative and reiterated that she wanted to revoke her membership in the Union and stop paying dues. In response, the President of the Union informed her that she would have to wait until August to resign, per the membership agreement.

Ramon Baro then filed this lawsuit under 42 U.S.C. § 1983, alleging that the continued deduction of dues violated her First Amendment rights under *Janus*, 138 S. Ct. at 2486, and seeking a refund for the dues she had paid. The President of the Union sent her a letter just a few days later, confirming that she was no longer a member of the Union and that dues would stop being withheld from her paycheck. He enclosed a check for $829.30, which he said included "a full refund of all [Ramon Baro's] dues plus an additional five hundred dollars for [her] efforts in pursuing this matter." The District stopped withholding her dues the same day. But two days later, Ramon Baro returned the check and moved forward with this lawsuit.

B. Procedural History

At the district court, the District and the Union moved to dismiss the complaint under Rule 12(b)(6). The court granted the motion, explaining that Ramon Baro's "voluntary choice to join her school's local union – even if ill-informed – means that [she] is bound by the terms of the union membership agreement and thus cannot show that the deduction of dues from her paycheck violated the First Amendment." She timely filed this appeal.

II. Analysis

"We review a dismissal order under Federal Rule of Civil Procedure 12(b)(6) de novo." *Proft*, 944 F.3d at 690. We find, as the district court held, that neither the First Amendment nor ordinary contract principles entitle Ramon Baro to relief.

A. *Janus* Does Not Apply to Union Members

Ramon Baro insists that when the District withheld union dues from her paychecks, it violated her First Amendment rights under *Janus*. In *Janus*, the Supreme Court considered the constitutionality of statutory "agency-fee" schemes for public sector unions. Under these agency-fee arrangements, "[e]mployees who decline[d] to join the union [we]re not assessed full union dues but [were required] instead [to] pay what [wa]s generally called an 'agency fee,' which amount[ed] to a percentage of the union dues." *Janus*, 138 S. Ct. at 2460. This left government employees

with no option but to subsidize a union in some way. Compelled union subsidization, the Court held, violated nonmembers' First Amendment rights. *Id*. at 2486.

Ramon Baro's claim that she has a right to rescind her union membership is based on a single paragraph in *Janus*:

> Neither an agency fee nor any other payment to the union may be deducted from a nonmember's wages, nor may any other attempt be made to collect such a payment, unless the employee affirmatively consents to pay. By agreeing to pay, nonmembers are waiving their First Amendment rights, and such a waiver cannot be presumed. Rather, to be effective, the waiver must be freely given and shown by 'clear and compelling' evidence.

Id. (cleaned up). She reads this passage as creating a right for any government employee who, like her, "agree[s] to pay" a union. Because "waiver cannot be presumed," Ramon Baro contends that once a nonmember signs a membership agreement and agrees to pay union dues, a secondary waiver analysis is triggered, requiring a court to look beyond the membership agreement for further "clear and compelling evidence" that the employee consented to pay the union.

We rejected this reading of *Janus* in *Bennett v. Council 31 of the American Federation of State, County & Municipal Employees, AFL-CIO*, 991 F.3d 724, 731 (7th Cir. 2021). The plaintiff in *Bennett* was a union

employee who had signed her union membership contract before *Janus* was decided and believed the holding in *Janus* permitted her to void the contract. We ruled that *Janus*'s reasoning was limited to nonmembers who were being forced to subsidize union speech with which they had chosen not to associate. *Id.* (citing *Belgau v. Inslee*, 975 F.3d 940, 950 (9th Cir. 2020), *cert. denied*, 141 S. Ct. 2795 (2021) and *Fischer v. Governor of New Jersey*, 842 F. App'x 741, 752 (3d Cir. 2021), *cert. denied sub nom. Fischer v. Murphy*, 142 S. Ct. 426 (2021)). By contrast, "*Janus* said nothing about union 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." *Id.* at 732. All circuits to consider the issue have agreed that *Janus* creates no new waiver requirement before a valid union contract can be enforced. *See Oliver v. Serv. Emps. Int'l Union Loc. 668*, 830 F. App'x 76, 79 (3d Cir. 2020); *Hendrickson v. AFSCME Council 18*, 992 F.3d 950, 962 (10th Cir. 2021), *cert. denied*, 142 S. Ct. 423 (2021); *Belgau*, 975 F.3d at 951; *Fischer*, 842 F. App'x at 753. The voluntary signing of a union membership contract *is* clear and compelling evidence that an employee has waived her right not to join a union.

Attempting to distinguish her case from *Bennett*, Ramon Baro points to the timing of her union membership. It is true that Bennett joined her union before *Janus* was decided while Ramon Baro joined the Union after *Janus* was decided. But the timing makes no difference. What matters is the nature of each person's decision to sign a private contract. Like Bennett,

Ramon Baro voluntarily signed a valid contract, became a union member, and accepted the terms and conditions of union membership. Accordingly, our holding in *Bennett* controls and *Janus* – a case about the First Amendment rights of employees who choose not to join unions – does not apply to Ramon Baro. Her § 1983 claim fails on these grounds alone.

B. Ordinary Contract Principles

Ramon Baro nevertheless argues that *Bennett* should not control because she did not know that joining the Union was optional, and so her decision to do so, unlike Bennett's, was not voluntary. But Ramon Baro's union membership is established by contract, and the First Amendment does not immunize agreements from ordinary contract law principles. *See Cohen v. Cowles Media Co.*, 501 U.S. 663, 669 (1991) ("[G]enerally applicable laws do not offend the First Amendment simply because their enforcement . . . has incidental effects" on free speech); *Bennett*, 991 F.3d at 731 (citing *Belgau*, 975 F.3d at 950). Indeed, every circuit court to consider the issue has held the same. *See Belgau*, 975 F.3d at 951; *Fischer*, 842 F. App'x at 753; *Hendrickson*, 992 F.3d at 962; *see also Hoekman v. Educ. Minn.*, 41 F.4th 969, 978 (8th Cir. 2022).

Applying ordinary Illinois contract principles, we see that Ramon Baro's voluntariness argument is untenable:

> Illinois follows the objective theory of intent, whereby the court looks first to the written

> agreement and not to the parties' subjective understandings. . . . The status of a document as a contract depends on what the parties express to each other and to the world, not on what they keep to themselves.

Hampton v. Ford Motor Co., 561 F.3d 709, 714 (7th Cir. 2009) (cleaned up)*; see also Lewitton v. ITA Software, Inc.*, 585 F.3d 377, 380 (7th Cir. 2009) ("Only if the 'contract's language is susceptible to more than one interpretation' would we look to extrinsic evidence to determine the parties' intent.") (quoting *Camico Mut. Ins. Co. v. Citizens Bank*, 474 F.3d 989, 993 (7th Cir. 2007)). In this case, the objective intent of the parties was clear from the face of the membership agreement. By the plain language of the contract, the agreement was a "voluntary authorization and assignment," intended to "be irrevocable, regardless of whether [Ramon Baro is] or remain[s] a member of the Union, for a period of one year." Ramon Baro's signature on the contract further attested that it was "signed freely and voluntarily." Under Illinois contract law, such unambiguous language means that our analysis does not consider the subjective understanding of the parties. In other words, Ramon Baro's belief that the contract was mandatory is irrelevant. *See Hendrickson*, 992 F.3d at 962 (applying New Mexico contract law); *Fischer*, 842 F. App'x at 752–53 (applying New Jersey contract law).[2]

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[2] These same contract principles explain why Ramon Baro's suggestion that dismissing her claim would sanction coercion and fraud by unions is unfounded. Fraud and coercion are common

In sum, the First Amendment protects our right to speak. It does not create an independent right to void obligations when we are unhappy with what we have said. For the foregoing reasons, the decision of the district court is

AFFIRMED.

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defenses which can void contracts in the first place. *See*, *e.g.*, *Keystone Montessori Sch. v. Vill. of River Forest*, 187 N.E.3d 1167, 1178 (Ill. App. Ct. 2021), *reh'g denied*, (July 20, 2021), *appeal denied*, 183 N.E.3d 909 (Ill. 2021).

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

[SEAL]

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FINAL JUDGMENT

January 6, 2023

Before
ILANA DIAMOND ROVNER, *Circuit Judge*
DAVID F. HAMILTON, *Circuit Judge*
AMY J. ST. EVE, *Circuit Judge*

No. 22-1722	ARIADNA RAMON BARO, *Plaintiff-Appellant* v. LAKE COUNTY FEDERATION OF TEACHERS LOCAL 504, IFTAFT/AFL-CIO and WAUKEGAN COMMUNITY SCHOOL DISTRICT NO. 60, *Defendants-Appellees*
Originating Case Information:	
District Court No: 1:20-cv-02126 Northern District of Illinois, Eastern Division District Judge John F. Kness	

The judgment of the District Court is AFFIRMED, with costs, in accordance with the decision of this court entered on this date.

/s/ Christopher Conway
Clerk of Court

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

ARIADNA RAMON BARO, Plaintiff, v. LAKE COUNTY FEDERATION OF TEACHERS LOCAL 504, IFT-AFT/AFL-CIO and WAUKEGAN COMMUNITY UNIT SCHOOL DISTRICT #60, Defendants.	No. 20-cv-02126 Judge John F. Kness

MEMORANDUM OPINION AND ORDER

(Filed Mar. 28, 2022)

On August 20, 2019, Plaintiff Ariadna Ramon Baro, a public-school English teacher, signed a membership agreement to join a teacher's union under the mistaken belief that such membership was required. Under the terms of that agreement, Plaintiff authorized the union to deduct annual membership dues from her salary. When Plaintiff realized her mistake—that union membership and paying union dues were not, in fact, required—Plaintiff attempted to resign her membership and revoke her dues authorization. On September 13, 2019, Plaintiff received an email from the union asserting that "you will pay union dues regardless of whether or not you are a member," which Plaintiff interpreted to mean that her request to resign was effectively denied. In January 2020, the school began

to deduct dues from Plaintiff's salary on the union's behalf.

On April 3, 2020, Plaintiff filed a § 1983 claim against her employer and the Union for violating her First Amendment rights under *Janus v. Am. Fed'n of State, Cnty., & Mun. Emps., Council 31*, ___ U.S. ___, 138 S. Ct. 2448 (2018). On April 10, 2020, the Union sent Plaintiff a formal acknowledgment of her resignation, assurance that dues would no longer be deducted from her earnings, and a check for a full refund of the dues, plus five hundred additional dollars to compensate Plaintiff for her troubles. Plaintiff refused to accept the check and instead amended her complaint to add a claim for punitive damages.

Now before the Court are Defendants' fully briefed motions to dismiss. As explained below, Plaintiff's voluntary choice to join her school's local union—even if ill-informed—means that Plaintiff is bound by the terms of the union membership agreement and thus cannot show that the deduction of dues from her paycheck violated the First Amendment. Accordingly, Defendants' motions are granted, and the case is dismissed.

I. BACKGROUND

Plaintiff Ariadna Ramon Baro, a citizen of Spain, relocated to Waukegan, Illinois in 2019 to begin work as an English-as-a-second-language teacher for high school students in the Waukegan Community Unit School District #60 (the "District"). (First Amended

Complaint ("FAC"), Dkt. 7 ¶ 10.) On August 20, 2019, Plaintiff attended an orientation meeting at which a representative of Defendant Lake County Federation of Teachers, Local 504, IFT-AFT/AFL-CIO (the "Union") presented information about the teachers' union. (*Id.* ¶ 11.) Believing that membership in the Union was required, Plaintiff filled out the union membership card and returned it to the representative. (*Id.*) Under the terms of that union membership agreement, Plaintiff agreed to authorize the Union "to deduct from [Plaintiff's] earnings on a regular pro rata basis . . . [a]n amount equal to the current annual membership dues as certified by [the Union] . . . for a period of one year[.]" (FAC, Exh. A.)

A few days later, Plaintiff "learned that union membership and paying the union was, in fact, not required," contrary to her prior belief. (*Id.* ¶ 12.) She then sent letters to both the District and the Illinois Federation of Teachers (the Union's affiliated entity) resigning her membership. (*Id.* ¶ 13.) In those letters, Plaintiff declared that her earlier dues-deduction authorization "was signed under a framework *Janus* declared unconstitutional." (*Id.*, Exhs. B & C.) On September 13, 2019, Plaintiff received an unrelated email from "Mr. Weber," a fellow teacher and a union representative, stating that "you will pay union dues regardless of whether or not you are a member." (*Id.* ¶ 14.) This statement, Plaintiff admits, was not true. (*Id.* ¶ 14.) But Plaintiff believed at the time that this emailed statement "meant that her request to resign was effectively denied." (*Id.* ¶ 15.)

In January 2020, the District began deducting Union dues from Plaintiff's paycheck and remitting them to the Union. (*Id.* ¶ 16.) On February 3, 2020, Plaintiff again contacted her Union representative and the District's payroll department to explain that she wanted to resign her membership and stop paying dues. (*Id.* ¶ 17.) But the payroll department told her that it could not stop deducting the dues and that she would have to speak to her Union representative. (*Id.*) The Union president then contacted Plaintiff and explained that she would have to wait until the withdrawal period in August 2020 to resign her membership and stop the deduction of dues. (*Id.*)

Plaintiff filed her first complaint in this case on April 3, 2020, under 42 U.S.C. § 1983 and 28 U.S.C. § 2201(a) against Defendants for violating her First Amendment rights by allegedly withholding Plaintiff's dues without Plaintiff's consent. (*Id.* ¶ 18; Dkt. 1.) Specifically, Plaintiff sought various declarations regarding Defendant's violation of Plaintiff's First Amendment rights under *Janus*, an injunction barring the further deduction of her Union dues, damages in the form of all dues collected from her, and costs and fees under 42 U.S.C. § 1988. (*See* Dkt. 1.) On April 15, 2020, Plaintiff received a letter from the Union acknowledging her resignation and explaining that dues would no longer be deducted. (FAC ¶ 18.) The letter included a check for $829.30, which represented "a full refund of all [Plaintiff's] dues plus an additional five hundred dollars for your efforts in pursuing this matter." (*Id.* ¶ 18, Exh. F.) Plaintiff returned the check (*id.*

¶ 20) and filed an amended complaint on April 24, 2020 that added a claim for punitive damages (*See* FAC). Now before the Court are Defendants' fully briefed motions to dismiss. (Dkts. 20, 22.) For the reasons discussed below, Defendants' motions to dismiss are granted.

II. LEGAL STANDARD

A motion under Rule 12(b)(6) "challenges the sufficiency of the complaint to state a claim upon which relief may be granted." *Hallinan v. Fraternal Order of Police of Chicago Lodge No. 7*, 570 F.3d 811, 820 (7th Cir. 2009). Each complaint "must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). Those allegations "must be enough to raise a right to relief above the speculative level." *Twombly*, 550 U.S. at 555. Put another way, the complaint must present a "short, plain, and plausible factual narrative that conveys a story that holds together." *Kaminski v. Elite Staffing, Inc.*, 23 F.4th 774, 777 (7th Cir. 2022) (internal quotation omitted). In evaluating a motion to dismiss, the Court must accept as true the complaint's factual allegations and draw reasonable inferences in the plaintiff's favor. *Iqbal*, 556 U.S. at 678. But even though factual allegations are entitled to the assumption of truth, mere legal conclusions are not. *Id.* at 678-79.

III. DISCUSSION

Defendants contend that Plaintiff's complaint must be dismissed under both 12(b)(6) and 12(b)(1). (Dkts. 21, 22.) Defendants first argue that Plaintiff's claim does not implicate the First Amendment because Plaintiff voluntarily entered into a private agreement with Defendants. (Dkt. 21 at 5-7; Dkt. 22 at 1-2.) Defendants also contend that their tender to Plaintiff, made after Plaintiff brought this action, eliminated any case or controversy between the parties. (Dkt. 21 at 9-14; Dkt. 22 at 2-3.) As matter of jurisdiction, the Court first addresses the issue of mootness.

A. Plaintiff's case is not moot

If a case becomes moot at any point during the proceedings, it is "no longer a Case or Controversy for purposes of Article III and is outside the jurisdiction of the federal courts." *Big Shoulders Cap. LLC v. San Luis & Rio Grande R.R., Inc.*, 13 F.4th 560, 570 (7th Cir. 2021). A case is moot when "the issues presented are no longer 'live' or the parties lack a legally cognizable interest in the outcome." *L.A. Cnty. v. Davis*, 440 U.S. 625, 631 (1979) (quoting *Powell v. McCormack*, 395 U.S. 486, 496 (1969)). The party asserting mootness bears a "heavy burden of proof" in demonstrating it is "absolutely clear that the allegedly wrongful behavior could not reasonably be expected to recur." *Freedom From Religion Found., Inc. v. Concord Comm. Schs.*, 885 F.3d 1038, 1051 (7th Cir. 2018). The proper test for mootness is "whether it is still possible to fashion some form of

meaningful relief to the [Plaintiff] in the event [she] prevails on the merits." *Holder v. Ill. Dept. of Corrs.*, 751 F.3d 486, 498 (7th Cir. 2014). To answer this question, the Court must determine whether Plaintiff remains injured and what relief Plaintiff requests.

At the crux of Plaintiff's alleged injury is a constitutional deprivation; namely, that Defendants violated Plaintiff's First Amendment rights under *Janus* by withholding union dues from Plaintiff's pay. To remedy this, Plaintiff requests: (1) a declaration that the union membership card she signed did not waive her First Amendment rights under *Janus* and that Defendants' actions thereby violated Plaintiff's constitutional rights; (2) actual damages for all union dues collected from her; (3) punitive damages against the Union; and (4) costs and attorneys' fees. (FAC at 8-9.) After Plaintiff filed this case, but before she filed the operative complaint, the District ceased withholding union dues from Plaintiff's paycheck and remitting them to the Union, and the Union voluntarily attempted to fully refund garnished dues plus a $500 check for Plaintiff's "efforts in pursuing this matter." (*Id.* ¶¶ 18-19, Exh. F.) Plaintiff returned the check, (*id.* ¶ 20) and filed an amended complaint with an added claim for punitive damages.

As a general rule, an unaccepted settlement offer does not render a case moot. *Campbell-Ewald Co. v. Gomez*, 577 U.S. 153, 162 (2016). And the Seventh Circuit has overruled a number of its decisions to the extent they hold that "a defendant's offer of full compensation moots the litigation or otherwise ends the

Article III case or controversy." *Chapman v. First Index, Inc.*, 796 F.3d 783, 787 (7th Cir. 2015).[1] *Chapman* went so far as to suggest that "[e]ven a defendant's proof that the plaintiff has *accepted* full compensation . . . is an affirmative defense rather than a jurisdictional bar." *Id.* Under *Chapman*, Defendant's attempted reimbursement cannot create a jurisdictional bar to Plaintiff's claim for damages. As a result, Plaintiff's claim for monetary relief is not moot. For the same reason, Plaintiff's requested declaratory relief under 28 U.S.C. § 2201 also survives a Rule 12(b)(1) challenge. *See NewPage Wis. Sys. Inc. v. United Steel, Paper & Forestry, Rubber, Mfg., Energy Allied Indus. & Serv. Workers Int'l Union, AFL-CIO/CLC*, 651 F.3d 775, 776 (7th Cir. 2011) ("Declaratory judgment actions are authorized as long as there is an actual controversy between the two parties").

Without regard to whether any prospective injunction would provide meaningful relief to Plaintiff,[2]

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[1] *Chapman* explained that "[i]f an offer to satisfy all of the plaintiff's demands really moots a case, then it self-destructs. Rule 68 is captioned 'Offer of Judgment.' But a district court cannot enter judgment in a moot case. . . . So if [Defendant tendered an offer that] made this case moot, even if [Plaintiff] had accepted it the district court could not have ordered [Defendant] to pay." *Chapman*, 796 F.3d at 786.

[2] Before Plaintiff filed her operative complaint, the Union had already ceased the challenged conduct: the Union acknowledged Plaintiff's request to become a nonmember and ceased deducting dues from her paycheck. (FAC, Exh. F.) Although a defendant's voluntary cessation of challenge conduct "does not necessarily render a case moot," if a defendant "sincerely self-corrects the practice at issue, a court will give this effort weight in its

Plaintiff's claims for damages and declaratory relief satisfy the "Article III minima of injury-in-fact" to maintain "requisite standing." *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 371 (1982). It is well established that "even the availability of a 'partial remedy' is 'sufficient to prevent [a] case from being moot.'" *Calderon v. Moore*, 518 U.S. 149, 150 (1996) (quoting *Church of Scientology of Cal. v. United States*, 506 U.S. 9, 13 (1992)). Thus, so long as Plaintiff has some available remedy—even if not "fully satisfactory"—Plaintiff's case is not moot. *Id.*

In view of *Chapman*, Plaintiff's claim for monetary damages and declaratory relief are not rendered moot by Defendant's voluntary attempts to provide a remedy. Because a case or controversy exists, the Court

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mootness determination." *Freedom From Religion Found.*, 885 F.3d at 1051 (citing *Wis. Right to Life, Inc. v. Schober*, 366 F.3d 485, 492 (7th Cir. 2004)). Even viewed in the light most favorable to Plaintiff, the complaint does not suggest the Union's conduct is reasonably expected to recur. Plaintiff admits that the statement she received—that she would have to "pay union dues regardless of whether or not [she became] a member"—"was not true." (Dkt. 7 ¶ 14.) For its part, the Union disavows its "legally inaccurate" statement in the letter as a "misstatement." (Dkt. 21 at 7.) Plaintiff further concedes that she "might not ever face the unconstitutional conduct alleged in her complaint again given [the Union's] voluntary cessation," and that the Union's conduct "may make [Plaintiff's] requested injunctive relief . . . moot." (Dkt. 27 at 9.) Although the pleadings create no reason to believe that Defendant could "resurrect the older procedure in the future," *Boyd v. Adams*, 513 F.2d 83, 89 (7th Cir. 1975), Plaintiff, for the reasons identified in this opinion, maintains justiciable claims for damages and declaratory relief. *Calderon v. Moore*, 518 U.S. 149, 150 (1996).

retains its jurisdiction under Article III and can proceed to address Defendants' motion to dismiss under Rule 12(b)(6).

B. Plaintiff's complaint does not implicate the First Amendment

In 2018, the Supreme Court held that "[n]either an agency fee for any other payment to the union may be deducted from a nonmember's wages, nor may any other attempt be made to collect such a payment, *unless the employee affirmatively consents to pay.* By agreeing to pay, *nonmembers* are waiving their First Amendment rights, and such a waiver cannot be presumed." *Janus*, 138 S. Ct. at 2486 (emphasis added). But "*Janus* said nothing about union members who . . . freely chose to join a union and voluntarily authorized the deduction of union dues, and who thus consented to subsidizing a union." *Bennett v. Council 31 of the Am. Fed'n of State, Cnty. & Mun. Emps., AFL-CIO*, 991 F.3d 724, 732 (7th Cir. 2021).

Janus held that the First Amendment prohibits unions from forcing compulsory payroll deductions—*i.e.*, "fair share" fees—from workers who are not union members. *Janus*, 138 S. Ct. at 2486. In *Janus*, the plaintiff was not a member of the union, but the collective bargaining agreement nevertheless required him to pay agency fees to the union, which in turn spent that money in part on lobbying and advertising on behalf of the union. *Id.* As the Supreme Court explained, compelling nonmembers to subsidize the activities of a

public sector union by automatically deducting fair-share fees runs afoul of the First Amendment absent an employee's affirmative consent and waiver of such right as shown by "clear and compelling evidence." *Id.*

Plaintiff's claim presupposes that the Supreme Court's decision in *Janus* established a First Amendment right for all public employees—including union members—not to subsidize a union by means of deduction of union dues without first affirmatively consenting to waive that right. But the Seventh Circuit expressly rejected that reading of *Janus* in *Bennett v. AFSCME Council* 31, joining instead "a swelling chorus of courts" that have held *Janus* does not, as a matter of law, require a constitutional waiver before union dues are deducted from employees who have chosen to join a public sector union. *Bennett*, 991 F.3d at 730-31.

As here, the plaintiff in *Bennett* signed a union membership card and later asserted that the *Janus* decision voided her dues-deduction authorization. *Id.* at 730. But the Seventh Circuit held that the union and school district did not violate the plaintiff's First Amendment rights by continuing to deduct union dues from her paychecks *after* she revoked her union membership, explaining that the signing of a union membership card authorized the deduction of union dues "in the context of a contractual relationship" and that "[t]he First Amendment does not confer a constitutional right to disregard promises that would otherwise be enforced under state law." *Id.* at 731 (cleaned up).

Bennett fatally undermines Plaintiff's claim that her "*Janus* rights" were violated by Defendants' conduct. Indeed, Plaintiff's own allegations establish that she signed the union membership agreement voluntarily, meaning that she is bound by the contract she entered. *See Troesch v. Chi. Tchrs. Union, Loc. Union No.1, Am. Fed'n of Tchrs.*, 522 F. Supp. 3d 425, 431 (N.D. Ill. 2021) (dismissing complaint for failure to state a *Janus* claim), *aff'd*, No. 21-1525, 2021 WL 2587783 (7th Cir. Apr. 15, 2021), *cert. denied sub nom. Troesch v. Chi. Tchrs. Union*, 142 S. Ct. 425 (2021). Although the Court need look no further than *Janus* and *Bennett* to dispose of Plaintiff's First Amendment claim, an exploration of the record is necessary to demonstrate why Plaintiff's claim fails.

1. Plaintiff Voluntarily Joined the Union

It is undisputed that Plaintiff signed the union membership agreement and that such membership was not a condition of Plaintiff's employment. (*See* FAC ¶ 11-12.) By its terms, the membership card was required to "authorize" the deduction of union dues and to "apply to be a member" in the union. (*Id.*, Exh. A.) Union membership was thus on an opt-in basis, not opt-out. (*Id.* ("I hereby apply to be a member"; "I hereby authorize . . . the [union] to act as my exclusive representative with my employer[.]").)

Plaintiff now asserts that there is not "clear and convincing evidence that she provided affirmative consent to waive her right not to pay" union dues because,

although she agreed to the terms of the membership agreement, Plaintiff did not specifically agree to give up her rights under *Janus* not to subsidize union speech. (*Id.* ¶ 3.) But this crabbed view finds no support in *Janus* or *Bennett; Janus* "said nothing about union members who, like [Plaintiff] voluntarily authorized the deduction of union dues." *Bennett*, 991 F.3d at 732.

Plaintiff does not dispute that she voluntarily signed the union membership card. (Dkt. 27 at 6 (Plaintiff "has never alleged that [the] September 13, 2019 statement caused her to involuntarily sign the union card on August 20, 2019").) Instead, Plaintiff alleges that "she filled out the union membership form" because she "[b]eliev[ed] it to be required" and "was unaware of the Supreme Court's *Janus* decision." (FAC ¶ 11.) A few days later, Plaintiff says, she realized her mistake and resigned her membership "[p]er the U.S. Supreme Court's decision in Janus [*sic*]." (*Id.*, Exh. B.) Plaintiff also alleges that the unrelated communication she received from "Mr. Weber" the following month—stating that Plaintiff "will pay union dues regardless of whether or not [Plaintiff is a] member"—caused her to believe that her request to resign "was effectively denied." (*Id.* ¶ 15.)

Although Plaintiff admits that the substance Weber's email "was not true"—Plaintiff concedes Defendants do not deduct union dues from nonmembers—Plaintiff maintains that she "did not know it was not true" at the time. (FAC ¶ 14.) This assertion is difficult to square with Plaintiff's Exhibits B and C, which

reflect, in detail, Plaintiff's apparent certitude—two weeks before she received the Weber email—that she was *not* obligated to remain a union member or to pay dues as a nonmember:

> **Effective immediately, I resign my membership from the Union and all affiliated unions and wish to be considered a nonmember.**
>
> Per the U.S. Supreme Court's decision in *Janus v. AFSCME*, I cannot be required to pay any dues or fees to a union to maintain my job.
>
> **Therefore, neither the Union nor my Employer is authorized** to enforce any authorization I previously gave or may be perceived to have given pursuant to a signed authorization form, or any authorization that Employer has inferred on my behalf, allowing Employer to make an automatic payroll deduction for Union dues or fees.
>
> **Furthermore, any restriction on the timing of revoking a dues/fees deduction is invalid because any previous authorization was signed under a framework Janus declared unconstitutional.**
>
> If you refuse to accept this letter as both an effective resignation and my immediate revocation of the automatic dues or fees deduction, please inform me immediately, in writing, of exactly what must be done to revoke my automatic dues or fees deduction authorization and resign my membership in the Union.

> Please respond promptly. Any further collection of dues or fees will constitute a violation of my rights under the U.S. Constitution.

(*Id.*, Exhs. B & C.)

Plaintiff's assertion that she thought her resignation was rejected is also belied by Plaintiff's allegation that, on February 3, 2020, she "again contacted her union representative and the payroll department of the District"—the details are sketchy—"and explained that she wanted to resign her membership and stop paying dues." (*Id.* ¶ 17.) If Plaintiff truly believed that her earlier resignation request was *de facto* denied by the Weber email, it is odd that Plaintiff chose to reiterate that previously-ineffective request.

These discrepancies may be immaterial, however, because the Court is bound to accept Plaintiff's factual allegations as true and to draw all reasonable inferences in Plaintiff's favor. *See Iqbal*, 556 U.S. at 678. Doing just that, the Court understands the essence of Plaintiff's narrative to be as follows:

- ➢ Plaintiff signed a union membership application form on August 20, 2019, authorizing the Union to deduct dues from Plaintiff's earning "for a period of one year from the date of authorization." (FAC, Exh. A.)
- ➢ At the time she signed the form, Plaintiff did not know that joining the union was optional. (*Id.* ¶ 11.)
- ➢ On August 30, 2019, Plaintiff sent detailed letters to Defendants attempting to void her

previously given authorization because "any previous authorization was signed under a framework *Janus* declared unconstitutional." (*Id.*, Exhs. B & C.)

- On September 13, 2019, Weber, a union representative, responded "you will pay union dues regardless whether or not you are a member" to a group email that happened to include Plaintiff as a recipient. (*Id.*, Exh. D.) Plaintiff interpreted the email to mean that her request to resign was denied. (*Id.* ¶ 15.)
- The District began deducting dues from Plaintiff's paycheck in January 2020. (*Id.* ¶ 16.)
- Plaintiff sent another letter to Defendants in February 2020 "explain[ing] that she wanted to resign her membership and stop paying dues." (*Id.* ¶ 17.)
- In response, the Union President explained to Plaintiff that, by signing the dues authorization card, Plaintiff "became a dues payer for at least 1 year." (*Id.*, Exh. E.)
- On April 10, 2020, soon after Plaintiff filed her initial complaint in this case, the Union President sent Plaintiff a letter acknowledging Plaintiff's resignation. (*Id.*, Exh. F.)

Even accepting Plaintiff's erroneous beliefs as true, Plaintiff's claim fails as a matter of law. As explained above, Plaintiff voluntarily joined the union. As for Plaintiff's suggestion that her choice is not binding because it was ill-informed, the Court is aware of no authority (including *Janus*) that imposes a duty of

informed consent to apply for membership in a union. Put differently, *Janus* did not mandate the workplace equivalent *of Miranda* warnings[3] before an employee's application to join a public-sector union could be presumed valid. *See Bennett*, 991 F.3d at 732 ("The Court [in *Janus*] made clear that a union may collect dues when an 'employee affirmatively consents to pay.' ").

2. Plaintiff is Contractually Bound by her Union Membership Agreement

Plaintiff nonetheless insists that, because she "was not told that joining or paying the Union was optional," the withholding of union dues from her paycheck violated her First Amendment rights. (Dkt. 27 at 2-5, 11.) But the Seventh Circuit has explained that *Janus* "in no way created a new First Amendment waiver requirement for union members before dues are deducted pursuant to a voluntary agreement." *Bennett*, 991 F.3d at 732 (quoting *Belgau v. Inslee*, 975 F.3d 940, 952 (9th Cir. 2020)); *id.* ("one 'cannot simultaneously choose to both join the Union and not pay union dues' ") (quoting *Oliver v. Serv. Emps. Int'l Union Loc.*, 830 F. App'x 76, 79 n.3 (3d Cir. 2020)). Plaintiff's voluntary act of signing and submitting a union membership application card means that the concern in *Janus*—nonmembers being forced to pay union dues—is not present here. *See Belgau*, 975 F.3d at 952 (Supreme Court only "discussed constitutional waiver *because* it concluded that nonmembers' First Amendment right

[3] *Miranda v. Arizona*, 384 U.S. 436 (1966).

had been infringed"); *see also Bennett*, 991 F.3d at 732-33 ("[Plaintiff] is not a non-member as the term was used in *Janus*. . . . [Plaintiff] does not fall within the sweep of *Janus*' waiver requirement").

By signing the application card, Plaintiff was bound to the terms of the membership agreement. As *Bennett* explained, the First Amendment does not "render unenforceable any legal obligations or restrictions that are self-imposed through a contract." *Bennett*, 991 F.3d at 731 (cleaned up). Nor does it "confer . . . a constitutional right to disregard promises that would otherwise be enforced under state law." *Id.* (quoting *Cohen v. Cowles Media Co.*, 501 U.S. 663, 672 (1991)). In the time since *Bennett* was decided, many courts have recognized that "*Janus* does not articulate a path 'to escape the terms' of an agreement to pay union dues." *Troesch*, 522 F. Supp. 3d at 431 (collecting cases). Plaintiff voluntarily entered into a one-year contract with the Union, which necessarily included a dues-paying obligation for one year even if Plaintiff later wanted to escape those terms. (FAC, Exh. A ("This voluntary authorization and assignment shall be irrevocable . . . for a period of one year").) Regardless of Plaintiff's back-and-forth with the union and its representatives, and regardless of the union's later decision to grant Plaintiff an early release from the agreement, Plaintiff can be held to that obligation without running afoul of *Janus* and the First Amendment. *See Bennett*, 991 F.3d at 731.

* * *

In sum, Plaintiff's complaint does not raise a right to relief beyond the speculative level. *See Twombly*, 550 U.S. at 555. Plaintiff may now regret her earlier decision to join the Union, but that does not render her knowing and voluntary choice nonconsensual. Unlike the proscribed conduct by Janus' employer, the District's deductions of dues from Plaintiff's earnings were made in compliance with Plaintiff's explicit written instructions. *See Troesch*, 522 F. Supp. 3d at 431 (dismissing complaint where "Plaintiffs do not identify 'even a whiff of compulsion' that led them to sign the [union] agreements in the first place"). In the light of Plaintiff's voluntary agreement to pay union dues, and in the absence of any legitimate claim of compulsion, Plaintiff has failed to state a First Amendment claim against Defendants.[4]

IV. CONCLUSION

For the reasons provided above, the Court grants Defendants' motions to dismiss (Dkt. 20, 22). Because a plaintiff who affirmatively "consented to pay dues to the union . . . does not fall within the sweep of *Janus*'s waiver requirement," *Bennett*, 991 F.3d at 733, any amendment to the complaint would be futile. Accordingly, this dismissal is with prejudice. *See Bogie v. Rosenberg*, 705 F.3d 603, 608 (7th Cir. 2013) (leave to

[4] Because Plaintiff's First Amendment claim does not implicate *Janus*, the Court need not address whether the Union is a "state actor" engaging in "state action."

amend need not be granted "if it is clear that any amendment would be futile").

SO ORDERED in No. 20-cv-02126.

Date: March 28, 2022 /s/ John F. Kness
JOHN F. KNESS
United States
District Judge

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

ARIADNA RAMON BARO,	
Plaintiff,	No. 21-cv-02126
v.	Judge John F. Kness
LAKE COUNTY FEDERATION OF TEACHERS LOCAL 504, IFT-AFT/AFL-CIO and WAUKEGAN COMMUNITY UNIT SCHOOL DISTRICT #60,	
Defendants.	

JUDGMENT IN A CIVIL CASE

(Filed Mar. 29, 2022)

Judgment is hereby entered (check appropriate box):

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

which ☐ includes prejudgment interest.
☐ does not include prejudgment 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 defendants Lake County Federation of Teachers Local 504, IFT-AFT/AFL-CIO and Waukegan Community Unit School District #60,

and against plaintiff Ariadna Ramon Baro, with prejudice.

Defendants shall recover costs from plaintiff.

☐ 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 John F. Kness on defendants' motions to dismiss (Dkt. 20, 22).

SO ORDERED in No. 20-cv-02126.

Date: March 28, 2022 /s/ John F. Kness
JOHN F. KNESS
United States
District Judge

United States Court of Appeals
For the Seventh Circuit
Chicago, Illinois 60604

February 7, 2023

Before

ILANA DIAMOND ROVNER, *Circuit Judge*

DAVID F. HAMILTON, *Circuit Judge*

AMY J. ST. EVE, *Circuit Judge*

No. 22-1722

ADRIADNA RAMON BARO, *Plaintiff-Appellant,* *v.* LAKE COUNTY FEDERATION OF TEACHERS LOCAL 504, IFT-AFT/AFLCIO and WAUKEGAN COMMUNITY SCHOOL DISTRICT NO. 60, *Defendants-Appellees*.	Appeal from the United States District Court for the Northern District of Illinois, Eastern Division. No. 1:20-cv-02126 John F. Kness, *Judge*.

ORDER

On consideration of the petition for rehearing and petition for rehearing en banc, no judge in regular active service has requested a vote on the petition for rehearing en banc[1] and the judges on the original panel have voted to deny rehearing. It is, therefore,

[1] Circuit Judge Doris Pryor did not participate in the consideration of this petition for rehearing en banc.

ORDERED that the petition for rehearing and petition for rehearing en banc is **DENIED**.

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

Ariadna Ramon Baro,

Plaintiff,

v.

Lake County Federation of Teachers Local 504, IFT-AFT/AFL-CIO and Waukegan Community Unit School District #60

Defendants.

No. 20-CV-2126

Judge John F. Kness

First Amended Complaint

(Filed Apr. 24, 2020)

1. Government employees have a First Amendment right not to be compelled to pay any dues or fees to a union unless an employee affirmatively consents to waive that right. *Janus v. AFSCME*, 138 S. Ct. 2448, 2486 (2018). "[W]aiver cannot be presumed. Rather, to be effective, the waiver must be freely given and shown by 'clear and compelling' evidence." *Id*.

2. For a waiver of constitutional rights to be effective it must be clearly established that there was an intentional relinquishment or abandonment of a known right or privilege. *Brookhart v. Janis*, 384 U.S. 1, 4 (1966).

3. In this case, the union membership card Plaintiff Ariadna Ramon Baro signed is not clear and convincing evidence that she provided affirmative consent to waive her right not to pay money to the union

because it was not an intentional relinquishment of a known right or privilege.

4. Ms. Ramon Baro, therefore, brings this case under 42 U.S.C § 1983 and 28 U.S.C. § 2201(a), seeking declaratory relief, damages in the amount of the dues previously deducted from her paychecks, and punitive damages.

PARTIES

5. Plaintiff Ariadna Ramon Baro is J-1 Visa holder employed by Defendant Waukegan Community Unit School District #60 ("District").

6. Defendant Lake County Federation of Teachers, Local 504, IFTAFT/AFL-CIO ("Union" or "Local 504") is a labor union with offices at 248 Ambrogio Drive, Gurnee, Illinois 60031. Local 504 is the certified exclusive representative for the bargaining unit to which Ms. Ramon Baro belongs. The Union is a labor organization under Section 2(c) of the Illinois Educational Labor Relations Act, 115 ILCS 5/2(c).

7. Defendant District has offices at 1201 North Sheridan Road, Waukegan, Illinois 60085. It serves nearly 17,000 students in preschool through grade twelve through its fifteen elementary schools, five middle schools, and a high school program. It is an educational employer under Section 2(a) of the Illinois Educational Labor Relations Act, 115 ILCS 5/2(a).

JURISDICTION AND VENUE

8. This case raises claims under the First and Fourteenth Amendments of the U.S. Constitution and 42 U.S.C. § 1983. The Court has subject-matter jurisdiction under 28 U.S.C. § 1331 and 28 U.S.C. § 1343.

9. Venue is proper because a substantial portion of the events giving rise to the claims occurred in the Northern District of Illinois. 28 U.S.C. 1391(b)(2).

FACTS

10. Plaintiff Ariadna Ramon Baro is employed by the District as an English-as-a-second-language teacher for high school students. She is a J-1 Visa holder from Barcelona, Spain employed by the District under a cultural exchange program. The 2019-2020 school year is her first of three years that she will be employed by the District.

11. In August 2019, she attended an orientation meeting held by the District. During the orientation, the District provided information and training. The District also gave Local 504 time at the orientation meeting to speak about the union. During that presentation, Local 504's representative told Ms. Ramon Baro and her fellow teachers how much money in union dues they would have to pay and gave them a form to sign to join the Union. Ms. Ramon Baro was not told that joining or paying the Union was optional. Believing it to be required, she filled out the union membership form and turned it in to the representative.

Exhibit A. At the time she signed the union membership agreement, she was unaware of the Supreme Court's *Janus* decision.

12. A few days later, Ms. Ramon Baro learned that union membership and paying the union was, in fact, not required.

13. On August 30, 2019, she sent letters both to the District and the Union resigning her membership. **Exhibits B and C**.

14. On September 13, 2019, a pair of the union representatives emailed the teachers of Ms. Ramon Baro's school, including Ms. Ramon Baro, to invite them to join the union. The initial email from one of the representatives, Cara Wyatt, stated, "I am contacting you to extend an invitation to join the Waukegan teacher's union." In response, another representative, Nathaniel Weber, stated "Just to clarify, you will pay union dues regardless of whether or not you are a member." **Exhibit D**. This statement by Mr. Weber was not true, but Ms. Ramon Baro did not know it was not true. In fact, the Supreme Court held in *Janus*, 138 S. Ct. at 2486, that requiring government employees to pay money to a union with their consent violates the First Amendment.

15. Ms. Ramon Baro believed the statement by Mr. Weber—that she would have to pay dues regardless of her union membership status—meant that her request to resign was effectively denied.

16. In January 2020, on her second paycheck of the month, the District began deducting dues from Ms. Ramon Baro's paycheck and remitting them to the Union.

17. On February 3, 2020, Ms. Ramon Baro again contacted her union representative and the payroll department of the District and explained that she wanted to resign her membership and stop paying dues. The payroll department of the District told Ms. Ramon Baro that they could not stop dues and she must speak to the Union. The President of Waukegan Council of Local 504, Andy Friedlieb, contacted her explaining that she would have to wait until August to resign her membership and stop union dues from being deducted. **Exhibit E**.

18. Ms. Ramon Baro filed her initial complaint in this case on April 3, 2020. On April 15, she received a letter from Local 504 President, Michael T. McGue, dated April 10, 2020, informing her that she is no longer a member of the Union, and that dues would stop being withheld from her paycheck. The letter also included a check for $829.30, representing "a full refund of all [Ms. Ramon Baro's] dues plus an additional five hundred dollars for your efforts in pursuing this matter." **Exhibit F**.

19. The District continued to withhold union dues from Ms. Ramon Baro's paycheck on behalf of the Union until the April 15, 2020 paycheck, from which dues were not withheld.

20. Ms. Ramon Baro responded to Mr. McGue's letter on April 17, 2020, referring him to her counsel, and returning the check. **Exhibit G**.

CAUSE OF ACTION

Local 504 and the District violated Ms. Ramon Baro's First Amendment right to free speech by withholding union dues from her paycheck without clear evidence that she intentionally relinquished her right not to pay money to the Union.

21. The allegations contained in all preceding paragraphs are incorporated herein by reference.

22. In *Janus v. AFSCME*, the Supreme Court held the First Amendment guarantees public employees a right to refrain from subsidizing a union and its speech. 138 S. Ct. at 2486. "By agreeing to pay, nonmembers are waiving their First Amendment rights, and such a waiver cannot be presumed." *Id*. For a waiver to be effective, it must be freely given and shown by "clear and compelling" evidence. Without clear and affirmative consent by an employee before money is taken from them, this standard cannot be met. *Id*.

23. For a waiver of constitutional rights to be effective it must be clearly established that there was an intentional relinquishment or abandonment of a known right or privilege. *Brookhart*, 384 U.S. at 4.

24. One cannot waive a constitutional right—intentionally relinquish a known right—without knowledge that they are entitled to that right and that they are engaging in an action to waive that right. *See Johnson v. Zerbst*, 304 U.S. 458, 464 (1938).

25. Government employers and exclusive-representative unions cannot presume government workers have knowledge of their right not to pay money to the union under *Janus*. *Id*. at 465.

26. Thus, government employers and exclusive-representative unions may not withhold union dues or fees from government workers without clear and convincing evidence that those workers have knowledge of their right not to pay money to a union.

27. At the time she signed the union membership card, Ms. Ramon Baro did not know she had a right to not subsidize the Union and did not know that by signing the union membership card she was relinquishing that right.

28. The District and the Union have never had clear and convincing evidence that Ms. Ramon Baro had knowledge of her right to not pay money to the union and intentionally relinquished that right.

29. The fact that Ms. Ramon Baro signed the union membership card is not clear and convincing evidence that she knew that she had a right to not join or pay money to the union or that she intentionally wished to relinquish that right.

30. The union membership card itself does not provide any indication that by signing it an employee waives their First Amendment right to not pay money to the Union. Nor did the Union or the District inform her of her right to not join or pay money to the Union before she signed the union membership card. And as a Spanish citizen working on a J-1 visa, Ms. Ramon Baro would especially have no reason to have knowledge of American constitutional law.

31. Worse, Ms. Ramon Baro was given false information by a union representative, asserting (wrongly) that teachers would have to pay union dues regardless of whether they were members or not. Thus, not only did Ms. Ramon Baro not have knowledge of her right not to subsidize the union, but she was informed (falsely) of the opposite—that she was required to subsidize the union no matter what.

32. When she contacted the Union, informing them that she had not understood her *Janus* rights, she was told that she would have to continue paying dues until August 2020.

33. Illinois law authorizes union dues deductions until a limited "opt-out window." 115 ILCS 5/11.1(a).

34. As a result, the District deducted dues from Ms. Ramon Baro's paycheck and gave them to Local 504 under color of state law.

35. Local 504 acted in concert with the District to collect union dues from Ms. Ramon Baro's paycheck without her knowing waiver and refused to allow her

to cancel her dues until after she filed this lawsuit. In doing so, Local 504 acted under color of state law.

36. The actions of Local 504 and the District constitute a violation of Ms. Ramon Baro's First Amendment rights to free speech and freedom of association not to join or financially support a union without her affirmative consent freely given after knowing waiver.

37. Ms. Ramon Baro is entitled to a declaration that the union membership card she signed does not constitute clear and convincing evidence that she intentionally relinquished her right to not pay money to the Union because it does not provide evidence that she knew of this right or that she intentionally relinquished it by signing the union membership card.

38. Ms. Ramon Baro is entitled to a declaration that the actions of the District and Local 504 to withhold union dues or fees from her paycheck without clear and convincing evidence establishing that she intentionally relinquished her right to not pay money to the Union violate the First Amendment.

39. Ms. Ramon Baro is entitled to a declaration that the actions of the District and Local 504 to withhold union dues or fees from her paycheck without clear and convincing evidence establishing that she knew she had a right to not pay money to the Union violate the First Amendment.

40. Based on those declarations and findings, under 42 U.S.C. § 1983, Ms. Ramon Baro is entitled to damages in the amount of all dues deducted and remitted to Local 504 from April 2019 to present.

41. Ms. Ramon Baro is entitled to punitive damages against Local 504 because its actions were at a minimum recklessly indifferent to Ms. Ramon Baro's federally protected rights—if not maliciously motivated—given the fraudulent statement made by its representative, which caused Ms. Ramon Baro substantial personal and professional distress.

PRAYER FOR RELIEF

Ms. Ramon Baro respectfully requests that this Court:

a. Declare that the union membership card she signed does not constitute clear and convincing evidence that she intentionally relinquished her right to not pay money to the Union because it does not provide evidence that she knew of this right or that she intentionally relinquished it by signing the union membership card;

b. Declare that the actions of the District and Local 504 to withhold union dues or fees from her paycheck without clear and convincing evidence establishing that she intentionally relinquished her right to not pay money to the Union violate her First Amendment rights;

c. Declare that the actions of the District and Local 504 to withhold union dues or fees from her paycheck without clear and convincing evidence establishing that she knew

she had a right to not pay money to the Union violate her First Amendment rights;

d. Award damages against Local 504 for all union dues collected from her;

e. Award punitive damages against Local 504 because its actions were at a minimum recklessly indifferent to Ms. Ramon Baro's federally protected rights—if not maliciously motivated—given the fraudulent statement made by its representative;

f. Award her costs and attorneys' fees under 42 U.S.C. § 1988; and

g. Award her any further relief to which she may be entitled and such other relief as this Court may deem just and proper.

Dated: April 24, 2020 Respectfully submitted,

/s/ Jeffrey M. Schwab

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