UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 20-1531

GARY MATTOS; DORIS BEEGLE; VICKIE BOGGS; BRADLEY FRENCH; CARLA GURGANUS; STEVEN HALE; JOHN HILL; BENJAMIN ICKES; MICHELLE LAMBERT; JESSICA MERRITT; JOHN MEYERS; CAROLE MILLER; MELISSA POTTER; JIM RIEMAN; LAURIE RUBIN; JOYCE STONER; RUSSELL STOTT; LARRY TEETS, on behalf of themselves and all those similarly situated,

Plaintiffs - Appellants,

and

KIMBERLY GRIFFITH,

Plaintiff,

v.

AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, AFL-CIO, COUNCIL 3,

Defendant - Appellee.

Appeal from the United States District Court for the District of Maryland, at Baltimore. George L. Russell, III, District Judge. (1: 19-cv-02539-GLR)

Submitted: August 29, 2022
Decided: September 16, 2022

Before KING and AGEE, Circuit Judges, and KEENAN, Senior Circuit Judge.

Affirmed by unpublished per curiam opinion.

ON BRIEF: Brian K. Kelsey, Reilly Stephens, LIBERTY JUSTICE CENTER, Chicago, Illinois; Aaron Solem, NATIONAL RIGHT TO WORK LEGAL DEFENSE FOUNDATION, Springfield, Virginia, for Appellants. Leon Dayan, Jacob Karabell, BREDHOFF & KAISER, P.L.L.C., Washington, D.C., for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Gary Mattos, an employee of the Maryland Department of Public Safety and Correctional Services, along with various other Maryland state employees (collectively "Appellants"), appeal from the district court's order dismissing their putative class action complaint pursuant to 42 U.S.C. § 1983 against the American Federation of State, County and Municipal Employees, AFL-CIO, Council 3 ("AFSCME"), a labor union that represented Maryland public sector employees. Appellants filed their complaint after the Supreme Court decided, in *Janus v. American Federation*

of State, County & Municipal Employees Council 31, 138 S. Ct. 2448, 2486 (2018), that "public-sector unions may no longer extract agency fees from nonconsenting employees." The complaint alleged that Appellants, who were not union members, were required to pay agency fees to AFSCME as a condition of employment pursuant to a collective bargaining agreement AFSCME had with the State from 2011 to 2018. Appellants sought to recover the amounts paid in agency fees prior to the *Janus* decision. The district court granted AFSCME's Fed. R. Civ. P. 12(b)(6) motion to dismiss, finding that Appellants' claim was barred by AFSCME's good-faith defense. We affirm.

On appeal, Appellants argue that the district court erred in allowing AFSCME to assert a good-faith defense to its 42 U.S.C. § 1983 claim, and that this court should decline to recognize a good-faith defense. However, after Appellants' brief was filed, we decided the issue of whether a union can assert a good-faith defense in a *Janus* claim under § 1983 in *Akers v. Maryland State Educ. Ass 'n*, 990 F.3d 375 (4th Cir. 2021). We concluded, in accordance with six other courts of appeals, that the good-faith defense is available to private parties sued under § 1983, and that the union was entitled to assert the good-faith defense in the *Janus* context. *Id.* 380-83. Because *Akers* directly applies to the legal question at issue here, we hold that the district court did not err in determining that AFSCME was entitled to assert a good-faith defense and granting AFSCME's motion to dismiss.

Accordingly, we affirm the district court's order. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED

FILED: September 16, 2022

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 20-1531
(1:19-cv-02539-GLR)

GARY MATTOS; DORIS BEEGLE; VICKIE BOGGS; BRADLEY FRENCH; CARLA GURGANUS; STEVEN HALE; JOHN HILL; BENJAMIN ICKES; MICHELLE LAMBERT; JESSICA MERRITT; JOHN MEYERS; CAROLE MILLER; MELISSA POTTER; JIM RIEMAN; LAURIE RUBIN; JOYCE STONER; RUSSELL STOTT; LARRY TEETS, on behalf of themselves and all those similarly situated

Plaintiffs - Appellants

and

KIMBERLY GRIFFITH

Plaintiff

v.

AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, AFL-CIO, COUNCIL 3

Defendant - Appellee

JUDGMENT

In accordance with the decision of this court, the judgment of the district court is affirmed.

This judgment shall take effect upon issuance of this court's mandate in accordance with Fed. R. App. P. 41.

/s/ PATRICIA S. CONNOR, CLERK

UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND

Chambers of
GEORGE L. RUSSELL, III
United States District Judge

101 West Lombard Street
Baltimore, Maryland 21201
410-962-4055

April 27, 2020

MEMORANDUM TO COUNSEL RE:

(Filed Apr. 27, 2020)

Gary Mattos, et al. v. American Federation of State, County and Municipal Employees, AFL-CIO, Council 3
Civil Action No. GLR-19-2539

Dear Counsel:

Pending before the Court is Defendant American Federation of State, County and Municipal Employees, AFL-CIO, Council 3's ("AFSCME") Motion to Dismiss. (ECF No. 14). The Motion is ripe for disposition, and no hearing is necessary. See Local Rule 105.6 (D.Md. 2018). For the reasons outlined below, the Court will grant the Motion.

AFSCME is a labor union that represents public sector employees in the State of Maryland. (Compl. ¶¶ 2–20, 32, ECF No. 1).[1] Plaintiffs are a class of current and former state, county, and municipal employees who are not union members but who paid agency

[1] Unless otherwise noted, the Court takes the facts from Plaintiffs' Complaint (ECF No. 1) and accepts them as true.

fees to AFSCME pursuant to its collective bargaining agreement with the State. (Id. ¶¶ 2–20, 32).

According to Plaintiffs, around July 2011, AFSCME negotiated a Memorandum of Understanding ("MOU") with the State that allowed AFSCME to collect agency fees from nonmembers. (Id. ¶ 27). Pursuant to the MOU, all employees in the bargaining units represented by AFSCME who were not union members—including Plaintiffs—were forced to pay agency fees to AFSCME as a condition of their employment. (Id. ¶ 29). As such, state employers covered by the collective bargaining agreement deducted agency fees from Plaintiffs' and other non-members' wages without their consent and transferred those funds to AFSCME. (Id. ¶ 30). This practice continued until on or about June 27, 2018, when the United States Supreme Court held in Janus v. AFSCME, Council 31, 138 S.Ct. 2448 (2018), that collecting fees from non-member public sector employees violates their right to free speech under the First Amendment of the United States Constitution. (Id. ¶¶ 1, 29–30).

On September 3, 2019, Plaintiffs filed suit against AFSCME under 42 U.S.C. § 1983 (2018), alleging violation of the First Amendment (Count I). (Id. ¶¶ 38–40). Plaintiffs seek damages equal to the amount of agency fees deducted from their wages prior to June 27, 2018, plus interest, as well as a declaratory judgment that AFSCME's collection of agency fees prior to

June 27, 2018 violated Plaintiffs' and other class members' First Amendment rights. (Id. at 8).[2]

On October 18, 2019, AFSCME filed a Motion to Dismiss, arguing that the Complaint fails to adequately state a § 1983 claim for damages and that Plaintiffs lack standing for declaratory relief. (ECF No. 14). On November 1, 2019, Plaintiffs filed an Opposition. (ECF No. 16). AFSCME filed a Reply on November 15, 2020. (ECF No. 17). AFSCME subsequently filed Notices of Supplemental Authority on December 27, 2019, February 25, 2020, and April 15, 2020. (ECF Nos. 18–20).

AFSCME first contends that Plaintiffs fail to state a § 1983 claim for damages under 12(b)(6). A complaint fails to state a claim if it does not contain "a short and plain statement of the claim showing that the pleader is entitled to relief," Fed.R.Civ.P. 8(a)(2), or does not "state a claim to relief that is plausible on its face," Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007)). A claim is facially plausible "when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." Id. (citing Twombly, 550 U.S. at 556). "Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." Id. (citing Twombly, 550 U.S. at 555). Though

[2] Plaintiffs also request that the Court certify the proposed class. (Compl. at 8). Because the Court finds that Plaintiffs' Complaint does not survive the motion to dismiss, the Court declines to certify the class.

the plaintiff is not required to forecast evidence to prove the elements of the claim, the complaint must allege sufficient facts to establish each element. Goss v. Bank of Am., N.A., 917 F.Supp.2d 445, 449 (D.Md. 2013) (quoting Walters v. McMahen, 684 F.3d 435, 439 (4th Cir. 2012)), aff'd sub nom. Goss v. Bank of Am., NA, 546 F.App'x 165 (4th Cir. 2013).

AFSCME argues that Plaintiffs fail to state a claim under 12(b)(6) because their demand for repayment of agency fees assessed prior to June 27, 2018 is barred by the good-faith defense available to private parties sued under § 1983. Since the Supreme Court's decision in Janus, numerous federal district courts have considered this very issue, and all have concluded that the good-faith defense precludes attempts to hold unions liable for following the law as it existed at the time of their actions.[3] Here, AFSCME collected fees

---

[3] See Danielson v. Am. Fed'n of State, Cty., & Mun. Emps., Council 28, AFL-CIO, 340 F.Supp.3d 1083 (W.D.Wash. 2018), aff'd sub nom. Danielson v. Inslee, 945 F.3d 1096 (9th Cir. 2019); Cook v. Brown, 364 F.Supp.3d 1184 (D.Or. 2019), appeal filed, No. 19-35191 (9th Cir.); Carey v. Inslee, 364 F.Supp.3d 1220 (W.D.Wash. 2019), appeal filed, No. 19-35290 (9th Cir.); Crockett v. NEA-Alaska, 367 F.Supp.3d 996 (D. Alaska 2019), appeal filed, No. 19-35299 (9th Cir.); Janus v. Am. Fed'n of State, Cty. & Mun. Emps., Council 31, AFL-CIO, No. 15 C 1235, 2019 WL 1239780 (N.D.Ill. Mar. 18, 2019), aff'd sub nom. Janus v. Am. Fed'n of State, Cty. & Mun. Emps., Council 31; AFL-CIO, 942 F.3d 352 (7th Cir. 2019); Hough v. SEIU Local 521, No. 18-CV-04902-VC, 2019 WL 1785414 (N.D.Cal. Apr. 16, 2019), appeal filed, No. 19-15792 (9th Cir.); Lee v. Ohio Educ. Ass'n, 366 F.Supp.3d 980 (N.D.Ohio 2019), aff'd, 951 F.3d 386 (6th Cir. 2020); Mooney v. Ill. Educ. Ass'n, 372 F.Supp.3d 690 (C.D.Ill.), aff'd, 942 F.3d 368 (7th Cir. 2019); Bermudez v. Serv. Emps. Int'l Union, Local 521,

from Plaintiffs pursuant to a state law specifically authorizing the collection of such fees. See Md. Code Ann., State Pers. & Pens. § 3502(b); (see also Compl. ¶ 26). Moreover, AFSCME's collection of fees from Plaintiffs and other non-members was consistent with the Supreme Court's long-standing decision in Abood v. Detroit Board of Education, 431 U.S. 209 (1977), which, until it was overruled by Janus, counseled that agency-fee requirements were constitutional under the First Amendment. Because collecting fees from non-members was consistent with both state law and Supreme Court jurisprudence as it existed at the time, AFSCME is entitled to the good-faith defense under § 1983.

No. 18-CV-04312-VC, 2019 WL 1615414 (N.D.Cal. Apr. 16, 2019); Akers v. Md. State Educ. Ass'n, 376 F.Supp.3d 563 (D.Md. 2019), appeal filed, No. 19-1524 (4th Cir.); Wholean v. CSEA SEIU Local 2001, No. 3:18-CV-1008 (WWE), 2019 WL 1873021 (D.Conn. Apr. 26, 2019), aff'd, No. 19-1563-CV, 2020 WL 1870162 (2d Cir. Apr. 15, 2020); Babb v. Cal. Teachers Ass'n, 378 F.Supp.3d 857 (C.D.CaL 2019), appeal filed, No. 19-55692 (9th Cir.); Doughty v. State Emp.'s Ass'n of N.H., No. 1:19-cv-00053 (D.N.H. May 30, 2019), appeal filed, No. 19-1636 (1st Cir.); Hernandez v. AFSCME Cal., 386 F.Supp.3d 1300 (E.D.Cal. 2019); Diamond v. Pa. State Educ. Ass'n, 399 F.Supp.3d 361 (W.D.Pa. 2019), appeal filed, No. 19-2812 (3d Cir.); Ogle v. Ohio Civil Serv. Emps. Ass'n, AFSCME, Local 11, 397 F.Supp.3d 1076 (S.D.Ohio 2019), aff'd sub nom. Ogle v. Ohio Civil Serv. Emps. Ass'n, AFSCME Local 11, AFL-CIO, 951 F.3d 794 (6th Cir. 2020); Allen v. Santa Clara Cty. Corr. Peace Officers Ass'n, 400 F.Supp.3d 998 (E.D.Cal. 2019), appeal filed, No. 1917217 (9th Cir.); Casanova v. Int '1 Ass'n Machinists, Local 701, No. 1:19-cv-00428 (N.D.Ill. Sept. 11, 2019), appeal filed, No. 19-2987 (7th Cir.); O'Callaghan v. Regents of the Univ. of Cal., No. 2:19-cv-2289 (C.D.Cal. Sept. 30, 2019).

For their part, Plaintiffs maintain they are nonetheless entitled to damages under § 1983 because the rule in Janus applies retroactively. However, whether Janus applies retroactively is far from clear, as the Janus Court did not state that it was applying the new rule to the parties before it, but simply remanded to the lower court for "further proceedings consistent with this opinion." 138 S.Ct. at 2486. Following from this, at least three federal district courts have noted there is a "strong argument" that the rules of retroactivity would not permit an award of "retrospective monetary relief" based on conduct that predated the Janus decision. Hough v. SEIU Local 521, 2019 WL 1785414, at *1 (N.D.Cal. Apr. 16, 2019); see also Babb v. Cal. Teachers Ass'n, 378 F.Supp.3d 857, 875–76 (C.D.Cal. 2019) (agreeing with Hough); Mooney v. Ill. Educ. Ass'n, 372 F.Supp.3d 690, 707 (C.D.Ill. 2019) (finding Hough's reasoning on this point "deeply persuasive").

Moreover, any retroactive effect of Janus would not preclude application of the good-faith defense. See Janus v. Am. Fed'n of State, Cty. & Mun. Emps., Council 31; AFL-CIO, 942 F.3d 352, 361–62 (7th Cir. 2019) (noting that "the retroactive application of a new rule of law does not 'deprive[] respondents of their opportunity to raise . . . reliance interests entitled to consideration in determining the nature of the remedy that must be provided' ") (quoting James B. Beam Distilling Co. v. Georgia, 501 U.S. 529, 544 (1991)). Because the Court finds that AFSCME is entitled to the good-faith

defense, Plaintiffs' argument that Janus applies retroactively cannot save the Complaint from dismissal.

Alternatively, Plaintiffs contend that even if AFSCME had a good -faith justification for collecting the fees, it has no reasonable basis for keeping those fees now because AFSCME should have known it would have to return the monies if the Supreme Court ever declared such fees unconstitutional. In so arguing, Plaintiffs attempt to circumvent the good-faith defense by reframing their claim for damages, which is a legal claim, as one for restitution, an equitable remedy. The Court declines to treat Plaintiffs' claim as one for restitution, however, because AFSCME was not unjustly enriched through the collection of agency fees from non-members. See Mooney, 372 F.Supp.3d at 701 ("Even with Janus holding mandatory fair-share fees are unconstitutional, unions were not unjustly enriched by the payment of fair-share fees because, as the name implies, the fees covered the costs of union representation for non-union members."). Because Plaintiffs' claim for damages sounds in law rather than equity, the good -faith defense is available here. See id.

Turning to Plaintiffs' claim for declaratory relief, AFSCME contends that Plaintiffs do not have standing to seek a judgment declaring AFSCME's past conduct unconstitutional. Specifically, AFSCME notes that Plaintiffs' Complaint does not challenge any ongoing conduct by AFSCME, but only the past collection of agency fees from non-members, which ceased upon the Supreme Court's decision in Janus.

Plaintiffs do not respond to this argument in their Opposition, and therefore concede this point. See Muhammad v. Maryland, No. ELH-11-3761, 2012 WL 987309, at *1 n.3 (D.Md. Mar. 20, 2012) ("[B]y failing to respond to an argument made in a motion to dismiss, a plaintiff abandons his or her claim."). And in any event, the Court agrees with AFSCME that the Court may not issue a declaratory judgment absent an ongoing injury. See Overbey v. Mayor of Baltimore, 930 F.3d 215, 230 (4th Cir. 2019) (finding that a plaintiff "must establish an ongoing or future injury in fact" and "may not rely on prior harms" in order to establish standing to sue for declaratory relief).

In sum, Plaintiffs' § 1983 claim for damages is barred by the good-faith defense, and Plaintiffs lack standing to seek declaratory judgment. Accordingly, the Court will grant AFSCME's Motion to Dismiss.

For the foregoing reasons, AFSCME's Motion to Dismiss (ECF No. 14) is GRANTED. Plaintiffs' Complaint is DISMISSED, and the Clerk is directed to CLOSE this case. Despite the informal nature of this memorandum, it shall constitute an Order of this Court, and the Clerk is directed to docket it accordingly.

Very truly yours,

/s/

George L. Russell, III
United States District Judge