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## **APPENDIX A**

### **UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT**

No: 21-3052

Pollyanna Burns; Rhonda Tomoson; Diane Gooding  
Plaintiffs - Appellants

v.

School Service Employees Union Local 284;  
Independent School District No. 191  
Defendants - Appellees

Appeal from U.S. District Court for the  
District of Minnesota  
(0:21-cv-00638-DWF)

### **JUDGMENT**

Before LOKEN, COLLTON and BENTON, Circuit  
Judges.

This appeal from the United States District Court was  
submitted on the record of the district court, briefs of  
the parties and was argued by counsel.

After consideration, it is hereby ordered and adjudged  
that the judgment of the district court in this cause is  
affirmed in accordance with the opinion of this Court.

July 28, 2023

Order Entered in Accordance with Opinion:  
Clerk, U.S. Court of Appeals, Eighth Circuit.

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/s/ Michael E. Gans

## APPENDIX B

### UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

No. 21-3052

Pollyanna Bums; Rhonda Tomoson; Diane Gooding,  
*Plaintiffs -Appellants,*

v.

School Service Employees Union Local 284;  
Independent School District No. 191,  
*Defendants - Appellees.*

Appeal from United States District Court  
for the District of Minnesota

Submitted: February 14, 2023  
Filed: July 28, 2023

Before LOKEN, COLLTON, and BENTON, Circuit  
Judges.

COLLOTON, Circuit Judge.

The principal issue in this appeal is whether a school district and a labor union violated the free speech rights of union members by deducting union dues from employee paychecks. We agree with the

district court\* that the school district's employees failed to state a claim, and we therefore affirm the judgment dismissing the action.

## I.

The appellants are food service managers employed by the Independent School District 191 in Burnsville, Minnesota. In 2015, Pollyanna Bums and Rhonda Tomoson signed a contract to join the union that represents service workers in the school district, the School Service Employees International Union Local 284. Diane Gooding joined Local 284 by executing a similar agreement in 2019. These contracts authorized the school district to deduct monthly union dues from the union member's paycheck and to send those dues to Local 284 on the union member's behalf.

The employees terminated their membership in the union in March 2020, and later sued the school district and Local 284. They alleged that the deduction of dues from their paychecks violated their rights under the First and Fourteenth Amendments and also contravened Minnesota law.

In support of their claims, the appellants relied on legal developments relating to employees who are not members of a union. Minnesota law permits public employees to bargain collectively with the State by

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\* The Honorable Donovan W. Frank, United States District Judge for the District of Minnesota.

designating a labor union to serve as the exclusive representative for employees in their bargaining unit. Minn. Stat. § 179A.06, subdiv. 2. If an employee declines to join the union, then state law permits the union to require the employee to contribute a so-called "fair-share" or "agency" fee. *Id.*, subdiv. 3. This fee is equal to the cost of membership dues, less the costs of benefits available only to members.

In *Abood v. Detroit Board of Education*, 431 U.S. 209 (1977), the Supreme Court upheld a similar regime that allowed public sector unions to compel the payment of fees from state employees who chose not to join the unions. Five years ago, in *Janus v. American Federation of State, County, & Municipal Employees, Council 31*, 138 S. Ct. 2448 (2018), the Court overruled *Abood*, and held that public-sector unions violated the First Amendment by deducting fair-share fees from nonmember employees without first obtaining affirmative consent. *Id.* at 2486.

Unlike the plaintiff in *Janus*, the employees in this case were union members. To join Local 284, each signed an agreement to "request" membership in the union and to "authorize" the union to represent them for the purpose of bargaining collectively with their employer. In exchange for the benefits of membership in Local 284, each employee agreed to "request and voluntarily authorize" the school district to deduct monthly union dues from her paycheck and transmit the union dues to Local 284. Each employee further agreed that if she resigned her union membership, then her authorization to the school district would be "automatically renewed as an irrevocable check-off

from year to year," unless she revoked it in writing "during the period not less than thirty (30) days and not more than forty-five (45) days before the annual anniversary date" of the agreement.

On March 5, 2020, the employees notified Local 284 that they terminated their membership in the union. Since this notification fell outside of the termination period specified in each employee's union membership agreement, the school district continued to deduct monthly dues until the "anniversary date" of their agreement. One year later, the employees sued Local 284 and the school district under 42 U.S.C. § 1983, alleging that the deduction of union dues-before and after they resigned from Local 284-violated their rights under the First Amendment as incorporated against the States. They also asserted claims under Minnesota law for alleged conversion, unjust enrichment, civil theft, tortious interference with contractual relations, and unlawful wage deductions.

The district court dismissed the federal claims for failure to state a claim, and declined to exercise supplemental jurisdiction over the claims under state law. The court reasoned that the employees voluntarily agreed to the deduction of dues when they joined the union, and that the *Janus* decision concerning the rights of nonmembers does not require any special waiver of rights by union members. We review the district court's decision *de novo*.

## II.

Section 1983 provides a cause of action against

a defendant whose actions were taken "under color of state law and deprived another of a federal right. *Lugar v. Edmondson Oil Co.*, 457 U.S. 922, 931 (1982). The right to be free from compelled speech is protected by the First and Fourteenth Amendments. *Janus*, 138 S. Ct. at 2463. These constitutional provisions, however, prohibit only state action. *Manhattan Cnty. Access Corp. v. Halleck*, 139 S. Ct. 1921, 1928 (2019).

A private entity's acts may qualify as state action in "limited circumstances." *Id.* For the First Amendment to apply, the acts of the private entity must have their "source in state authority." *Lugar*, 457 U.S. at 939. We concluded in *Hoeckman v. Education Minnesota*, 41 F.4th 969, 978 (8th Cir. 2022), that when a public sector union-a private entity-deducts dues from its union members, the deduction is not based on state authority, but rather on a private agreement between the union and the union member. We therefore ruled in *Hoeckman* that a § 1983 claim brought by two union members against their unions for deducting dues failed for lack of state action. *Id.* Similarly, Local 284's deduction of dues for these employees was authorized by private agreement between the union and the employee. The employees' § 1983 claims against the union are foreclosed by *Hoeckman*.

The school district, however, is a public entity, *see Minn. Stat. § 123A.55*, so our conclusion regarding deductions by a private entity does not control. Even so, the school district argues that the employees failed to allege sufficient state action by the district. The school district contends that it performed merely a

"ministerial role" of honoring the private agreement between the union and its members, and that the employees seek to hold the district liable for the actions of private parties. *See Blum v. Yaretsky*, 457 U.S. 991, 1003 (1982). We need not address this argument. Assuming for the sake of analysis that the school district engaged in state action, the free speech claims fail for other reasons.

In the wake of *Janus*, every circuit to consider the matter has concluded that the deduction of union dues under a valid contract between the union and a member does not violate the First Amendment. The Ninth Circuit described a "swelling chorus of courts recognizing that *Janus* does not extend a First Amendment right to avoid paying union dues." *Belgau v. Inslee*, 975 F.3d 940, 951 (9th Cir. 2020). *Janus* concerned compelled extraction of fees from non-union members; the opinion 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.*, 991 F.3d 724, 732 (7th Cir. 2021).

The employees nonetheless maintain that the reasoning of *Janus* extends to union members who authorized the deduction of dues. They rely on the Court's statement in *Janus* that "[n]either 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." *Janus*, 138 S. Ct. at 2486 (emphasis added). The

employees argue that the phrase "nor any other payment to the union" must include union membership dues.

The sentence from *Janus* on which the employees rely, however, refers to any other payment to the union that may be deducted from "a *nonmember's* wages." The decision concluded only that a nonmember's rights were violated by an automatic deduction without affirmative consent. *Janus* did not create "a new First Amendment waiver requirement for union members before dues are deducted pursuant to a voluntary agreement." *Belgau*, 975 F.3d at 952; *see Hendrickson v. AFSCME Council 18*, 992 F.3d 950, 962 (10th Cir. 2021). By signing a union membership contract, an employee "clearly and affirmatively" waives her right to refrain from joining the union, and consents to fund the union according to the terms of the contract. *Ramon Baro v. Lake Cnty. Fed'n of Tchrs. Loe.* 504, 57 F.4th 582, 586 (7th Cir. 2023), *cert. denied*, No. 22-1096, 2023 WL 3937633 (June 12, 2023). The First Amendment does not provide the employees with an opportunity to "disregard promises that would otherwise be enforced under state law." *Cohen v. Cowles Media Co.*, 501 U.S. 663, 672 (1991).

The employees assert that they were coerced into their contractual relationship with Local 284, because they were forced to choose between joining the union and "paying 100% of dues" or not joining the union and paying 85% of dues through an agency fee. This argument mischaracterizes their choice: they were "faced with a constitutional choice-whether or not to join" the union. *Oliver v. Serv. Emps. Int'l Union*

*Loe.* 668, 830 F. App'x 76, 79 (3d Cir. 2020). They chose to join the union and to authorize the school district to deduct dues from their paychecks. They did so in exchange for the benefits of union membership, and they "assumed the risk that subsequent changes in the law could alter the cost-benefit balance of their bargain." *Fischer v. Governor of NJ.*, 842 F. App'x 741, 753 (3d Cir. 2021).

For these reasons, we conclude that the employees did not state a claim for a violation of rights under the First and Fourteenth Amendments. The judgment of the district court is affirmed.

## APPENDIX C

### UNITED STATES DISTRICT COURT District of Minnesota

Pollyanna Burns, Rhonda  
Tomoson, and Diane Gooding,  
Plaintiff(s),

v.

Case No.: 21-cv-638 DWF/HB

Service Employees  
International Union Local 284  
and Independent School District 191  
Defendants

### JUDGMENT IN A CIVIL CASE

- Jury Verdict.** This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.
- Decision by Court.** This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED THAT:

1. Counts One and Two of the Complaint (Doc. No. [1]) are **DISMISSED WITH PREJUDICE**.
2. Counts Three through Seven of the

Complaint (Doc. No. [1]) are  
**DISMISSED WITHOUT PREJUDICE.**

Date: 8/13/2021

KATE M. FOGARTY, CLERK

## **APPENDIX D**

### **UNITED STATES DISTRICT COURT DISTRICT OF MINNESOTA**

Pollyanna Burns, Rhonda Tomoson,  
and Diane Gooding,  
Plaintiffs,

v. Civil No. 21-638 (DWF/HB)

Service Employees International Union  
Local 284 and Independent School District 191.  
Defendants.

### **MEMORANDUM OPINION AND ORDER**

Douglas P. Seaton, Esq., and James V.F. Dickey, Esq.,  
Upper Midwest Law Center, counsel for Plaintiffs.

Brendan D. Cummins, Esq., Cummins & Cummins,  
LLP, and Patrick C. Pitts, Esq., and Scott A. Kronland,  
Esq., Altshuler Berzon LLP, counsel for Service  
Employees International, Local 284.

Kari Marie Dahlin, Esq., and Sally J. Ferguson,  
Arthur Chapman Kettering Smetak & Pikala, P.A.,  
counsel for Independent School District 191.

### **INTRODUCTION**

This matter is before the Court on Defendants

Service Employees International Union, Local 284’s (“Local 284”) and Independent School District 191’s (“ISD 191”) (together, “Defendants”) Motion to Dismiss (Doc. No. 16). For the reasons set forth below, the Court grants Defendants’ Motion.

## BACKGROUND

Plaintiffs Pollyanna Burns, Rhonda Tomoson, and Diane Gooding (“Plaintiffs”) are food-service managers employed by ISD 191 in a bargaining unit represented by Local 284. (Doc. No. 1 (“Compl.”) ¶¶ 12, 17, 23; Doc. No. 19 (“Gibbons Decl.”) ¶¶ 6, 8, 10).<sup>1</sup> Burns and Tomoson both joined Local 284 in August 2015, and Gooding joined in January 2019. (*Id.* ¶¶ 12, 17, 23).) Each plaintiff executed an agreement with Local 284, in which they requested membership with Local 284 and authorized Local 284 to represent them in collective bargaining. (*See* Gibbons Decl. ¶¶ 6, 8, 10, Exs. A, B (“I request membership with and authorize [Local 284] to represent me for the purpose of collective bargaining with my employer . . .”); Ex. C (“I hereby request and voluntarily accept membership in [Local 284] . . . [and] authorize [Local 284] to act as my exclusive representative in collective bargaining over wages, benefits, and other terms and conditions of employment[.]”).) In addition, Plaintiffs agreed to pay their union membership dues via payroll deduction

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<sup>1</sup> Defendants submit copies of Plaintiffs’ respective agreements with Local 284. Plaintiffs’ Complaint references and quotes from these agreements. (Compl. ¶¶ 13, 18, 24.) Therefore, they are properly considered. See *Porous Media Corp. v. Pall Corp.*, 186 F.3d 1077, 1079 (8th Cir. 1999).

(“check-off authorization”). The agreements signed by Burns and Tomoson stated:

I hereby request and voluntarily authorize my employer to deduct from my wages my initiation fee and an amount equal to the regular monthly dues uniformly applicable to members of [Local 284] or monthly service fee, and further that such amount so deducted be sent to such Local Union for and on my behalf. This authorization shall remain in effect and shall be irrevocable unless I revoke it by sending written notice to both my employer and the Local Union during the period not less than thirty (30) and not more than forty-five (45) days before the annual anniversary date of this authorization or the date of termination of the applicable contract between my employer and the Local Union, whichever occurs sooner. This authorization shall be automatically renewed as an irrevocable check-off from year to year unless I revoke it in writing during the above-described window period, irrespective of my membership in the Union.

(Gibbons Decl. ¶¶ 6, 8, Exs. A, B; *see also* Compl. ¶¶ 13, 18, 29.) The language in Gooding’s agreement contains similar provisions:

I recognize the need for a strong union

and believe everyone represented by our union should pay their fair share to support our union's activities. I hereby request and voluntarily authorize my employer to deduct from my earnings and to pay over to [Local 284] an amount equal to the regular monthly dues uniformly applicable to members of [Local 284]. This authorization shall remain in effect and shall be irrevocable unless I revoke it by sending written notice via U.S. mail to both the employer and [Local 284] during the period not less than thirty (30) days and not more than forty-five (45) days before the annual anniversary date of this agreement or the date of termination of the applicable contract between the employer and [Local 284] whichever occurs sooner. This authorization shall be automatically renewed as an irrevocable check-off from year to year unless I revoke it in writing during the window period, even if I have resigned my membership in [Local 284].

(Gibbons Decl. ¶ 10, Ex. C; *see also* Compl. ¶¶ 24, 30.)

On March 5, 2020, Plaintiffs notified Local 284 that they terminated their membership and demanded the stoppage of dues deductions. (Compl. ¶¶ 15, 20, 25.) Because Plaintiffs' notifications fell outside of the termination periods specified in the authorizations in their respective agreements, amounts equal to the regular monthly dues continued to be deducted from

their pay and transmitted to Local 284 for a period following their resignations. (Compl. ¶¶ 16, 21, 27; Gibbons Decl. ¶ 13.) Burns' and Tomoson's deductions continued through July 2020, and Gooding's continued through December 2020. (*Id.*) These dates corresponded with the "anniversary date" of their respective agreements.

Plaintiffs filed the present action on March 5, 2021. In Counts One and Two, Plaintiffs submit that the deductions from their paychecks pursuant to the terms of their dues deduction authorization agreements, both before and after they resigned from Local 284, violate the First Amendment and 42 U.S.C. §1983. (Compl. ¶¶ 39-54.) In Counts Three through Seven, Plaintiffs assert state-law claims for conversion, money had and received/unjust enrichment, civil theft, tortious interference with contractual relations, and unlawful wage deductions. (*Id.* ¶¶ 55-78.) Defendants move to dismiss Plaintiffs' federal claims with prejudice and ask the Court to decline to exercise supplemental jurisdiction over Plaintiffs' state-law claims.

## **DISCUSSION**

In deciding a motion to dismiss under Rule 12(b)(6), a court assumes all facts in the complaint to be true and construes all reasonable inferences from those facts in the light most favorable to the complainant. *Morton v. Becker*, 793 F.2d 185, 187 (8th Cir. 1986). In doing so, however, a court need not accept as true wholly conclusory allegations, *Hanten v. Sch. Dist. of Riverview Gardens*, 183 F.3d 799, 805 (8th

Cir. 1999), or legal conclusions drawn by the pleader from the facts alleged, *Westcott v. City of Omaha*, 901 F.2d 1486, 1488 (8th Cir. 1990). A court deciding a motion to dismiss may consider the complaint, matters of public record, orders, materials embraced by the complaint, and exhibits attached to the complaint. *See Porous Media Corp.*, 186 F.3d at 1079.

To survive a motion to dismiss, a complaint must contain “enough facts to state a claim to relief that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). Although a complaint need not contain “detailed factual allegations,” it must contain facts with enough specificity “to raise a right to relief above the speculative level.” *Id.* at 555. As the Supreme Court reiterated, “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements,” will not pass muster under *Twombly*. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Twombly*, 550 U.S. at 555). In sum, this standard “calls for enough fact[s] to raise a reasonable expectation that discovery will reveal evidence of [the claim].” *Twombly*, 550 U.S. at 556.

#### **A. Federal Claims**

In Counts One and Two, Plaintiffs allege that Defendants violated the First Amendment by taking deductions from Plaintiffs’ pay both before and after their resignations from Local 284. (Compl. ¶¶ 39-54.) Defendants move to dismiss these claims, arguing that the dues were deducted based on Plaintiffs’ dues checkoff agreements with Local 284 and, therefore, do

not violate the First Amendment.<sup>2</sup>

Under the Minnesota Public Employee Labor Relations Act (“PERLA”), Minn. Stat. §§ 179A.01, *et seq.*, public-school employees may vote to form a union for purposes of collective bargaining. Employees are not required to join the union, and Minnesota law requires unions to represent fairly the interests of all bargaining unit members regardless of membership status. § 179A.06, subd. 2. PERLA authorized public employers and unions to enter into collective-bargaining agreements that require all represented employees to pay their proportionate share of the costs of representation regardless of union membership (referred to as a “fair-share” or “agency” fee). *Id.* § 179A.06, subd. 3. Until 2018, it was constitutionally permissible to charge non-union members such fair-share or agency fees. *See Abood v. Detroit Bd. of Educ.*, 431 U.S. 209, 235-36 (1997) (allowing non-union members to be charged for the portion of union dues attributable to activities that are germane to collective bargaining activities). In 2018, the Supreme Court of the United States overruled *Abood*. *See Janus v. Am. Fed’n of State, Cty., & Mun. Emps., Council 31*, 138 S. Ct. 2448 (2018).<sup>3</sup> In *Janus*, the Supreme Court held that requiring non-union members to pay union fees as

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<sup>2</sup> Defendants submit that because Counts One and Two fail to state a claim, the Court need not consider other potentially dispositive issues on which Defendants preserve their position. The Court agrees.

<sup>3</sup> The PERLA provision allowing “fair-share” fees has not been amended after the *Janus* decision.

a condition of public employment violates the First Amendment. *Id.* at 2464, 2486 (“Because the *compelled* subsidization of private speech seriously impinges on First Amendment rights, it cannot be casually allowed.”; “States and public-sector unions may no longer extract agency fees from *nonconsenting* employees.”) (emphasis added). The Supreme Court stated:

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.

*Id.* at 2486.

Plaintiffs rely on *Janus* in arguing that Defendants have violated their First Amendment rights and, in particular, that *Janus* applies to full-dues-paying union members.<sup>4</sup> However, the decision in *Janus* does not address the collection of union dues from union members and, instead, relates to union-related deductions from a “nonmember’s wages.” See

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<sup>4</sup> Plaintiffs argue that the phrase “nor any other payment to the union” must refer to any other payment different from an agency-fee payment, which includes membership dues and, thus, “*Janus*’ proscription on compelled speech . . . includes full dues payments made to a public sector union.” (See Doc. No. 23 at 8.)

*Janus*, 138 S. Ct. at 2485 & 2485 n.27 (“States can keep their labor-relations systems exactly as they are—only they cannot force nonmembers to subsidize public-sector unions.”). Court have routinely recognized that *Janus* does not extend to the collection of union dues from union members. *See, e.g., Belgau v. Inslee*, 975 F.3d 940, 951 (9th Cir. 2020) (“*Janus* does not address the financial burden of union membership. . . . We join the swelling chorus of courts recognizing that *Janus* does not extend a First Amendment right to avoid paying union dues.”) (citing cases); *Bennett v. Council 31 of AFSCME*, 991 F.3d 724, 732 (7th Cir. 2021) (“*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.”); *Hoekman v. Educ. Minn.*, --F.Supp.3d--, Civ. No 18-1686, 2021 WL 533683, at \*8 (D. Minn. Feb. 12, 2021) (“*Janus* did not address a union member’s First Amendment rights.”); *Loescher v. Minn. Teamsters Public & Law Enf’t Union, Local No. 230*, 441 F. Supp. 3d 762, 773 (D. Minn. Feb. 26, 2020) (same) (citing cases).

Here, the allegations in the Complaint clearly demonstrate that Plaintiffs were members of Local 284 and that they authorized monthly dues deductions. (Compl. ¶¶ 13, 18, 24.) Further, the operative agreements provided that the dues authorizations would remain in effect unless revoked by written notice during a specific time period, and that the authorizations would automatically renew from year to year unless so revoked irrespective of membership in Local 284. During Plaintiffs’ membership, Local 284 deducted union dues from Plaintiffs’ paychecks in

accordance with the authorizations. Based on these allegations in the Complaint, which show that Plaintiffs joined the union and voluntarily agreed to dues deductions, Plaintiffs did not experience compulsion that might violate the First Amendment and the deductions did not violate their First Amendment rights. *See, e.g., Belgau*, 975 F.3d at 950 (“Employees, who are union members, experienced no such compulsion.”); *Bennett*, 991 F.3d at 732 (explaining that *Janus* does not apply to union members who freely chose to join a union and voluntarily authorized the deduction of union dues); *Durst v. Or. Educ. Ass’n*, 450 F. Supp. 3d 1085, 1090 (D. Or. 2020) (explaining that *Janus* is not applicable to employees who voluntarily joined their unions and signed authorization agreements). Thus, the *Janus* holding does not prohibit the dues collections from their wages and Plaintiffs’ reliance on *Janus* does not establish a claim to relief.

Plaintiffs also claim that the dues checkoff agreements were not freely given waivers of their First Amendment rights because Plaintiffs were not offered a real choice and after *Janus*, Defendants failed to meaningfully inform Plaintiffs of their rights. Specifically, Plaintiffs argue that Burns and Tomoson were given the false choice to either pay full dues to join Local 284 or to not join and still pay a percentage of the dues or lose their jobs. Plaintiffs also submit that Gooding’s dues checkoff agreement failed to notify her of her rights under *Janus*. In essence, Plaintiffs allege that they were coerced into joining Local 284 and that Defendants have not provided clear and convincing evidence of a freely given waiver. The Court

respectfully rejects these arguments. First, the Court notes that even before *Janus*, Plaintiffs Burns and Tomoson had the option not to join the union. And while the amount paid by nonmembers now is different than when Burns and Tomoson joined Local 284, that difference does not negate the fact that they agreed to join Local 284 and authorized the dues deductions. *See, e.g., Belgau*, 975 F.3d at 950 (“That Employees had the option of paying less as agency fees pre-*Janus*, or that *Janus* made that lesser amount zero by invalidating agency fees, does not establish coercion.”); *Hendrickson v. AFSCME Council 18*, 992 F.3d 950, 960 (10th Cir. 2021) (“[Plaintiff] was free to join the Union or not. Regretting a prior decision to join the Union does not render a knowing and voluntary choice to join nonconsensual.”); *Loescher*, 441 F.Supp.3d at 774 (explaining that the choice to join a union in lieu of paying an agency fee required under Minnesota’s law before *Janus* “was a calculated decision, not the result of a lack of free will”). The Court agrees with these decisions rejecting the argument that pre-*Janus* checkoffs were not voluntary agreements.

Plaintiffs also object to the continued deduction of dues after they notified Defendants that they wanted to terminate their membership in Local 284. The allegations in the Complaint show that Plaintiffs’ resignation notifications fell outside of the termination periods specified in the respective authorizations and, as provided in the agreements, dues deductions continued until one month before the “anniversary date” of their agreements. The agreements created financial obligations that lasted for a set period of time

in the event that Plaintiffs chose to resign from the Union. Plaintiffs have not demonstrated that such a contractual obligation is constitutionally impermissible. *See, e.g., Bennet*, 991 F.3d at 730-33 (concluding that plaintiff did not suffer a violation of First Amendment rights, noting among other things that she agreed that a dues authorization would remain in effect for the duration of her employment unless validly revoked); *Loescher*, 2020 WL 912785, at \*7 (neither *Janus* nor state contract law allows plaintiff to voluntarily enter into a dues authorization agreement with her union and then cancel outside of the opt-out period).

Finally, Plaintiffs argue that under *Janus*, Defendants were required to procure a special waiver of First Amendment rights. Again, the Court disagrees. As discussed above, *Janus* involved only the right of nonmembers not to be compelled to support the union. *Janus* did not create a new First Amendment waiver requirement for union members. *See Belgau*, 975 F.3d at 952 (explaining that *Janus* “in no way created a First Amendment waiver requirement for union members before dues are deducted pursuant to a voluntary agreement”); *Hoekman*, 2021 WL 533683, at \*8 (“Nor must the dues authorization agreement satisfy *Janus*’s waiver requirements.”).

This Court joins the numerous other courts to consider the issues presented here in concluding that *Janus* does not apply to situations where an employee chooses to join a union, authorizes dues deductions, receives union benefits not available to nonmembers,

and later attempts to cancel deductions outside of the opt-out period in their agreements. Accordingly, the Court finds that Plaintiffs have failed to state a claim for a First Amendment violation and Counts One and Two are properly dismissed with prejudice.

## **B. State-Law Claims**

In Counts Three through Seven, Plaintiffs allege state-law claims. Subject matter jurisdiction over these claims exists only through the Court’s exercise of supplemental jurisdiction. 28 U.S.C. § 1337(c)(3). A district court may decline to exercise supplemental jurisdiction over state-law claims if it has dismissed all claims over which it had original jurisdiction. *See Barstad v. Murray Cty.*, 420 F.3d 880, 888 (8th Cir. 2005) (citing 28 U.S.C. § 1337(c)(3)); *Carnegie-Mellon Univ. v. Cohill*, 484 U.S. 343, 350 n.7 (1988) (holding that a district court maintains discretion to either remand the state law claims or keep them in federal court).

While a federal district court may exercise supplemental jurisdiction, it should “exercise judicial restraint and avoid state law issues wherever possible.” *Condor Corp. v. City of St. Paul*, 912 F.2d 215, 220 (8th Cir. 1990). Typically, when federal claims are eliminated prior to trial, “the balance of factors to be considered under the pendant jurisdiction doctrine—judicial economy, convenience, fairness, and comity—will point toward declining to exercise jurisdiction over the remaining state-law claims.” *See Carnegie-Mellon Univ.*, 484 U.S. at 350 n.7. When declining to exercise supplemental jurisdiction under

§ 1367(c), the Court can decide to dismiss the remaining claims without prejudice or remand those claims to state court. *St. John v. Int'l Ass'n of Machinists and Aerospace Workers*, 139 F.3d 1214, 1217 (8th Cir. 1998).

Here, the Court declines to exercise supplemental jurisdiction over Plaintiffs' state-law claims, which are based entirely on Minnesota state law. Accordingly, the Court dismisses Counts Three through Seven without prejudice.!

## ORDER

Based on the files, records, and proceedings herein, and for the reasons stated above, **IT IS HEREBY ORDERED** that Defendants' Motion to Dismiss (Doc. No. [16]) is **GRANTED** as follows:

1. Counts One and Two of the Complaint (Doc. No. [1]) are **DISMISSED WITH PREJUDICE**.
2. Counts Three through Seven of the Complaint (Doc. No. [1]) are **DISMISSED WITHOUT PREJUDICE**.

**LET JUDGMENT BE ENTERED  
ACCORDINGLY.**

Dated: August 12, 2021    s/Donovan W. Frank  
DONOVAN W. FRANK  
United States District Judge

## **APPENDIX E**

### **UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT**

No: 21-3052

Pollyanna Burns, et al.

Appellants

v.

School Service Employees Union Local 284  
and Independent School District No. 191  
Appellees

Appeal from U.S. District Court for the  
District of Minnesota  
(0:21-cv-00638-DWF)

### **ORDER**

The petition for rehearing en banc is denied.  
The petition for rehearing by the panel is also denied.

September 12, 2023

Order Entered at the Direction of the Court:  
Clerk, U.S. Court of Appeals, Eighth Circuit.

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/s/ Michael E. Gans