In the
United States Court of Appeals
for the Seventh Circuit

No. 20-1621

SUSAN BENNETT,

Plaintiff-Appellant,

v.

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

Defendants-Appellees.

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

ARGUED FEBRUARY 17, 2021—DECIDED MARCH 12, 2021

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

FLAUM, *Circuit Judge.* When plaintiff–appellant Susan Bennett began working as a custodian for defendant–appellee Moline-Coal Valley School District (the "School District"), she had the choice either to become a member of defendants–appellees American Federation of State, County, and Municipal Employees

("AFSCME") Local 672 and AFSCME Council 31 (collectively, the "Union") and pay union dues or to decline membership yet pay "fair-share" or "agency" fees.[1] She chose to join the Union. Following the Supreme Court's decision in *Janus v. American Federation of State, County, and Municipal Employees, Council 31*, 138 S. Ct. 2448 (2018), she notified the Union and the School District that she wished to resign her membership and terminate all payments to the Union. The Union allowed Bennett to resign her membership and opt out of payments, but only after the lapse of the window set forth in her union-membership agreement.

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

In a matter of first impression before this Court, Bennett cannot establish that the deduction from her

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

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

I. Background

A. Statutory and Legal Background

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

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

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

B. Factual Background

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

> I hereby affirm my membership in AFSCME Council 31, AFL-CIO and authorize AFSCME Council 31 to represent me as my exclusive representative on matters related to my employment.

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

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

10-day period" during which employees may revoke their dues-deduction authorizations); 115 Ill. Comp. Stat. 5/11.1(a) (same).

On November 1, 2018, after the Supreme Court issued its *Janus* decision, Bennett sent a letter to AFSCME's national office stating that she wanted to resign her union membership and asking the Union to stop collecting dues. On November 5, 2018, she wrote to the School District's chief financial officer, informing him that she intended to resign her union membership and requesting that the School District not honor any prior dues-deduction authorization she had signed. In their December 3, 2018 response, the School District told Bennett to contact the Union regarding her inquiries, as the School District has no role, authority, or discretion in determining union membership or dues deductions. Ten days later, on or around December 13, 2018, the Union sent a letter to Bennett advising her that it would accept her resignation from membership as soon as it received written notice that she wanted to resign but, regardless of whether she resigned from the Union, she could not revoke her dues-deduction authorization until a two-week window from July 17 to August 11, 2019.

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

membership agreement. The School District thus stopped deducting union dues from Bennett's wages in August 2019.

C. Procedural Background

While waiting for the arrival of her two-week revocation window, Bennett brought this action under 42 U.S.C. § 1983 and 28 U.S.C. § 2201(a) against the Union, the School District, and certain Illinois state officials (the "state defendants"). In Count I of the two-count complaint, Bennett alleged that the Union and the School District violated her First Amendment rights to free speech and freedom of association by deducting dues from her wages without her affirmative consent. She alleged that the dues-deduction authorizations she had signed prior to the issuance of the *Janus* decision did not provide affirmative consent because they were the product of an unconstitutional choice between paying full union dues or a fair-share fee. As a remedy, Bennett sought damages from the Union in an amount equal to the dues deducted from her paychecks, both before and after *Janus* was decided. She also sought various forms of declaratory and injunctive relief against the Union and the School District. In Count II, brought against the Union and the state defendants, Bennett alleged that the system of exclusive representation set forth in the IELRA violates her free speech and associational rights. She sought a declaration that the Act is unconstitutional and injunctions barring its enforcement.

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

This appeal followed.

II. Discussion

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

construe all reasonable inferences in favor of the party against whom the motion was granted. *Gill v. Scholz*, 962 F.3d 360, 363 (7th Cir. 2020). Therefore, we will view the facts in the light most favorable to Bennett and draw all reasonable inferences in her favor.

A. Deduction of Union Dues

Bennett first challenges the dismissal of Count I of her complaint, which alleged that the Union and the School District violated her First Amendment rights by deducting union dues from her paychecks. She does not dispute that she voluntarily authorized the deduction of dues or that she was not required to join the Union as a condition of employment. Nor does she dispute that she voluntarily signed the revised union-membership agreement in 2017. Instead, Bennett's appeal turns on the premise that the Supreme Court's *Janus* decision establishing the First Amendment right of public employees not to subsidize a union without first affirmatively consenting to waive that right applies to deduction of union dues. She contends that the district court erred because it did not apply *Janus*'s test for waiver, and under that test she did not waive her right. Bennett thus effectively argues that the *Janus* decision voided her dues-deduction authorization.

As the Union and the School District point out, however, the Ninth Circuit and a panel of the Third Circuit, as well as several district courts, have addressed this very argument that *Janus*'s waiver

requirement applies to union members as well as nonmembers and found it unavailing. Although not precedential here, the cases before the courts of appeals bear similarities to the case at hand. In the Third and Ninth Circuit cases, the plaintiffs were public employees who had, prior to *Janus*, signed union-membership agreements authorizing their state employers to deduct union dues from their paychecks. *See Fischer v. Governor of New Jersey*, No. 19-3914, 2021 WL 141609, at *1-2 (3d Cir. Jan. 15, 2021) (nonprecedential decision); *Belgau v. Inslee*, 975 F.3d 940, 945 (9th Cir. 2020), *petition for cert. docketed*, No. 20-1120 (U.S. Feb. 16, 2021). After the Supreme Court issued its *Janus* decision, each group of plaintiffs requested to resign their union memberships and terminate their payments. *See Fischer*, 2021 WL 141609, at *2; *Belgau*, 975 F.3d at 946. Their unions allowed the plaintiffs to resign, but their state employers continued to deduct dues from their paychecks until the terms of their dues-deduction authorizations expired as set forth in state law or the plaintiffs' membership agreements. *See Fischer*, 2021 WL 141609, at *2; *Belgau*, 975 F.3d at 946. The plaintiffs in each case sued their union and various state defendants, asserting that the defendants violated their First Amendment rights, as established in *Janus*, by collecting union dues from them without their consent and after they requested to terminate all such payments; by their formulation, *Janus* abrogated the commitments set forth in their membership agreements and required the state to obtain a constitutional waiver to deduct union dues from its employees' wages.

See Fischer, 2021 WL 141609, at *3, *7; *Belgau*, 975 F.3d at 944, 950.

Both circuit court panels rejected the plaintiffs' *Janus* arguments. Relying on the Supreme Court's decision in *Cohen v. Cowles Media Co.*, 501 U.S. 663 (1991), they explained that "[t]he First Amendment [did] not support [the plaintiffs'] right to renege on their promise to join and support the union" because that "promise was made in the context of a contractual relationship between the union and its employees." *Belgau*, 975 F.3d at 950. *See also Fischer*, 2021 WL 141609, at *8 n.18 ("[E]nforcement of Plaintiffs' membership agreements does not violate the First Amendment given that those agreements are enforceable under laws of general applicability. . . ."). Applying those First Amendment principles, the circuit court panels also agreed that "'*Janus* does not extend a First Amendment right to avoid paying union dues' when those dues arise out of a contractual commitment that was signed before *Janus* was decided." *Fischer*, 2021 WL 141609, at *8 (quoting *Belgau*, 975 F.3d at 951). Having determined that the plaintiffs suffered no infringement upon their First Amendment rights, the Third Circuit panel and the Ninth Circuit rejected the argument that *Janus* requires a constitutional waiver before union dues are deducted. *See id.* at *8 n.18; *Belgau*, 975 F.3d at 952. In reaching this holding, both panels noted that they were joining a "swelling chorus of courts" recognizing that *Janus* did not create a new waiver requirement for union members. *See Fischer*, 2021 WL 141609, at *8; *Belgau*, 975 F.3d at 951.

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

Moreover, it is generally accepted that "the legal framework that existed at the time of a contract's execution must bear on its construction" and that "a subsequent change in the law cannot retrospectively alter the parties' agreement." *Fla. E. Coast Ry. Co. v. CSX Transp., Inc.*, 42 F.3d 1125, 1129-30 (7th Cir. 1994) (applying Florida law to settlement agreement). *See also* 11 Williston on Contracts § 30:23 (4th ed. 2020) ("[C]hanges in the law subsequent to the execution of a contract are not deemed to become part of [an] agreement unless its language clearly indicates such to have been [the] intention of [the] parties."). Rather, "[b]y binding oneself [by agreement,] one assumes the risk of future changes in circumstances in light of which one's bargain may prove to have been a bad one." *United States v. Bownes*, 405 F.3d 634, 636 (7th Cir.

2005).[2] "That is the risk inherent in all contracts; they limit the parties' ability to take advantage of what may happen over the period in which the contract is in effect." *Id.* We see here no clear indication that the parties intended the terms of Bennett's membership agreements and dues-deduction authorizations to incorporate future changes in the law. Consequently, we agree with the reasoning of the Third and Ninth Circuit panels and conclude that the First Amendment does not provide Bennett with a right to renege on her bargained-for commitment to pay union dues.

We also agree that *Janus* does not require a different result. In that case, the Supreme Court held that the practice of automatically deducting fair-share fees from nonmembers who "need not be asked" and "are not required to consent before the fees are deducted" violated those nonmembers' First Amendment rights by compelling them to subsidize the union's speech. *Janus*, 138 S. Ct. at 2460-61, 2486. In contrast, *Janus* said nothing about union members who, like Bennett, freely chose to join a union and voluntarily authorized the deduction of union dues, and who thus consented to subsidizing a union. While Bennett tries to decouple the decision to join the Union from the decision to pay union dues by framing the right at issue here as the "right to pay no money to the Union" (as she claims was

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

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

Nothing in *Janus* suggests that its holding regarding union-related deductions from nonmembers' wages also applies to similar financial burdens on union members. The *Janus* Court explicitly "dr[ew] the line at allowing the government to . . . require all employees to support the union." 138 S. Ct. at 2478. The Court also explicitly stated that "[s]tates can keep their labor-relations systems exactly as they are—only they cannot force nonmembers to subsidize public-sector unions." *Id.* at 2485 n.27. As we stated on remand in that case, the Court "was not concerned in the abstract with the deduction of money from employees' paychecks pursuant to an employment contract." *Janus v. Am. Fed'n of State, Cnty. & Mun. Emps., Council 31* ("*Janus II*"), 942 F.3d 352, 357 (7th Cir. 2019). Nor did it provide "an unqualified constitutional right to accept the benefits of union representation without paying."

Id. at 358. Stated differently, "[t]he only right . . . recognized is that of an objector not to pay *any* union fees." *Id.*

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

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

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

B. Exclusive Representation

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

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

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

We followed *Knight* to uphold the constitutionality of the exclusive-bargaining-representative provisions of the Illinois Public Labor Relations Act—the parallel statute to the IELRA—in *Hill v. Service Employees International Union.* 850 F.3d at 864-66. In that case, a

group of home healthcare and childcare providers argued that these provisions violated their First Amendment associational rights because the statute forced them into a mandatory association with the union that represented their bargaining unit. *Id.* at 862-63. We held that the exclusive representation statute did not infringe on the plaintiffs' freedom of association because, as *in Knight*, the plaintiffs "do not need to join . . . or financially support" the union[3] and could form their own groups or oppose the union if they chose. *Id.* at 864. We further rejected the plaintiffs' argument that the law created a mandatory association triggering heightened scrutiny because the exclusive-representation system of labor relations did not compel them to express a particular message, accept undesired members into their own associations, or modify their expressive conduct. *Id.* at 865.

Knight and *Hill* control here to foreclose Bennett's claims based on the alleged infringement of her First Amendment free speech and associational rights. Bennett contends that exclusive representation creates a mandatory association subject to exacting scrutiny because it compels her to both associate with the Union and endorse speech that she finds objectionable. She further argues that exclusive representation under the IELRA does not meet that heightened standard

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

because it does not serve a compelling state interest. As we did in *Hill*, we again reject these arguments against the constitutionality of exclusive representation.

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

Second, Bennett asserts that *Hill* itself is distinct because the plaintiffs there were "partial" public employees—and their union thus had a limited ability to collectively bargain on their behalf. Accordingly, she argues that the *Hill* plaintiffs experienced a lesser degree of forced association than Bennett does as a "full-fledged" public employee. As explained above, however, we based our decision in *Hill* on *Knight*, which considered the exclusive representation of full public employees. *Compare Knight*, 465 U.S. at

275-76 (explaining that the Minnesota State Board for Community Colleges, the plaintiff faculty members' employer, operated and retained final policy-making authority over the state's community college system), *with Harris*, 573 U.S. at 621-23, 645-46 (describing plaintiff care providers as "partial," as opposed to "full-fledged," public employees because Illinois law established that private persons receiving homecare services are "employers" of and "control[] all aspects of the employment relationship" with care providers, while "the State's role is comparatively small").

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

Finally, we remain unpersuaded by Bennett's argument in the alternative that *Janus* overturned *Knight* (and by extension *Hill*). She relies on a passage in *Janus* characterizing exclusive representation as "a significant impingement on associational freedoms that would not be tolerated in other contexts." 138 S. Ct. at 2478; *see also id.* at 2460 (explaining that exclusive representation "substantially restricts the

rights of individual employees"). But *Janus* did not mention, let alone overrule, *Knight* or otherwise question the constitutionality of a system of labor relations based on exclusive representation. The same passage from *Janus* that Bennett relies on reaffirms that "[i]t is . . . not disputed that the State may require that a union serve as exclusive bargaining agent for its employees. . . . We simply draw the line at allowing the government to go further still and require all employees to support the union irrespective of whether they share its views." *Id.* at 2478. After acknowledging this principle, the *Janus* Court concluded that "[s]tates can keep their labor-relations systems exactly as they are," other than charging fair-share fees. *Id.* at 2485 n.27.

In contrast, *Knight* speaks directly to the constitutionality of exclusive representation. "The [Supreme] Court's instructions in this situation are clear: 'If a precedent of this Court has direct application in a case, yet appears to rest on reasons rejected in some other line of decisions, the Court of Appeals should follow the case [that] directly controls, leaving to this Court the prerogative of overruling its own decisions.'" *Price v. City of Chicago*, 915 F.3d 1107, 1111 (7th Cir. 2019) (alteration in original) (quoting *Agostini v. Felton*, 521 U.S. 203, 237, (1997)). Consistent with that instruction, we apply *Knight*'s directly applicable precedent and hold that the IELRA's exclusive-bargaining-representative arrangement does not violate Bennett's First Amendment rights. We find further reinforcement for this conclusion in the fact that every circuit

court to address this issue after the *Janus* decision has held that exclusive representation remains constitutional. *See Reisman v. Associated Facs. of Univ. of Me.*, 939 F.3d 409, 414 (1st Cir. 2019), *cert. denied*, 141 S. Ct. 445 (2020); *Oliver*, 830 F. App'x at 80-81 (Third Circuit panel decision); *Akers v. Md. State Educ. Ass'n*, No. 19-1524, 2021 WL 852086, at *5 n.3 (4th Cir. Mar. 8, 2021); *Thompson v. Marietta Educ. Ass'n*, 972 F.3d 809, 813-14 (6th Cir. 2020), *petition for cert. docketed*, 20-1019 (U.S. Jan. 28, 2021); *Bierman v. Dayton*, 900 F.3d 570, 574 (8th Cir. 2018); *Mentele v. Inslee*, 916 F.3d 783, 786-89 (9th Cir. 2019).

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

III. Conclusion

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

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

[SEAL]

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FINAL JUDGMENT

March 12, 2021

Before: DIANE S. SYKES, Chief Circuit Judge
JOEL M. FLAUM, Circuit Judge
ILANA DIAMOND ROVNER, Circuit Judge

No. 20-1621	SUSAN BENNETT, Plaintiff - Appellant v. COUNCIL 31 OF THE AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, AFL-CIO, et al., Defendants - Appellees
Originating Case Information:	
District Court No: 4:19-cv-04087-SLD-JEH Central District of Illinois District Judge Sara Darrow	

We **AFFIRM** the district court's grant of summary judgment for defendants-appellees and denial of

summary judgment for Bennett, with costs, in accordance with the decision of this court entered on this date.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS
ROCK ISLAND DIVISION

SUSAN BENNETT, Plaintiff, v. AMERICAN FEDERATION OF STATE, COUNTY, AND MUNICIPAL EMPLOYEES, COUNCIL 31, AFL-CIO; AFSCME LOCAL 672; BOARD OF EDUCATION MOLINE-COAL VALLEY SCHOOL DISTRICT NO. 40;[1] ATTORNEY GENERAL KWAME RAOUL, in his official capacity; and ANDREA R. WAINTROOB, chair, JUDY BIGGERT, GILBERT O'BRIEN JR., LYNNE SERED, and LARA SHAYNE, members, of the Illinois Educational Labor Relations Board, in their official capacities, Defendants.	)	Case No. 4:19-cv-04087-SLD-JEH

[1] Defendant Board of Education of Moline-Coal Valley School District No. 40 was incorrectly named Moline-Cole Valley School District No. 40 in the caption of the Complaint, ECF No. 1. *See* Not. of Correction, ECF No. 3; Sch. Dist. Answer 1, ECF No. 17.

ORDER

(Filed Mar. 31, 2020)

Before the Court are Defendants Attorney General Kwame Raoul, Andrea R. Waintroob, Judy Biggert, Gilbert O'Brien Jr., Lynne Sered, and Lara Shayne's ("State Defendants") Motion to Dismiss, ECF No. 14;[2] Defendants American Federation of State, County, and Municipal Employees, Council 31, AFL-CIO ("Council 31") and AFSCME Local 672's ("Local 672") (collectively, "the Union") Motion for Summary Judgment, ECF No. 30; Defendant Board of Education Moline-Coal Valley School District No. 40's ("School District") Motion for Summary Judgment, ECF No. 32; and Plaintiff Susan Bennett's Motion for Summary Judgment, ECF No. 27. For the reasons that follow, Defendants' motions are GRANTED and Plaintiffs motion is DENIED.

[2] On July 22, 2019, the parties agreed that the State Defendants' Motion to Dismiss be considered, along with the anticipated joint statement of stipulated facts, as a motion for summary judgment. Agreed Mot. Stay Briefing Mot. Dismiss 1-2, ECF No. 21. On August 2, 2019, the Court granted the agreed motion and will treat the State Defendants' Motion to Dismiss as one for summary judgment under Rule 56 of the Federal Rules of Civil Procedure. Fed. R. Civ. P. 12(d).

BACKGROUND[3]

Plaintiff has been employed as a custodian by the School District since August 2009. Council 31, a Chicago based labor organization under Section 2(c) of the Illinois Educational Labor Relations Act ("IELRA"), 115 ILCS 5/1–21, represents public sector workers employed by government employers in Illinois. Local 672 is also organized under Section 2(c) of the IELRA and represents custodial and maintenance employees of the School District out of its Moline, Illinois location. The School District is an Illinois public school district with its principal office located in Moline, Illinois. The School District is an educational employer under Section 2(a) of the IELRA. Attorney General Raoul is sued in his official capacity as the representative of the State of Illinois charged with the enforcement of state laws, including the IELRA. Waintroob, Biggert, O'Brien Jr., Sered, and Shayne, are members of the Illinois Educational Labor Relations Board ("IELRB") and are sued in their official capacities. The IELRB has certified Council 31 as the exclusive representative, pursuant to 115 ILCS 5/8, for the bargaining unit

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[3] The facts related here are taken from the Joint Stipulated Record, ECF No. 26, the exhibits attached to it, the State Defendants' Background, State Defs.' Mem. Supp. Mot. Dismiss 1-3, ECF No. 15; the Union's Statement of Facts, Union's Br. Supp. Mot. Summ. J. 2-5, ECF No. 31; and the School District's Statement of Undisputed Material Facts, Sch. Dist.'s Br. Supp. Mot. Summ. J. 2-3, ECF No. 33. *See* Pl.'s Combined Resp. Defs.' Mots. 2, ECF No. 34 (indicating no objection to the facts recited in the Defendants' motions).

consisting of the School District's custodial and maintenance employees.

School District employees may become union members but joining the Union has never been a condition of employment. Union members had the right to vote on whether to ratify a collective bargaining agreement, the opportunity to serve on bargaining committees, the right to vote in union elections, and the right to be nominated for or elected to union office. Plaintiff, who has been employed by School District since August 2009 in a bargaining unit position represented by Council 31, initially became a member of the Union in November 2009 by signing a membership and dues-deduction authorization card ("2009 Card") that stated: "I hereby authorize my employer to deduct the amount as certified by the Union as the current rate of dues. This deduction is to be turned over to AFSCME, AFL-CIO." 2009 Card, Joint Stip. R. Ex 1, ECF No. 26-1. On August 21, 2017, Plaintiff signed a Council 31 membership and dues-deduction authorization card ("2017 Card") that stated:

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

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

2017 Card, Joint Stip. R. Ex 2, ECF No. 26-2.

The Union requires yearly dues commitments to facilitate the School District's dues-deductions process and to help budget and make advance financial commitments, such as renting offices, hiring staff, and entering into contracts with other vendors. The Union and the School District have agreed to three consecutive collective bargaining agreements ("CBA") since July 1, 2014, with the current collective bargaining agreement ("Current CBA") set to expire on June 30, 2020. The School District deducted union dues from wages earned by Plaintiff and the other union members in her bargaining unit and remitted them to Council 31. The School District had no role, authority, or discretion in determining union membership, the amount of dues deductions, or the opt-out window. The Union informed the School District as to who was and

who was not a member and the amount of any dues deduction to be withheld from employees' paychecks.

Prior to June 27, 2018, nonmember employees were required to pay "fair-share fees" to the Union pursuant to Article XV, Section 2 of both the 2014–2017 CBA and the 2017–2018 CBA and 5 ILCS 315/6(e).[4] The School District and Council 31 stopped enforcing the fairshare-fee requirement of the 2017–2018 CBA and stopped deducting and collecting fair-share fees immediately after the Supreme Court issued its decision in *Janus v. American Federation of State, County, and Municipal Employees, Council 31*, 138 S. Ct. 2448 (2018). The Current CBA contains no fair-share-fee requirement.

In August 2018, Plaintiff attended a union membership meeting, at which time she voted on whether to ratify the Current CBA. On March 4, 2019, Plaintiff resigned her union membership and on July 29, 2019, within the 2017 Card's revocation window, revoked her dues-deduction authorization. The School District stopped deducting dues from her wages.

On April 26, 2019, Plaintiff filed suit pursuant to 42 U.S.C. § 1983 and the First and Fourteenth Amendments (1) alleging that the School District and the Union violated Plaintiff's First Amendment rights to free speech and freedom of association, Compl. ¶¶ 37–45, ECF No. 1; (2) seeking a judgment declaring that

[4] For some reason, the parties cite to the fair-share fee provision in the Illinois Public Labor Relations Act rather than the IELRA's version at 115 ILCS 5/11. Joint Stip. R. ¶ 27.

(i) Defendants' collective bargaining agreement, entered under color of and pursuant to Illinois law, violated Plaintiffs free speech rights by purporting to limit the ability of Plaintiff to revoke the dues-deduction authorization to a window of time without affirmative consent, *id.* at 10(a)–11(a); (ii) the 2017 Card signed by Plaintiff—when such authorization was based on an unconstitutional choice between paying the union as a member or paying the union as a nonmember—did not meet the standard for affirmative consent required to waive the First Amendment right announced in *Janus, id.* at 11(b); and (iii) the exclusive representation provided for in 115 ILCS 5/3 is unconstitutional, *id.* ¶¶ 46–56; (3) seeking to enjoin (i) the Illinois Attorney General from enforcing 115 ILCS 5/3, *id.* at 11(g); and (ii) Waintroob, Biggert, O'Brien Jr., Sered, and Shayne as members of the IELRB from certifying a union as the exclusive representative in a bargaining unit, *id.* at 12(h). Plaintiff also seeks damages against the Union for all dues collected from her, before and after the Supreme Court's decision in *Janus. Id.* at 12(i), (j).[5] The parties move for summary judgment on all claims.

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[5] Plaintiff also seeks a judgment declaring that the School District's practice of withholding union dues from Plaintiff's paycheck is unconstitutional, to prohibit further deductions, and to require the Union to allow Plaintiff to immediately resign her union membership. Compl. 11(c)–(e). To satisfy Article III's requirement that courts consider only actual cases or controversies, prospective injunctive relief is only available if plaintiffs demonstrate a real and immediate threat of future injury. *City of Los Angeles v. Lyons*, 461 U.S. 95, 102 (1983); *UWM Student Ass'n v. Lovell*, 888 F.3d 854, 860 (7th Cir. 2018) (same). Plaintiff has resigned from the union and dues are no longer being deducted from

DISCUSSION

I. Legal Standard

"The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). The court must view the evidence "in the light most favorable to the nonmoving party[] and draw[] all reasonable inferences in that party's favor, "*McCann v. Iroquois Mem'l Hosp.*, 622 F.3d 745, 752 (7th Cir. 2010) (citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986)), and determine whether there is sufficient evidence favoring the nonmoving party for a factfinder to return a verdict in its favor. *Anderson*, 477 U.S. at 249. Since the parties have stipulated to a set of facts, the Court views each party's motion in the light most favorable to the non-moving party and determines whether the movant is entitled judgment as a matter of law. 42 U.S.C. § 1983 provides a cause of action against "[e]very person who, under color of any statute, ordinance, regulation . . . subjects, or causes to be subjected, any [person] . . . to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws." Freedom of speech and association are protected by the First Amendment, which is made applicable to the states through the Fourteenth Amendment.

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her wages, Joint Stip. R. ¶ 39, so Plaintiff's requests for injunctive relief are MOOT.

II. Analysis

In *Janus*, the Supreme Court held that the Illinois Public Labor Relations Act's ("IPLRA") enforcement of a collective bargaining agreement's fair-share fee provision violated the free speech rights of nonmembers because it "compel[ed] them to subsidize private speech on matters of substantial public concern" without their consent. *Janus*, 138 S. Ct. at 2459–61. While a nonmember may choose to pay a fair-share fee, one may not be collected "unless the employee affirmatively consents to pay[,] . . . [thereby] waiving [his] First Amendment rights." *Id.* at 2486.

Here, Plaintiff argues the Union's previous offer to employees—to be a fair-share-fee paying nonmember or a dues-paying member—was an unconstitutional choice under *Janus* and failed to provide her with an opportunity to affirmatively waive her First Amendment right to not pay the Union a portion of her wages. Pl.'s Mem. Supp. Mot. Summ. J. 3–6, ECF No. 28. She also argues that the IELRA's exclusive representative provisions violate her First Amendment rights to freedom of speech and freedom of association. *Id.* at 7–9.

A. Union Dues[6]

Plaintiff argues that after *Janus*, payments to a union could no longer be deducted from a public

[6] The parties debate whether Defendants' conduct constituted state action under section 1983 and the First and Fourteenth Amendments to the Constitution. While far from clear, the Court will assume state action for purposes of the order.

employee's wages without the employee's affirmative consent to waive his First Amendment right to not pay a union. Pl.'s Mem. Supp. Mot. Summ. J. 3–6. The Union argues *Janus* held that *nonmembers* could no longer be constitutionally required to pay fair-share fees, but that it had no effect on *union members'* obligations to pay fees pursuant to voluntarily signed membership agreements. Union's Br. Supp. Mot. Summ. J. 5–10, ECF No. 31.

1. Coercion

Plaintiff argues her dues authorization was coerced because she was given the unconstitutional choice between paying the Union as a nonmember or a member. "[B]etween paying something for nothing and paying more for benefits she did not consider worth the cost, she decided to take the latter option." Pl.'s Mem. Supp. Mot. Summ. J. 4.[7] The Union, relying on similar cases filed throughout the country after *Janus*, argues that Plaintiff chose to join the Union and cannot void the dues-deduction authorization commitment on

[7] The Union calls attention to the missing factual basis for Plaintiff's claim—there is no evidence "that she only joined the Union because of the then-applicable fair-share fee requirement." Union's Br. Supp. Mot. Summ. J. 7–8. Instead, the evidence shows Plaintiff voluntarily became a union member and received membership benefits in exchange. *See* Joint Stip. R. ¶¶ 10, 13, 41–43 (listing benefits such as "home mortgage assistance," . . . "access to scholarship programs" and "discounts on wireless phone plans, auto insurance, life insurance, and legal services.") Once Plaintiff resigned her membership, she no longer had membership rights or access to members-only benefits.

grounds of coercion. Union's Br. Supp. Mot. Summ. J. 5–8.[8] Coercion is defined as the "[c]ompulsion of a free agent by physical, moral, or economic force or threat of physical force." *Coercion*, Black's Law Dictionary (11th ed. 2019). "Economic duress . . . is an affirmative defense to a contract, which releases the party signing under duress from all contractual obligations. Duress occurs where one is induced by a wrongful act or threat of another to make a contract under circumstances that deprive one of the exercise of one's own free will." *Krilich v. Am. Nat'l Bank & Tr. Co. of Chi.*, 778 N.E.2d 1153, 1162 (Ill. App. Ct. 2002) (citation omitted).

Plaintiff does not factually or legally support her coercion claim and courts faced with similar challenges *post-Janus* have rejected coercion arguments. *See Oliver v. Serv. Emps. Int'l Union Local 668*, 415 F. Supp. 3d 602, 606–08 (E.D. Pa. 2019) (rejecting the plaintiff's argument that she was coerced because a state statute made union membership voluntary); *Babb v. Cal. Teachers Ass'n*, 378 F. Supp. 3d 857, 877 (C.D. Cal. 2019) ("Plaintiffs voluntarily chose to pay membership dues in exchange for certain benefits, and the fact that [they] would not have opted to pay union membership fees if *Janus* had been the law at the time of their decision does not mean their decision was therefore coerced." (brackets and quotation marks omitted)); *Bermudez v. Serv. Emps. Int'l Union, Local 521*, No. 18-cv-04312-VC, 2019 WL 1615414, at *2 (N.D. Cal. Apr. 16, 2019) (rejecting plaintiffs' state law claims

[8] "[E]mployees shall . . . have the right to refrain from any or all [collective bargaining] activities." 115 ILCS 5/3(a).

for a refund of their membership dues because the decision to pay dues was not coerced or wrongfully collected but based on a valid contract term); *Belgau v. Inslee*, 359 F. Supp. 3d 1000, 1016–17 (W.D. Wash. 2019) (holding that neither statute nor collective bargaining agreement compelled involuntary dues deductions and the "notion that the [p]laintiffs may have made a different choice if they knew the Supreme Court would later invalidate public employee agency fee arrangements in *Janus* does not void their previous knowing agreements" (quotation marks and brackets omitted)); *Cooley v. Cal. Statewide Law Enf't Ass'n*, No. 2:18-cv-02961-JAM-AC, 2019 WL 331170, at *3 (E.D. Cal. Jan. 25, 2019) (same). Accordingly, Plaintiff has not shown she was under pressure to sign the 2017 Card or otherwise demonstrated that she was coerced.

2. Knowing and Voluntary Waiver

Relatedly, Plaintiff argues she did not knowingly and voluntarily waive her First Amendment right to not pay the Union because *Janus* had not been decided when she signed the 2017 Card. Pl.'s Mem. Supp. Mot. Summ. J. 4–6; *see Johnson v. Zerbst*, 304 U.S. 458, 464 (1938) ("A waiver is ordinarily an intentional relinquishment or abandonment of a known right or privilege"). After all, a waiver of a constitutional right "must be freely given and shown by clear and compelling evidence." Pl.'s Mem. Supp. Mot. Summ. J. 3 (quoting *Janus*, 138 S. Ct. at 2486) (quotation marks omitted). The Union shifts the discussion to better describe the

"right" waived here.[9] While obligated under a union agreement, Plaintiff did not have a right to not pay a fair-share fee without giving affirmative consent. Perhaps Plaintiff is actually arguing that her 2017 Card involuntarily and unknowingly waived her right to take advantage of *Janus*. But signing a membership agreement suggests that she was not intending to assert her right to remain a no-fee paying nonmember. And the right created in *Janus* was unknown in 2017 when Plaintiff signed the dues-deduction authorization card. "[C]hanges in intervening law—even constitutional law—do not invalidate a contract." *Smith v. Bieker*, No. 18-cv-05472-VC, 2019 WL 2476679, at *2 (N.D. Cal. June 13, 2019) (citing *Brady v. United States*, 397 U.S. 742, 757 (1970)). Parties may enter into mutually beneficial contracts that by implication foreclose future opportunities.

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[9] Relying on *Harper v. Virginia Department of Taxation*, 509 U.S. 86, 97 (1993), Plaintiff argues *Janus* applies retroactively, meaning that the Union and the School District were required "to secure Plaintiff's affirmative consent for the knowing and voluntary waiver of her rights not to join a union. . . . Because they did not[,] . . . the Union could not compel her to be a member . . . or to continue to pay [U]nion dues. . . . Plaintiff's union card is void under *Janus.*" Pl.'s Mem. Supp. Mot. Summ. J. 5–6. The evidence indicates Plaintiff "affirm[ed her] membership in [the Union]" and that her "authorization of dues deductions . . . [wa]s voluntary." Joint. Stip. R. ¶ 13. Again, Plaintiff points to no evidence that she would have chosen to not join the Union if she had known she had a First Amendment right to not pay a fair-share fee. Plaintiff's argument that the Court should apply *Janus* retroactively to void her voluntarily entered membership and dues-deduction authorization card is rejected.

For instance, courts routinely uphold plea agreements that waive defendants' rights to appeal or collaterally attack their convictions even when the Supreme Court modifies constitutional criminal law or procedures in their favor. "[O]ne major purpose of an express waiver is to account in advance for unpredicted future developments in the law." *Oliver v. United States*, 951 F.3d 841, 845 (7th Cir. 2020). "By binding oneself one assumes the risk of future changes in circumstances in light of which one's bargain may prove to have been a bad one." *Id.* (quotation marks omitted). A defendant may regret his plea agreement because he did not anticipate a Supreme Court ruling, but that "does not render his decision to plead guilty involuntary." *United States v. Vela*, 740 F.3d 1150, 1154 (7th Cir. 2014). If incarcerated defendants cannot rescind agreements as involuntary in light of subsequently developed constitutional caselaw, civil litigants disputing property rights should fare no differently. Accordingly, Plaintiff's obligation to pay union dues pursuant to the 2017 Card remains enforceable despite the new constitutional right identified in *Janus*. *See also Jared Allen v. Ohio Civil Serv. Emps. Ass'n AFSCME, Local 11*, No. 2:19-cv-3709, 2020 WL 1322051, at *9 (S.D. Ohio Mar. 20, 2020) ("Plaintiffs have not identified any cases where an individual voluntarily entered into a contract with full information as to the rights he/she was giving up, waived those rights, and subsequently was permitted to break that contract based on a change in the law applicable to those rights."); *Smith v. Superior Court, Cty. of Contra Costa*, No. 18-cv-05472-VC, 2018 WL 6072806, at *1 (N.D. Cal. Nov. 16,

2018) (rejecting the plaintiffs attempt to invalidate his union contract after *Janus* because it was "not the rights clarified in *Janus* that are relevant[. The plaintiff's] First Amendment right to opt out of union membership was clarified in 1977, and yet he waived that right by affirmatively consenting to be a member of Local 2700." (citing *Abood v. Detroit Bd. of Educ.*, 431 U.S. 209, 235–36 (1977), *overruled by Janus*, 138 S. Ct. at 2464)).

The fact that Plaintiff did not sign a waiver of the later-identified First Amendment right to not pay a fair-share fee does not invalidate her agreement to join the Union.[10] The 2017 Card was not the product of coercion and was not involuntary simply because *Janus* made union membership less appealing.

B. Exclusive Representation

Representatives selected by a bargaining unit "shall be the exclusive representative of all the employees in such unit to bargain on wages, hours, terms and conditions of employment." 115 ILCS 5/3(b). Plaintiff argues that this exclusive representation is unconstitutional because the Union uses it to compel her "speech [when] [ ]the union speaks on behalf of the employees, as though its speech is the employees' own speech[ ]" and her "association [because] [ ]the union

[10] Even after Plaintiff resigned her union membership, she was required to fulfill her commitment to pay union dues under the dues-deduction authorization card. Joint Stip. R. ¶¶ 13, 24, 25, 33–36, 38.

represents everyone in the bargaining unit without any choice or alternative for dissenting employees not to associate.[ ]" Pl.'s Mem. Supp. Mot. Summ. J. 7. She asserts exclusive representation is subject to "at least exacting scrutiny, if not strict scrutiny." *Id.* at 8 (citing *Knox v. Serv. Emps. Int'l Union, Local 1000*, 567 U.S. 298, 310 (2012) (discussing standard of review for mandatory associations)).

State Defendants contend that requiring exclusive representation does not create a mandatory association, State Defs.' Mem. Supp. Mot. Dismiss 5, ECF No. 15, and that *Janus* did not otherwise disturb the "bedrock principle of labor law" that permits a majority of employees to select an exclusive representative to represent all employees of the bargaining unit, *id.* at 3–7. In support, they and the Union cite *Minnesota State Board for Community Colleges v. Knight*, 465 U.S. 271, 271 (1984), *D'Agostino v. Baker*, 812 F.3d 240, 244 (1st Cir. 2016), *Hill v. Serv. Emps. Int'l Union*, 850 F.3d 861 (7th Cir. 2017), and cases that have considered the issue after *Janus*.

Mandatory associations that force membership and financial support for group speech "implicate the First Amendment freedom of association, which includes the freedom to choose not to associate, and the First Amendment freedom of speech, which also includes the freedom to remain silent or to avoid subsidizing group speech with which a person disagrees." *Kingstad v. State Bar of Wis.*, 622 F.3d 708, 712–13 (7th Cir. 2010) "Despite [a] general rule against 'forced speech,' . . . the Supreme Court has found that certain

mandatory associations—agency shops, agricultural marketing collectives, and integrated or mandatory bars—are permitted under the First Amendment because the forced speech serves legitimate governmental purposes for the benefit of all members." *Id.* at 713. "Mandatory associations are subject to exacting scrutiny, meaning they require a compelling state interest that cannot be achieved through significantly less-restrictive means." *Hill*, 850 F.3d at 863.

In *Knight*, non-union college instructors objected to the union's exclusive right to bargain on educational policies, topics beyond the scope of a typical labor relations statute. The Court held that "[t]he state ha[d] in no way restrained [instructors'] freedom to speak on any education-related issue or their freedom to associate or not to associate with whom they please, including the exclusive representative. Nor has the state attempted to suppress any ideas." *Knight*, 465 U.S. at 288. Additionally, the instructors were free to not join the union and to form advocacy groups. *Id.* at 289. Plaintiff argues that the instructors in *Knight* sought a right to force the government to listen to their policy views in a formal setting, whereas she only seeks to not be associated with the Union. Pl.'s Combined Resp. Defs.' Mots. 21, ECF No. 34. This is a distinction without a difference—regardless of a nonmember's motivation to contest the association, the effect on First Amendment rights necessarily resulting from exclusive representation is not sufficient to invalidate it.

Similarly, in *D'Agostino*, nonmembers bristled at exclusive-bargaining representation. The court concluded that "exclusive bargaining representation by a democratically selected union d[id] not, without more, violate the right of free association on the part of dissenting nonunion members of the bargaining unit." *D'Agostino*, 812 F.3d at 244. Further, it rejected that a nonmember's association with a union resulted in compelled speech.

> [T]he relationship is one that is clearly imposed by law, not by any choice on a dissenter's part, and when an exclusive[-]bargaining agent is selected by majority choice, it is readily understood that employees in the minority, union or not, will probably disagree with some positions taken by the agent answerable to the majority. And the freedom of the dissenting [employees] to speak out publicly on any union position further counters the claim that there is an unacceptable risk the union speech will be attributed to them contrary to their own views; they may choose to be heard distinctly as dissenters if they so wish, and . . . the higher volume of the union's speech has been held to have no constitutional significance.

Id. The employees were not "compelled to act as public bearers of an ideological message they disagree[d] with," *id.* (citing *Wooley v. Maynard*, 430 U.S. 705 (1977)), required "to modify the expressive message of any public conduct they may choose to engage in," *id.* (citing *Hurley v. Irish–Am. Gay, Lesbian & Bisexual Grp. of Bos.*, 515 U.S. 557 (1995)), or "under any

compulsion to accept an undesired member of any association they may [have] belong[ed] to," *id.* (citing *Boy Scouts of Am. v. Dale*, 530 U.S. 640 (2000)).

In *Hill*, non-union employees asserted that the IPLRA's exclusive-bargaining provisions created an unconstitutional association. *Hill*, 850 F.3d at 863. The court, relying on *Knight* and *D'Agostini*, concluded that "the IPLRA[ ] . . . d[id] not compel an association that trigger[ed] heightened First Amendment scrutiny." *Id.* at 865.[11]

Plaintiff also suggests the exclusive-bargaining representation set forth in 115 ILCS 5/3(b) imposes too great a burden on the First Amendment principles identified in *Janus.* But it is clear that *Janus* did not reach the issue and instead, reaffirmed the traditional labor system. "States can keep their labor-relations systems exactly as they are—only they cannot force nonmembers to subsidize public-sector unions." *Janus*, 138 S. Ct. at 2485 n.27.

> [T]he State may require that a union serve as exclusive[-]bargaining agent for its employees—itself a significant impingement on associational freedoms that would not be tolerated

[11] Plaintiff argues the *Hill* plaintiffs were not considered "full-fledged" public employees, *Hill*, 850 F.3d at 862 n.1, a status that necessarily narrowed the scope of the union's representation to only those "terms and conditions of employment that [we]re within the State's control," 20 ILCS 2405/3(f). Plaintiff does not explain how this distinction impacted the court's decision, Combined Resp. Defs.' Mots. 22, and the Court will not speculate, especially in light of *Knight's* controlling precedent involving "full-fledged" employees.

> in other contexts. We simply draw the line at allowing the government to go further still and require all employees to support the union irrespective of whether they share its views.

Id. at 2478. On remand, the Seventh Circuit reiterated the viability of exclusive union representation. "[T]he union still enjoys the power and attendant privileges of being the exclusive representative of an employee unit." *Janus v. Am. Fed'n of State, Cly. & Mun. Emps., Council 31*, 942 F.3d 352, 358 (7th Cir. 2019). It is "[t]he principle . . . [that] lies at the heart of our system of industrial relations." *Id.* at 354. This leaves *Knight, Hill*, and exclusive representation undisturbed. *See also Mentele v. Inslee*, 916 F.3d 783, 789 (9th Cir. 2019) (holding that the state's "authorization of an exclusive[-]bargaining representative d[id] not infringe [an employee]'s First Amendment rights"); *Bierman v. Dayton*, 900 F.3d 570, 574 (8th Cir. 2018) (applying *Knight*, because *Janus* did not consider *Knight* or the constitutionality of exclusive representation, to conclude that statute permitting it "did not impinge on the right of association"). As the IELRA does not create a mandatory association, "it is not subject to heightened scrutiny," *Hill*, 850 F.3d at 866, and is not an unconstitutional impingement on Plaintiff's freedom to associate as protected by the First Amendment, *Knight*, 465 U.S. at 288.

CONCLUSION

Accordingly, the State Defendants' Motion to Dismiss, ECF No. 14, the Union's Motion for Summary Judgment, ECF No. 30, and the School District's Motion for Summary Judgment, ECF No. 32, are GRANTED. Plaintiff's Motion for Summary Judgment, ECF No. 27, is DENIED. This action is DISMISSED WITH PREJUDICE. The Clerk is directed to enter judgment and close the case.

Entered this 31st day of March, 2020.

s/ Sara Darrow
SARA DARROW
CHIEF UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
for the
Central District of Illinois

Susan Bennett, Plaintiff, vs. Council 31 of the American Federation of State, County, and Municipal Employees, AFL-CIO, AFSCME Local 672, Moline Coal Valley School District No. 40, Kwame Raoul, Andrea Waintroob, Judy Biggert, Gilbert O'Brien, Jr., Lynne Sered, Lara Shayne, Defendants, Moline-Coal Valley School District No. 40, Cross Claimant, vs. AFSCME Local 672, Council 31 of the American Federation of State, County, and Municipal Employees, AFL-CIO, Cross Defendants	)	Case Number: 19-4087

JUDGMENT IN A CIVIL CASE

(Filed Apr. 2, 2020)

DECISION BY THE COURT. This action came before the Court, and a decision has been rendered.

IT IS ORDERED AND ADJUDGED that Bennett's action against Council 31 of the American Federation of State, County, and Municipal Employees, AFL-CIO ("Council 31"), AFSCME Local 672, Moline Coal Valley School District No. 40, Kwame Raoul, Andrea Waintroob, Judy Biggert, Gilbert O'Brien, Jr., Lynne Sered, and Lara Shayne is dismissed and she recovers nothing on her claims. Moline-Coal Valley School District No. 40's cross claim against Council 31 and AFSCME Local 672 is dismissed and it receives nothing on its claim.

Dated: 4/2/2020

s/ Shig Yasunaga SY
Shig Yasunaga, Clerk,
U.S. District Court

UNITED STATES DISTRICT COURT
for the
Central District of Illinois

Susan Bennett, Plaintiff, vs. Council 31 of the American Federation of State, County, and Municipal Employees, AFL-CIO, AFSCME Local 672, Moline Coal Valley School District No. 40, Kwame Raoul, Andrea Waintroob, Judy Biggert, Gilbert O'Brien, Jr., Lynne Sered, Lara Shayne, Defendants, Moline-Coal Valley School District No. 40, Cross Claimant, vs. AFSCME Local 672, Council 31 Of the American Federation of State, County, and Municipal Employees, AFL-CIO Cross Defendants	)	Case Number: 19-4087

AMENDED JUDGMENT IN A CIVIL CASE

(Filed Sep. 23, 2020)

DECISION BY THE COURT. This action came before the Court, and a decision has been rendered.

IT IS ORDERED AND ADJUDGED that Susan Bennett's action against Council 31 of the American Federation of State, County, and Municipal Employees, AFL-CIO ("Council 31"), AFSCME Local 672, Moline Coal Valley School District No. 40, Kwame Raoul, Andrea Waintroob, Judy Biggert, Gilbert O'Brien, Jr., Lynne Sered, and Lara Shayne is dismissed and she recovers nothing on her claims. Moline-Coal Valley School District No. 40's crossclaim against Council 31 and AFSCME Local 672 is DISMISSED WITHOUT PREJUDICE

Dated: 9/23/2020

s/ Shig Yasunaga SY
Shig Yasunaga
Clerk, U.S. District Court