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UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PORTLAND DIVISION

COLLEEN STROEDER,

Plaintiff,

v.

**SERVICE EMPLOYEES
INTERNATIONAL UNION LOCAL 503,
OREGON PUBLIC EMPLOYEES
UNION; KATE BROWN,** in her official
capacity as governor of Oregon; **PAUL
MATHER,** in his official capacity as acting
director of the Oregon Department of
Transportation; and **KATY COBA,** in her
official capacity as director of the Oregon
Department of Administrative Services,

Defendants.

Case No. _____

COMPLAINT
Civil Rights Action (42 U.S.C § 1983)
First Amendment to the U.S. Constitution
Fourteenth Amendment to the U.S. Constitution
Declaratory Judgment (28 U.S.C. § 2201(a))

INTRODUCTION

1. Government employees have a First Amendment right not to be compelled by their employer to join a union or to pay any fees to that union unless an employee “affirmatively consents” to waive that right. *Janus v. AFSCME*, 138 S. Ct. 2448, 2486 (2018). Such a waiver must be “freely given and shown by ‘clear and compelling’ evidence.” *Id.*

2. Union dues deduction agreements signed in jurisdictions that required agency fees before the Supreme Court’s decision in *Janus* are no longer enforceable. Union members who signed such agreements could not have freely waived their right not to join or pay a union because the Supreme Court had not yet recognized that right. All government employees must be given the choice either to join the union or not to join the union without paying dues or fees to the union.

3. The State of Oregon is violating Plaintiff’s First Amendment rights to free speech and free association through its current practice of prohibiting employees from ending their union dues deductions except during a time period specified by the union and through a recently enacted law codifying that practice, which otherwise has the purpose, intent, and effect of making it easy to join a union but difficult to leave. Oregon Chapter 429, (2019 Laws) (2019 H.B. 2016) Section 6(6) (enacted June 20, 2019, added to and made a part of ORS 243.650 to 243.782, but no ORS section number assigned yet).

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

PARTIES

5. Plaintiff Colleen Stroeder (“Stroeder”) is an executive support specialist for the Oregon Department of Transportation (“ODOT”). She lives in Beaverton, Oregon in Washington County and works for ODOT in Portland, Oregon in Multnomah County.

6. Defendant Service Employees International Union Local 503, Oregon Public Employees Union (“SEIU” or the “Union”) is a labor union with offices at 1730 Commercial St., SE, Salem, OR 97302 in Marion County.

7. Defendant Kate Brown (“Brown”) is sued in her official capacity as governor of Oregon and is the chief executive officer responsible for executing the laws of Oregon. Her offices are at 900 Court Street, Suite 254, Salem, OR 97301-4047 in Marion County.

8. Defendant Paul Mather (“Mather”) is sued in his official capacity as acting director of the Oregon Department of Transportation, charged with final responsibility over the management of Plaintiff and her paychecks. His offices are at 355 Capitol St., NE MS 11, Salem, OR 97301 in Marion County.

9. Defendant Katy Coba (“Coba”) is sued in her official capacity as director of the Oregon Department of Administrative Services (“DAS”), which manages human relations and labor relations for the State of Oregon. Her offices are at the Executive Building, 155 Cottage St. NE, Salem, OR 97301 in Marion County.

JURISDICTION AND VENUE

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

11. Venue is proper because all Defendants reside in the District of Oregon, 28 U.S.C. § 1391(b)(1), and a substantial part of the events and omissions giving rise to the claim occurred in Multnomah County in the Portland Division. 28 U.S.C. § 1391(b)(2).

FACTS

12. Stroeder has been employed as an executive support specialist with ODOT since April 2008.

13. When she was hired by ODOT, her supervisor Brenda Triplett Coleman told Stroeder that her position was represented by SEIU and that, therefore, she was mandated to join SEIU. Coleman gave Stroeder an SEIU packet of information, including a union membership application card and told her to sign it and turn it in.

14. Relying on the statement from her supervisor Brenda Triplett Coleman that she must join SEIU as a condition of employment, Stroeder signed the SEIU union membership application card.

15. Stroeder committed to a new job description with ODOT in December 2009 and January 2014. In both instances the position contract noted that the position was represented by SEIU.

16. The designations on her employment contracts led Stroeder to her reasonable belief that she was forced to remain a member of SEIU as a condition of her employment by ODOT.

17. Relying on the statement from her supervisor Brenda Triplett Coleman that she must join SEIU as a condition of employment and relying on the union designation on her 2009 and 2014 employment contracts, Stroeder signed her latest Union membership application card

on September 19, 2017.

18. On August 28, 2018, two months and a day after the U.S. Supreme Court issued its decision in *Janus*, Stroeder sent a letter to the Union asserting her rights as recognized in *Janus* to withdraw her union membership and to end her union dues deductions.

19. SEIU refused, telling Stroeder she had missed the opportunity to end her dues deductions by ten days, and she could not end her deductions until August 3, 2019.

20. Stroeder next contacted Alicia Pullen in the payroll office of ODOT and requested that her union dues deductions cease.

21. Ms. Pullen told Stroeder that ODOT could not stop her union dues deductions unless it was notified to do so by SEIU.

22. Next, Stroeder sent an email to DAS requesting to end her union dues deductions.

23. DAS also told Stroeder it could not stop her union dues deductions unless it was notified to do so by SEIU.

24. On December 4, 5, and 11, Stroeder sent further emails to State of Oregon employees and union representatives to end her dues deductions, and she was told they would not end.

25. On April 23, 2019, counsel for Plaintiff wrote a letter to Mather's chief administrative officer explaining that Stroeder had withdrawn her authorization for due deductions, so the department should no longer deduct dues from her paychecks. No response was received.

26. Brown, Mather, and Coba have deducted union dues from Stroeder's paychecks since 2008 and have, on information and belief, remitted those dues to the Union. Those dues were approximately \$66.61 per month, plus a \$2.75 mandatory "issues" surcharge, of which 75

cents is dedicated directly to the Union's political action committee, Citizen Action for Political Education.

27. Under the State of Oregon collective bargaining agreement currently in force with the Union, SEIU is recognized as the exclusive representative of Plaintiffs. Art. 2, Sec. 1. SEIU is empowered to collect dues deductions or fair-share fees from employees in covered bargaining units. Art. 10, Sec. 15-16. Employee requests to end dues deductions may be made only during an annual 15-day time period from 45 days to 30 days prior to the anniversary of signing the membership application. Art. 10, Sec. 15(b). All cancellations for membership must be handled by the Union; any cancellations received by the state must be "promptly forwarded" to SEIU, which shall have the authority to tell the state from whom to deduct dues. Art. 10, Sec. 15(a).

28. Recently enacted state legislation provides that a dues deduction authorization "shall remain in effect until the public employee revokes the authorization in the manner provided by the terms of the agreement." Oregon Chapter 429, (2019 Laws) (2019 H.B. 2016) Section 6(6). This new legislation prevents Brown, Mather, and Coba from honoring Stroeder's request to revoke her union dues deduction until the time period agreed to by SEIU and the State of Oregon. Although this legislation does not take effect until January 1, 2010, the legislation codifies the existing practice of Defendants Brown, Mather, and Coba of keeping dues deductions in effect until the public employees revoke the authorization in the manner provided by the terms of the agreement.

29. The new legislation impairs Plaintiff's right, and the right of other similarly situated employees, to "speak with her wallet" and otherwise freely associate and disassociate upon equal terms, from the public employee union that is her exclusive representative for purposes of collective bargaining.

COUNT I

By refusing to allow Plaintiff to withdraw from the Union and end her dues deduction until a specified time, SEIU, Brown, Mather, and Coba are violating her First Amendment rights to free speech and freedom of association.

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

31. Requiring a government employee to join a union or to pay fees to a union violates that employee's First Amendment rights to free speech and freedom of association unless the employee "affirmatively consents" to waive the rights. *Janus v. AFSCME*, 138 S. Ct. 2448, 2486 (2018). Such a waiver must be "freely given and shown by 'clear and compelling' evidence." *Id.*

32. The rights to free speech and freedom of association in the First Amendment have been incorporated to and made enforceable against the states through the Fourteenth Amendment guarantee of Due Process. *Id.* at 2463; *NAACP v. Alabama*, 357 U.S. 449 (1958); *Gitlow v. New York*, 268 U.S. 652 (1925).

33. 42 U.S.C. § 1983 provides a cause of action for both damages and injunctive relief against any person who, under color of law of any state, subjects any person within the jurisdiction of the United States to a deprivation of any rights, privileges, or immunities secured by the Constitution.

34. 28 U.S.C. § 2201(a) allows a court of the United States, as a remedy, to declare the rights and other legal relations of interested parties.

35. After the Supreme Court's decision in *Janus* on June 27, 2018, Stroeder did not provide any affirmative consent to remaining a member of SEIU or to having union dues withheld from her paychecks by Brown, Mather, and Coba.

36. Brown is a state actor who deducted dues from Plaintiff's paychecks and gave

them to SEIU under color of state law, and she is responsible for the implementation of the State of Oregon collective bargaining agreement with SEIU and the execution of Oregon statutes.

37. Mather is a state actor who deducted dues from Plaintiff's paychecks and gave them to SEIU under color of state law.

38. Coba is a state actor who deducted dues from Plaintiff's paychecks and gave them to SEIU under color of state law, and she oversees labor relations for the state, including the negotiation and implementation of the State of Oregon collective bargaining agreement with SEIU.

39. SEIU acted in concert with Brown, Mather, and Coba to collect union dues from Stroeder's paychecks without her consent and refuses to allow her to cancel her dues until a specified window of time. In doing so, SEIU acts under color of state law. Further, SEIU continues to act pursuant to an exclusive collective bargaining agreement negotiated with a state entity, has been delegated authority by the state to determine from whose paychecks Union dues may be deducted, and is following the laws of the State of Oregon in doing so.

40. The actions of SEIU, Brown, Mather, and Coba constitute a violation of Stroeder's First Amendment rights to free speech and freedom of association not to join or financially support a union without her affirmative consent.

41. Because Plaintiff was not given the option of paying nothing to the union as a non-member of the union, she could not have provided affirmative consent to join the union. Any consent that Plaintiff may have given to dues collection was not "freely given" because it was given based on an unconstitutional choice between union membership or payment to the union of agency fees without the benefit of union membership. *Janus*, 138 S. Ct. at 2486. Plaintiff's alleged consent, compelled by the false information and false dichotomy given to her,

was not “freely given.” *Id.*

42. Plaintiff did not provide “freely given affirmative consent” to join SEIU because she was told by her ODOT supervisor that she was required to join SEIU as a condition of her employment and because her employment contracts noted that her position was represented by SEIU, a fact which led to her reasonable belief that joining SEIU was required.

43. Plaintiff is entitled under 42 U.S.C. § 1983 to damages in the amount of all dues deducted and remitted to the SEIU.

44. Plaintiff is also entitled to a declaration that Oregon Chapter 429, (2019 Laws) (2019 H.B. 2016) Section 6(6) and Defendants’ existing practice are unconstitutional for keeping dues deductions in effect until a public employee revokes the authorization in the manner provided by the terms of the collective bargaining agreement, thus preventing her from associating and disassociating from a public employee union upon equal terms.

PRAYER FOR RELIEF

Plaintiff respectfully requests that this Court:

a. Declare that Plaintiff’s signing of a union membership application cannot provide a basis for her affirmative consent to waive her First Amendment rights upheld in *Janus* because such authorization was based on the unconstitutional choice between paying the union as a member or paying the union as a non-member;

b. Declare that Defendants’ existing practices and Oregon Chapter 429, (2019 Laws) (2019 H.B. 2016) Section 6(6) are unconstitutional infringements on Plaintiff’s First Amendment rights to Free Speech and Free Association by limiting when she can end the union dues deduction from her paycheck to an arbitrary time period and by impairing her ability to freely

associate and dissociate upon equal terms from the public employee union that is her exclusive representative for purposes of collective bargaining;

c. Enjoin Brown from deducting union dues from Plaintiff's paychecks, from enforcing any collective bargaining agreement provisions requiring dues be withdrawn from Plaintiff's paychecks, and from enforcing Oregon Chapter 429, (2019 Laws) (2019 H.B. 2016) Section 6(6);

d. Enjoin Mather from deducting union dues from Plaintiff's paychecks, from enforcing any collective bargaining agreement provisions requiring dues be withdrawn from Plaintiff's paychecks, and from enforcing Oregon Chapter 429, (2019 Laws) (2019 H.B. 2016) Section 6(6);

e. Enjoin Coba from deducting union dues from Plaintiff's paychecks, from enforcing any collective bargaining agreement provisions requiring dues be withdrawn from Plaintiff's paychecks, and from enforcing Oregon Chapter 429, (2019 Laws) (2019 H.B. 2016) Section 6(6);

f. Enjoin SEIU from accepting union dues from Plaintiff's paychecks;

g. Award damages against SEIU for all union dues collected from Plaintiff;

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

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

Dated: July 30, 2019

Respectfully Submitted,

/s/ Brian K. Kelsey

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