

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA**

SUSAN HALLORAN,

Plaintiff,

v.

AFSCME COUNCIL 5 and ERIC DAVIS, in
his official capacity as vice chancellor for
human resources at the Minnesota State
Colleges & Universities,

Defendants.

Case No. _____

**COMPLAINT SEEKING DECLARATORY
RELIEF, INJUNCTIVE RELIEF, AND
DAMAGES FOR DEPRIVATION OF
FIRST AMENDMENT RIGHTS**

INTRODUCTION

1. Government employees have a First Amendment right not to be compelled to join a union or to pay any dues or fees to that union unless an employee affirmatively consents to waive that right. *Janus v. AFSCME*, 138 S. Ct. 2448, 2486 (2018).

2. “A waiver is ordinarily an intentional relinquishment or abandonment of a known right or privilege.” *Johnson v. Zerbst*, 304 U.S. 458, 464 (1938) (emphasis added). In order to ensure that the person knows of his rights, *Johnson* imposed an affirmative obligation on the responsible official to inform the person of those rights before asking the person whether he wished to waive them. *Id.* at 465.

3. Plaintiff Susan Halloran is an employee of Inver Hills Community College, a constituent college of the Minnesota State Colleges & Universities system (“the System”), located in Inver Grove Heights, Dakota County. The System and AFSCME Council 5 failed to inform Ms. Halloran of her right *not* to join AFSCME and instead pressured her into the false impression she had to join the union. She could not,

therefore, make a knowing and intelligent waiver of her rights, and the union card she signed is invalid.

4. After signing the union card, Ms. Halloran sought the very next day to withdraw her application, which is within the acceptable time to cancel a waiver of constitutional rights in these circumstances.

5. Ms. Halloran, 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

6. Plaintiff Susan Halloran is a senior account clerk in the business office of Inver Hills Community College. She lives in Inver Grove Heights, Dakota County, Minnesota.

7. Defendant American Federation of State, County, and Municipal Employees (AFSCME) Council 5 is a labor union with offices at 300 Hardman Ave S. South St. Paul, MN 55075. AFSCME is the certified exclusive representative for the bargaining unit to which Ms. Halloran belongs.

8. Defendant Eric Davis is vice chancellor for human resources of the Minnesota State Colleges and Universities. Inver Hills is a community college within the Minnesota State (MNSCU) system. Mr. Davis's offices at the System are located at 30 East 7th Street, St. Paul, MN 55101-7804.

JURISDICTION AND VENUE

9. 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.

10. Venue is proper because the parties are primarily based in and the alleged events giving rise to the claim took place in the District of Minnesota. 28 U.S.C. § 1391(b)(1) and (2).

FACTS

11. Plaintiff Susan Halloran began working at Inver Hills Community College in April 2018, initially due to a grant. She does not recall any discussion of unions or her rights at new employee orientation, nor did she receive any information about it to take home. Her bargaining unit was represented by the Minnesota Association of Professional Employees (MAPE).

12. Beginning October 1, 2018, she changed jobs at the college and moved into the business office. AFSCME Council 5 is the exclusive representative for employees in that bargaining unit. When she switched jobs into a new bargaining unit, she again did not receive any verbal or physical information about her rights to join or not join the union.

13. An AFSCME field representative named Matthew Schirber visited her several months into her new job, saying it was just to introduce himself.

14. On April 15, 2019, Ms. Halloran was busy in a training session for her new position. Midway through the training she was pulled out of it because Matthew Schirber, the AFSCME field representative from several months ago, wanted to see her. He said that he had returned because he had failed to get her to sign her union authorization during their last meeting. Because it was busy with students outside, they walked into her office. He had a tablet computer with her dues authorization pulled up. He said that all she needed to do was sign it. As she signed, she asked how much her dues would be. He replied that it would be a percentage of her income but he didn't know precisely. She felt rushed and pressured and wanted to get him out of her office because the training instructor was waiting for her to return. The entire interaction was only a few minutes. He did not provide her any information about her *Janus* rights at any point in their conversation, nor did he provide her with her own physical or electronic copy of the dues authorization before, during, or after the visit.

15. The very next day, Susan emailed Mr. Schirber to say that she had figured out the cost of the dues (almost \$700 per year) and looked at her income and expenses given her medical bills for cancer treatment, and wished to retract her registration. She stated that his visit was “unexpected and I was pressured trying to get back to the training with my co-worker I was doing for my job.” He replied that she was bound to pay dues until her revocation period in one year. (Email exchange provided as Exhibit 1).

16. Susan then tried multiple different tacks to withdraw her membership. She talked to another employee of the union she knew and got no help. She emailed the field representative again and the main Council 5 office. She approached Human Resources at the College, and her counsel sent a letter to the College administration. Every time, she received no response or was told that she could not revoke her membership until her revocation period in a year.

17. The System has deducted union dues from Ms. Halloran’s paychecks since April 2019 and has, on information and belief, remitted those dues to AFSCME Council 5.

18. As vice chancellor for human resources for the System, Mr. Davis is responsible for compensation, classification, training, policy development, and collective bargaining with unions, including AFSCME Council 5.

COUNT I

By holding Ms. Halloran to a union card she signed without knowing waiver of her rights, AFSCME and Mr. Davis are violating her First Amendment rights to free speech and freedom of association.

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

20. The rights to free speech and freedom of association in the First Amendment have been incorporated and made enforceable against the states and their agencies such as Inver Hills Community College through the Fourteenth Amendment

guarantee of Due Process. *NAACP v. Alabama*, 357 U.S. 449 (1958); *Gitlow v. New York*, 268 U.S. 652 (1925).

21. 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.

22. 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.

23. Requiring a government employee to join a union or to pay dues or fees to a union violates that employee's First Amendment rights to free speech and freedom of association unless the employee provides "affirmative consent . . . freely given" to waive his or her rights. *Janus v. AFSCME*, 138 S. Ct. 2448, 2486 (2018). "A waiver is ordinarily an intentional relinquishment or abandonment of a known right or privilege." *Johnson v. Zerbst*, 304 U.S. 458, 464 (1938) (emphasis added).

24. In order to ensure that the person knows of his rights, *Johnson* imposed an affirmative obligation on the responsible official to inform the person of those rights before asking the person whether he wished to waive them. *Id.* at 465.

25. The responsibility to make a person aware of his rights before he can choose to waive them is especially acute when the circumstances otherwise create pressure for him to forego his rights, *see Estelle v. Smith*, 451 U.S. 454, 467 (1981), or where there is a substantial power imbalance between the parties, *see Fuentes v. Shevin*, 407 U.S. 67, 95 (1972).

26. Similarly, union officials in agency shops were obligated before *Janus* to make new employees aware of their First Amendment right to pay a fair-share fee in lieu of full membership. *Marquez v. Screen Actors Guild*, 525 U.S. 33, 43 (1998). If a union was required to provide notice of the employee's right to be a fair-share payer, then it is obligated now to provide notice of the employee's right not to pay dues at all.

27. Knowing, intelligent waiver also requires foreknowledge of the consequences of a decision to waive one's rights. *See Brady v. United States*, 397 U.S. 742, 748 (1970). In this instance, the dues to be deducted from a paycheck are essential information for making an informed decision, but this information was not given to Ms. Halloran before she signed.

28. Thus, under the doctrine of *Janus*, *Johnson*, and *Marquez*, public employers and exclusive-representative unions are obligated to inform public workers of their right not to pay dues or fees to a union before an employee makes a choice about whether to sign a membership form. The union is further obligated to specifically state what the dues will be before an employee decides whether to sign a membership form.

29. The System and the Union failed to meet these constitutional standards in Ms. Halloran's case. When she was hired and again when she was transferred into a new bargaining unit, the System provided her no information about her constitutional rights vis-à-vis the exclusive-representative union. When the AFSCME field representative approached her, he also provided her no information about her alternative not to join. He did not give her specific information about the dues to be charged. He secured her consent by having her pulled out of a meeting and forced into a time-sensitive situation with pressure to sign quickly, without space to read or make a considered decision.

30. Rather than being empowered with full information to make an informed decision about whether to waive her *Janus* rights, she was rushed into a pressured decision with incomplete information, even lacking information as basic as what the dues would be off each paycheck and a personal copy of the document to be signed.

31. As a result of her signature, the System, under Mr. Davis's direction and supervision, is deducting dues from Ms. Halloran's paycheck and giving them to AFSCME under color of state law.

32. AFSCME is acting in concert with the System to collect union dues from Ms. Halloran's paycheck without her knowing waiver and refuses to allow her to cancel her dues. In doing so, AFSCME is acting under color of state law.

33. The actions of AFSCME and Mr. Davis constitute a violation of Ms. Halloran's First Amendment rights to free speech and freedom of association not to join or financially support a union without her affirmative consent freely given after knowing waiver.

34. Ms. Halloran is entitled under 42 U.S.C. § 1983 to damages in the amount of all dues deducted and remitted to AFSCME from April 2019 to present.

35. Ms. Halloran is entitled to a declaration that Mr. Davis and AFSCME are obligated to provide her notice of her First Amendment rights and the consequences of her decision, including the dues to be charged, before she or any other employee can make an informed decision as to the exercise of her rights.

COUNT II

In the alternative, AFSCME and Mr. Davis are violating Ms. Halloran's First Amendment rights by failing to respect her right to promptly withdraw her waiver.

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

37. *Janus* sets the baseline for public employees as nonmembership in a union, and characterizes a decision to join a union as a waiver of the employee's First Amendment rights, citing *Johnson v. Zerbst*. *Janus v. AFSCME*, 138 S. Ct. 2448, 2486 (2018).

38. In addition to the body of doctrine requiring knowing, intelligent waiver, *Johnson's* progeny also spell out a right to promptly withdraw waiver of a constitutional right. *United States v. Mortensen*, 860 F.2d 948, 950 (9th Cir. 1988); *State v. Prax*, 686 N.W.2d 45, 49 (Minn. Ct. App. 2004). Consent to waive a constitutional right may be

withdrawn if timely made, in good faith and in circumstances where no substantial harm would occur to another party. *See United States v. Neville*, 985 F.2d 992, 1000 (9th Cir. 1993).

39. Ms. Halloran promptly withdrew her waiver of her right not to join the union. She wrote the union the very next day saying she had changed her mind after figuring out the full facts, including the actual cost of the dues.

40. Her withdrawal of waiver, if the Union and System had respected it, would not have caused substantial harm to either. It would have been the simplest administrative matter for the union to cancel her membership application. No payroll deduction had been processed at that point, no money withdrawn. The union could have respected her decision without anything more than mild inconvenience, much less substantial harm.

PRAYER FOR RELIEF

Ms. Halloran respectfully requests that this Court:

a. Declare that her signing of a union card cannot provide a basis for her affirmative consent to waive her First Amendment rights upheld in *Janus* because such authorization was given without knowing and intelligent waiver of her First Amendment rights;

b. Alternatively, declare that her withdrawal of her waiver was timely given, made in good faith, and would not have caused substantial harm to other parties and therefore should have been respected by AFSCME;

c. Enjoin Mr. Davis from continuing to deduct AFSCME membership dues from her paycheck;

d. Award damages against AFSCME for all union dues collected from her from April 2019 to present;

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

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

Dated: September 16, 2019

Respectfully submitted,

s/ James V. F. Dickey

Brian K. Kelsey (*Pro Hac Vice to be filed*)

bkelsey@libertyjusticecenter.org

Daniel R. Suhr (*Pro Hac Vice to be filed*)

dsuhr@libertyjusticecenter.org

Liberty Justice Center

190 South LaSalle Street, Suite 1500

Chicago, Illinois 60603

Phone: 312-263-7668

Fax: 312-263-7702

Douglas P. Seaton (MN Bar No. 127759)

Upper Midwest Law Center

8421 Wayzata Blvd. Suite 105

Golden Valley, MN 55426

Phone: 612-428-7001

Doug.Seaton@UMWLC.org

James V. F. Dickey (MN Bar No. 393613)

Hellmuth & Johnson, PLLC

8050 West 78th Street

Edina, MN 55439

Phone: 952-746-2144

jdickey@hjlawfirm.com

Attorneys for Plaintiff