

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

<p>SUSAN HALLORAN, Plaintiff, v. AFSCME COUNCIL 5, et al., Defendants.</p>	<p>Case No. _____</p> <p>HALLORAN DECLARATION</p>
----------------------------------------------------------------------------------------------------------------	----------------------------------------------------------

DECLARATION OF SUSAN HALLORAN

Pursuant to 28 U.S.C. § 1746, I declare that the following facts are true, to the best of my knowledge, information, and belief:

1. I began working at Inver Hills Community College in April 2018, initially due to a grant.
2. I do not recall any discussion of unions or my First Amendment rights vis-à-vis the union at new employee orientation, nor did I receive any printed information about my First Amendment rights to take home and read later.
3. My first position at the college was represented by the Minnesota Association of Professional Employees (MAPE), which I joined after being

asked by a friend. My membership in MAPE expired when I left that bargaining unit for a different job at the college.

4. On October 31, 2018, I changed jobs at the college and moved into the business office. AFSCME Council 5 is the exclusive representative for employees in that bargaining unit.
5. When I moved between jobs and between bargaining units, I received no verbal or printed information about my rights to join or not join the Union.
6. An AFSCME field representative, Mr. Matthew Schirber, visited me several months into my new job, saying it was just to introduce himself.
7. On April 15, 2019, I was engaged in a training session for my new position.
8. I was pulled out of the training midway through it because I was told Matthew Schirber wanted to see me.
9. Mr. Schirber told me that he had returned because he had failed to get me to sign the union authorization during our last meeting.
10. We walked into my office, and Mr. Schirber produced a tablet computer with Ms. Halloran's dues authorization pulled up. He said that all she needed to do was sign it.
11. As I signed it, I asked how much her dues would be. He replied that it would be a percentage of my income but he didn't know precisely.

12. I felt rushed and pressured and wanted to get him out of my office because the training instructor was waiting for me to return.

13. Our entire interaction was only a few minutes.

14. At no point in our conversation did Mr. Schirber did not provide me with any information about my *Janus* rights ion, nor did he provide her with her own physical or electronic copy of the dues authorization before, during, or after the visit.

15. The next day, April 16, 2019, I emailed Mr. Schirber to say that I had calculated the cost of the dues and looked at my income and expenses given my medical bills for cancer treatment, and I stated that I wanted to retract my registration. A true and correct copy of our email exchange is attached as Exhibit 1.

16. Mr. Schirber replied to me that I was bound to pay dues until my revocation period in one year. See Exhibit 1.

17. I sent a message to another AFSCME union representative that I know who was near retirement. He said he could not help me beyond referring me to the main AFSCME office. A true and correct copy of our email exchange is attached as Exhibit 2.

18. I sent a message to Mr. Schirber again and to the AFSCME main office and again received no help in retracting my authorization. A true and correct

copy of my emails is attached as Exhibits 3 (emails to Mr. Schirber) and 4 (email to AFSCME Council 5 and their response).

19. My lawyers at the Liberty Justice Center sent a letter to the college's administration on my behalf, and we received no response. A true and correct copy of that letter is attached as Exhibit 5.

20. In July, I told my supervisor in the business office about my attempts to resign, and she took my concerns on my behalf to the Director of Human Resources at the college. Human Resources talked to the new AFSCME Local President and was informed that the union insisted on my ability to resign only during the allotted window one year from the date of signing.

21. Inver Hills Community College has deducted union dues from my paychecks since April 2019.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.


Susan Halloran, declarant

Dated: September 13, 2019

Halloran v. AFSCME Council 5 & Berndt

Motion for Preliminary Injunction

EXHIBIT ONE

From: Matthew Schirber [mailto:Matthew.Schirber@afscmemn.org]

Sent: Tuesday, April 16, 2019 3:25 PM

To: Susan Halloran <SHalloran@inverhills.edu>

Subject: Re: afscme

Hello Susan,

Unfortunately the card you have signed have a revocation period of one year. In order to revoke your membership you need to be within the revocation period. Your membership has already been process I am sorry you are not within your revocation period.

Sincerely,

Matt Schirber
Field Representative
AFSCME Council 5
651-328-0611

On Apr 16, 2019, at 2:08 PM, Susan Halloran <SHalloran@inverhills.edu> wrote:

Hi Matthew,

I am in need of retracting my registration to AFSCME.

I did the math and it is nearly one of my checks. My income is not allowing me to have anything extra due to my medical bills.

I have many medical expenses and cannot spare missing one check per my yearly income.

Sorry for the change, but your visit was unexpected and I was pressured trying to get back to the training with my co-worker I was doing for my job.

Thanks for your understanding,

Sue Halloran

Inver Hills Community College

This email has been scanned for spam and viruses by Proofpoint Essentials. Click [here](#) to report this email as spam.

This email has been scanned for spam and viruses by Proofpoint Essentials. Click [here](#) to report this email as spam.

Halloran v. AFSCME Council 5 & Davis

Motion for Preliminary Injunction

EXHIBIT TWO

From: [Suzy Halloran](#)
To: [Suzy Halloran](#)
Subject: FW: additional documentation of medical costs
Date: Friday, May 10, 2019 11:04:53 AM

From: Suzy Halloran
Sent: Friday, May 10, 2019 11:03 AM
To: Suzy Halloran <SHalloran@inverhills.edu>
Subject: FW: additional documentation of medical costs

From: Myron Stevens [<mailto:ctnycare@brainerd.net>]
Sent: Friday, May 10, 2019 9:12 AM
To: Suzy Halloran <SHalloran@inverhills.edu>
Subject: Re: additional documentation of medical costs

Hi, I talk about this with some of our E-Board members and we can not do anything. But pass it on to Melinda Pierson she works at council 5 and is head field director. Please contact her at C-5 she will try to help you. But from what I got was we can not get out of this, it is A contract. I will be done working on May 17th. Good luck. Myron

Sent from my iPhone

On May 9, 2019, at 1:43 PM, Suzy Halloran <SHalloran@inverhills.edu> wrote:

Good afternoon Myron,
I am not sure if you were able to share my information at your meeting on Saturday. I have another bill for my oncologist attached that I just got in the mail. I have another appointment on Friday the 17th and will be talking about if I have to stop treatment. On couple of weeks ago, I did call as I told the reps I was going to have to do to see what will happen if I stop my treatments. As you know, the nurse calls you back, not the doctor. She tried to convince me to not do that. I will hopefully be able to get more information at the appointment on the 17th on what will happen if I stop the current treatment. Do you want me to deal with someone else at this time? I think you mentioned a Joel may be my contact. Anything you can do to help would be appreciated Myron.
Thank you,
Sue Halloran

Halloran v. AFSCME Council 5 & Davis

Motion for Preliminary Injunction

EXHIBIT THREE

Catrin Thorman

From: Suzy Halloran <SHalloran@inverhills.edu>
Sent: Wednesday, May 15, 2019 7:11 AM
To: Catrin Thorman
Subject: FW: afscme
Attachments: 2019_04_24_10_06_09.pdf

From: Susan Halloran
Sent: Wednesday, April 24, 2019 10:12 AM
To: 'Matthew.Schirber@afscmemn.org' <Matthew.Schirber@afscmemn.org>
Subject: afscme

Hello Matt,

Just checking in on the status of the removal of my afscme membership.

I have attached another bill for my oncologist that I paid in March. I have another appointment coming up in the near future and as you can see it is not cheap. And that is after I also pay the \$60.00 office visit and then the \$285.30.

Many employees are giving me advice on the issue of revoking the membership. If you need me to take another approach such as the Employee Freedom option let me know. I cannot afford this at this time.

Please get back to me with where the progress is going and what is still needed to get this taken care of.

Thanks Matt,

Sue Halloran

Catrin Thorman

From: Suzy Halloran <SHalloran@inverhills.edu>
Sent: Wednesday, May 15, 2019 7:11 AM
To: Catrin Thorman
Subject: FW: afscme

From: Matthew Schirber [mailto:Matthew.Schirber@afscmemn.org]
Sent: Friday, April 19, 2019 9:48 AM
To: Susan Halloran <SHalloran@inverhills.edu>
Subject: RE: afscme

I am looking into it and will get back to you.

From: Susan Halloran [mailto:SHalloran@inverhills.edu]
Sent: Thursday, April 18, 2019 12:37 PM
To: Matthew Schirber <Matthew.Schirber@afscmemn.org>
Subject: RE: afscme

Hi Matt,

Any ideas if this can work?

A co-worker also suggested the National Right to Work Legal Defense Foundation. Do you need to have things drawn up in a legal manner to get this done?

Please let me know. If I have to cancel this medical test and the infusion that follows, I need to know so I can consult with my Oncologist hopefully by phone so I don't have to pay for the appointment time. I also have another port flush/draw coming up in May so should know to cancel in ample time.

Thanks Matt,
Sue

From: Susan Halloran
Sent: Wednesday, April 17, 2019 11:19 AM
To: 'Matthew Schirber' <Matthew.Schirber@afscmemn.org>
Subject: RE: afscme

Good morning Matt,

Are you sure you can't do anything? I contacted you the next day after realizing the financial adjust to my paycheck. I am living check to check and a lot of it has to do with my medical issues.

I don't want to have to call my Oncologist and tell her that I cannot take my oral chemo, flush my port, have the test done that is scheduled in July and any of the infusions she said I need to be healthy.

I do believe that you can make this work out. I don't want to not be able to pay for my medical bills and to be healthy because of not enough income to cover these procedures. Please see if there is a way to retract this and help me.

Thank you Matt,
Sue

Halloran v. AFSCME Council 5 & Davis

Motion for Preliminary Injunction

EXHIBIT FOUR

Catrin Thorman

From: Suzy Halloran <SHalloran@inverhills.edu>
Sent: Wednesday, May 15, 2019 7:11 AM
To: Catrin Thorman
Subject: FW: Document1
Attachments: Document1.docx; port flush stmt with oncologist.pdf; oncologist office visit.pdf

Good morning here are some of the things I sent to AFSCME.
Sue

From: Susan Halloran
Sent: Wednesday, April 24, 2019 11:20 AM
To: 'Council5@afscmemn.org' <Council5@afscmemn.org>
Cc: 'suecq3@hotmail.com' <suecq3@hotmail.com>
Subject: FW: Document1

Good day,
I have attached an email and documentation that I need some help with regarding the AFSCME registration and the withdrawal from the union.
I look forward to hearing from you in the near future.
Thank you for your kindness and help,
Sue Halloran

051-260-8787
available
after 4:30pm

April 24, 2019

Susan Halloran
4597 Blaylock Way
Inver Grove Heights, MN 55076

RE: Inver Hills Community College, AFSCME

Dear Council of AFSCME of MN,

On April 15th I was pulled out of training for new position here at IHCC due to Matthew Schirber wanting to see me. He said that he noticed that I had not signed up to the AFSCME Union. We went into my office and as I was needing to get back to my trainer who was waiting for me to return, he pulled up the signature screen on his computer as I was pulling up the same site on my computer. He said that he had it up and all I had to do was to sign his screen. As I was signing it I asked how much was going to be deducted and he said it would be a percentage of my income and then as I handed him he told me the amount. Being rushed and know that I was being waited on, I realized there was a mistake in my judgement. I cannot afford the cost of the dues as I am strapped for money due to my medical bills.

I have sent emails to Matthew starting the next day, April 16th to have him reverse or cancel the membership as it would put me in a position of not having enough income to support myself due to the high cost of my medical care due to cancer. The first email I sent and his first response is listed below:

From: Matthew Schirber [<mailto:Matthew.Schirber@afscmemn.org>]
Sent: Tuesday, April 16, 2019 3:25 PM
To: Susan Halloran <SHalloran@inverhills.edu>
Subject: Re: afscme

Hello Susan,

Unfortunately the card you have signed have a revocation period of one year. In order to revoke your membership you need to be within the revocation period. Your membership has already been process I am sorry you are not within your revocation period.

Sincerely,

Matt Schirber

Field Representative

AFSCME Council 5

651-328-0611

On Apr 16, 2019, at 2:08 PM, Susan Halloran <SHalloran@inverhills.edu> wrote:

Hi Matthew,

I am in need of retracting my registration to AFSCME.

I did the math and it is nearly one of my checks. My income is not allowing me to have anything extra due to my medical bills.

I have many medical expenses and cannot spare missing one check per my yearly income.

Sorry for the change, but your visit was unexpected and I was pressured trying to get back to the training with my co-worker I was doing for my job.

Thanks for your understanding,

Sue Halloran

Inver Hills Community College

The second and third emails sent are below; his last contact/comment was sent to me on April 19th shown here starting with his response on April 19th, (I am looking into it and will get back to you).

I am looking into it and will get back to you.

From: Susan Halloran [<mailto:SHalloran@inverhills.edu>]
Sent: Thursday, April 18, 2019 12:37 PM
To: Matthew Schirber <Matthew.Schirber@afscmemn.org>
Subject: RE: afscme

Hi Matt,

Any ideas if this can work?

A co-worker also suggested the National Right to Work Legal Defense Foundation. Do you need to have things drawn up in a legal manner to get this done?

Please let me know. If I have to cancel this medical test and the infusion that follows, I need to know so I can consult with my Oncologist hopefully by phone so I don't have to pay for the appointment time. I also have another port flush/draw coming up in May so should know to cancel in ample time.

Thanks Matt,

Sue

From: Susan Halloran
Sent: Wednesday, April 17, 2019 11:19 AM
To: 'Matthew Schirber' <Matthew.Schirber@afscmemn.org>
Subject: RE: afscme

Good morning Matt,

Are you sure you can't do anything? I contacted you the next day after realizing the financial adjust to my paycheck. I am living check to check and a lot of it has to do with my medical issues.

I don't want to have to call my Oncologist and tell her that I cannot take my oral chemo, flush my port, have the test done that is scheduled in July and any of the infusions she said I need to be healthy.

I do believe that you can make this work out. I don't want to not be able to pay for my medical bills and to be healthy because of not enough income to cover these procedures. Please see if there is a way to retract this and help me.

Thank you Matt,

Sue

I was told by a fellow employee that you may be able to help me to get this reversed. I have so many medical bills and my care is important to get me over this hurdle of cancer that I don't want to have to stop because I am not able to pay for my care. I have port flushes, tests, oral chemo daily, and in July I am starting up infusions if the test indicates that more help is needed to keep me healthy. This is important and right now I simply cannot do the deductions out of my check.

If you could please help me get out of this for now, I would be very appreciative.
If you have questions, I can be reached at work at 651-450-2313 or cell 651-280-8939. Or my work email is shalloran@inverhills.edu.

Thank you for your consideration,
Sue (Susan) Halloran

American Federation of State, County, and Municipal Employees
One strong united voice for Minnesota workers

4577 Blaylock Avenue S.
South St. Paul, MN 55075
612-490-4400
www.afscmna.org



311 West 2nd Street
Duluth, MN 55802
218-722-6517
fax 218-722-6602

www.afscmemn.org

Memorandum

To: SUSAN HALLORAN
4597 BLAYLOCK WAY
INVER GROVE HEIGHTS, MN 55076

From: AFSCME Council 5, Member Action Center

Date: April 30, 2019

Subject: Membership Revocation

We are in receipt of your request to revoke your membership. Based on the Membership card you have signed, this cannot be completed at this time as you are not within your revocation period.

To view your card, please access your records by logging into MemberLink using the MemberLink button from our website: <http://afscmemn.org>

Halloran v. AFSCME Council 5 & Davis

Motion for Preliminary Injunction

EXHIBIT FIVE



190 South LaSalle Street, Suite 1500
Chicago, Illinois 60603
312.263.7668



UPPER MIDWEST
LAW CENTER

8421 Wayzata Boulevard, Suite 105
Golden Valley, Minnesota 55426

June 12, 2019

Via email and regular mail

Michael Berndt, Interim President
Inver Hills Community College
2500 80th Street East
Inver Grove Heights, MN 55076
mberndt@inverhills.edu

Dear Mr. Berndt:

The Liberty Justice Center and Upper Midwest Law Center have been retained by Susan Halloran, who is employed as an account clerk, senior, in the Career Services Center of Inver Hills Community College. In April 2019, one day after signing a dues checkoff card for the AFSCME local at Inver Hills, Ms. Halloran sought to cancel her union membership and dues authorization with AFSCME Council 5. She was told that she could not do so until her opt-out window arose one year later.

Janus v. AFSCME, Council 31, 138 S. Ct. 2448 (2018), categorized the decision to join a public-sector union as waiver of the employee's First Amendment right *not* to join a union. *Janus* and the cases cited therein provide that certain standards be met in order for a person to properly waive their constitutional rights. First, waiver of a constitutional right must be of a "known right or privilege." *Johnson v. Zerbst*, 304 U.S. 458, 464 (1938). Second, the waiver must be freely given; it must be voluntary, knowing, and intelligently made. *D. H. Overmyer Co. v. Frick Co.*, 405 U.S. 174, 185-86 (1972). Finally, the Court has long held that it will "not presume acquiescence in the loss of fundamental rights." *Ohio Bell Tel. Co. v. Public Utilities Comm'n*, 301 U.S. 292, 307 (1937). "Courts indulge every reasonable presumption against waiver of fundamental constitutional rights." *College Savings Bank v. Fla. Prepaid Postsecondary Educ. Expense Bd.*, 527 U.S. 666 (1999). The First Amendment right of free speech, which the Court based its decision upon in *Janus*, is such a fundamental right. *Schneider v. New Jersey*, 308 U.S. 147, 161 (1939).

Ms. Halloran signed a union card on April 15, 2019, without being told about her rights under *Janus* and without an answer from the union as to the amount of dues to be withheld. The very next day, after realizing the implications of that decision and before the first dues withdrawal was made, she wrote the union to cancel her authorization.

First, if Ms. Halloran was not aware of her *Janus* rights, see *Marquez v. Screen Actors Guild Inc.*, 525 U.S. 33, 43 (1998), and if she did not have information about the dues to

be charged, *see Brady v. United States*, 397 U.S. 742, 748 (1970), then she could not have given informed consent, especially if she felt pressured to sign due to a power imbalance between parties, *see Fuentes v. Shevin*, 407 U.S. 67, 95 (1972).

Second, waiver of constitutional rights may be withdrawn. *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 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). Certainly the day after the initial waiver and before any dues deduction had begun qualifies as timely and without substantial harm.

Therefore, you are no longer authorized to enforce any authorization our client may have apparently given pursuant to a signed authorization form, or any authorization that the College has inferred on our client's behalf, allowing it to make an automatic payroll deduction for union dues or fees.

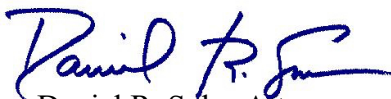
Moreover, the College may not defer to the union to determine whether it may stop withholding union dues or fees, and may not require the union to consent before stopping to withhold union dues or fees from an employee. *Janus* states that the employer has just as much responsibility as the union to respect the employee's constitutional rights. *See Janus*, 138 S. Ct. at 2486. In addition, because the right not to join or pay a union as a condition of one's employment with a governmental entity is based on the First Amendment to the United States Constitution, any union contract or agreement that requires the College to defer to, or obtain consent from, the union before stopping the withholding of fees from an employer is unconstitutional, and therefore invalid.

We request that you immediately stop withholding union dues or fees from Ms. Halloran's paycheck, return any dues withheld from her paycheck after April 16, 2019, and provide confirmation that you have done so.

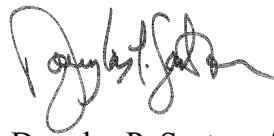
If you fail to stop withholding union dues or fees from our client's paycheck, we will consider that a rejection of this request. If you reject our request, our client has authorized us to take legal action against you. If we take legal action against you for violating our client's constitutional rights, we will seek an injunction preventing you from withholding dues from her paycheck, damages for the amount of dues withheld, and reimbursement of our attorneys' fees.

We hope that this matter can be resolved without litigation. If you have any questions, please contact us.

Sincerely,



Daniel R. Suhr, Attorney
Liberty Justice Center
dsuhr@libertyjusticecenter.org



Douglas P. Seaton, Attorney
Upper Midwest Law Center
Doug.Seaton@UMWLC.org