IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

HOLLIE ADAMS, et al.,	:	
	:	
Plaintiffs,	:	**No. 1:19-cv-00336 SHR**
	:	
v.	:	**The Honorable Sylvia Rambo**
	:	
TEAMSTERS UNION LOCAL 429, et al.	:	**Electronically Filed Document**
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	:	*Complaint Filed 02/27/19*
Defendants.	:	

DEFENDANT TEAMSTERS' LOCAL UNION NO. 429'S BRIEF IN OPPOSITION TO PLAINTIFFS' MOTION TO DISMISS AND REPLY BRIEF IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT

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I. SUPPLEMENTAL PROCEDURAL HISTORY

Defendants Teamsters Local Union No. 429 ("Teamsters" or "Union")[1] outlined in detail the procedural history of this case in its Brief in Support of Its Motion to Dismiss Plaintiff's Complaint Pursuant to Fed. R. Civ. P. 12(b)(1) and 12(b)(1) and 12(b)(6), Now Converted to a Motion for Summary Judgment Under Fed. R. Civ. P. 56 ("Rule 56") (hereinafter "Teamsters' Opening Brief"), which it filed on June 18, 2019. Subsequently, on July 16, 2019, Plaintiffs Hollie Adams ("Plaintiff Adams"), Chris Felker ("Plaintiff Felker"), Karen Unger ("Plaintiff Unger"), and Jody Weaber ("Plaintiff Weaber") (collectively referred to hereinafter as "Plaintiffs"), employees of Defendant Lebanon County ("County"), filed a Motion for Summary Judgment and a supporting brief, opposing Teamsters' Motion for Summary Judgment and supporting their Motion for Summary Judgment (hereinafter "Plaintiffs' Opening Brief"). Plaintiffs argued in their Opening Brief that this Honorable Court should deny Teamsters' Motion for Summary Judgment and grant their Motion for Summary Judgment, finding in their favor on both Counts I and II, which allege claims under 42 U.S.C. § 1983 ("Section 1983") for purported violations of their First and Fourteenth Amendment rights (Counts I and Count II).

[1] Plaintiffs mistakenly denote Teamsters as "Teamsters Union Local No. 429." Its proper legal name is Teamsters Local Union No. 429.

Teamsters now file this Brief in Opposition to Plaintiffs' Motion for Summary Judgment and Reply Brief in Support of Its Motion for Summary Judgment (hereinafter "Response Brief"), a Supplemental Declaration of Kevin Bolig (hereinafter "Bolig Supp. Decl."), and Defendants' Supplemental Joint Statement of Material Facts (hereinafter "Jt. Supp. St."), the latter of which is filed on behalf of all Defendants. In its Response Brief, Teamsters demonstrate Plaintiffs have raised no valid legal grounds justifying the grant of their Motion for Summary Judgment or the denial of the Teamsters' Motion for Summary Judgment. For these reasons, as explained in more detail below, this Honorable Court should deny Plaintiffs' Motion for Summary Judgment and grant the Motion for Summary Judgment filed by the Union.

II. SUPPLEMENTAL STATEMENT OF FACTS

In Plaintiffs' Opening Brief, they adopt Defendants' Joint Statement of Material Facts. Since the filing of their brief, Teamsters were provided additional information that supports its Motion for Summary Judgment and opposition to Plaintiffs' Motion for Summary Judgment. Thus, Teamsters filed the Jt. Supp. St. along with the Bolig Supp. Decl. The supplemental material facts are outlined below.

When a bargaining unit employee of the County chose to become a union member, the Local provided him or her the membership application which included the dues authorization form. (Jt. Supp. St., ¶ 7.) The membership application and

the dues authorization form are contained on one page and were designed by the International Brotherhood of Teamsters for use by its various locals, including Teamsters Local Union No. 429. (Jt. Supp. St., ¶ 3.) Bargaining unit employees who chose to become members would complete and sign the union membership application and then the dues authorization form. (Jt. Supp. St., ¶ 8.) Thus, bargaining unit employees only signed a dues authorization form if they had signed the membership application. (Jt. Supp. St., ¶ 8.) Prior to June 27, 2018, if a bargaining unit employee working at the County chose not to become a union member, he or she paid fair share fees rather than dues. (Jt. Supp. St., ¶ 9.)

All four Plaintiffs signed a dues authorization form after being hired by the County. (Jt. Supp. St., ¶ 5.) The dues authorization forms signed by Plaintiffs Adams, Felker, Unger, and Weaber read in pertinent part:

> I, _____ hereby authorize my employer to deduct from my wages each and every month an amount equal to the monthly dues, initiation fees and uniform assessments of Local Union _____ and direct such amounts so deducted to be turned over each month to the Secretary-Treasurer of such Local Union for and on my behalf.
>
> This authorization is voluntary and is not conditioned on my present or future membership in the Union.
>
> This authorization and assignment shall be irrevocable for the term of the applicable contract between the union and the employer or for one year, whichever is the lesser, and shall automatically renew itself for successive yearly or applicable contract periods thereafter, whichever is lesser, unless I give written notice to the company and the union at least sixty [60] days, but not more than seventy-five [75] days before

> any periodic renewal date of this authorization and assignment of my desire to revoke same.

(Jt. Supp. St."), ¶ 6.)

Bargaining unit employees, including all four Plaintiffs, signed a dues authorization form after they had signed a membership application. (Jt. Supp. St., ¶ 8.) On or about January 26, 2010, Plaintiff Felker signed the Local's membership application—the same day that he signed his dues authorization form. (Jt. Supp. St., ¶¶ 1, 8; Exhibit "A.") On or about November 7, 2017, Plaintiff Unger ("Plaintiff Unger") signed the Local's membership application—the same day that she signed her dues authorization form. (Jt. Supp. St., ¶¶ 1, 8; Bolig Supp. Decl., Exhibit "B.") Based on the dates that Plaintiffs Adams and Weaber signed their dues authorization forms, they signed their membership applications on or about May 6, 2003 and July 31, 2007, respectively. (Jt. Supp. St., ¶ 10).

The membership application reads in pertinent part:

> I voluntarily submit this Application for Membership in Local Union _____, affiliated with the International Brotherhood of Teamsters, so that I may fully participate in the activities of the Union. I understand that by becoming and remaining a member of the Union, I will be entitled to attend membership meetings, participate in the development of contract proposals for collective bargaining, vote to ratify or reject collective bargaining agreements, run for Union office or support candidates of my choice, receive Union publications and take advantage of programs available only to Union members. I understand that only as a member of the Union will I be able to determine the course the Union takes to represent me in negotiations to improve my wages, fringe benefits and working conditions. And, I understand that the Union's strength and ability to represent my interests depends upon

> my exercising my right, as guaranteed by federal law, to join the Union and engage in collective activities with my fellow workers.
>
> I understand that under the current law, I may elect "nonmember" status, and can satisfy any contractual obligation necessary to retain my employment by paying an amount equal to the uniform dues and initiation fee required of members of the Union. I also understand that if I elect not to become a member or remain a member, I may object to paying the pro-rata portion of regular Union dues or fees that are not germane to collective bargaining, contract administration and grievance adjustment, and I can request the Local Union to provide me with information concerning its most recent allocation of expenditures devoted to activities that are both germane and non-germane to its performance as the collective bargaining representative sufficient to enable me to decide whether or not to become an objector. I understand that nonmembers who choose to object to paying the pro-rata portion of regular Union dues or fees that are not germane to collective bargaining will be entitled to a reduction in fees based on the aforementioned allocation of expenditures, and will have the right to challenge the correctness of the allocation. The procedures for filing such challenges will be provided by my Local Union, upon request.
> I have read and understand the options available to me and submit this application to be admitted as a member of the Local Union.

(Jt. Supp. St., ¶ 4.)

On or about May 10, 2019, the Local sent each Plaintiff a letter advising him or her that the Local was refunding all dues deductions received by the Local from the time he or she requested to resign his or her membership until dues deductions ceased. (Jt. Supp. St., ¶ 11.) Each letter contained a check for the refunded dues along with statutory interest. (Jt. Supp. St., ¶ 11.) In mid-June, each Plaintiff cashed the check provided by the Local. (Jt. Supp. St., ¶ 12; Bolig Supp. Decl., Exhibit "C.")

III. STATEMENT OF QUESTIONS INVOLVED

1. Pursuant to Rule 56, should this Court with respect to Count II of the Complaint deny Plaintiffs' Motion for Summary Judgment and grant Teamsters' Motion for Summary Judgment, dismissing the claim in its entirety and any relief sought thereunder because it fails to state a claim for relief under well-established and still applicable Supreme Court precedent?

Suggested Answer: Yes.

2. Pursuant to Rule 56, should this Court with respect to Count I of the Complaint deny Plaintiffs Motion for Summary Judgment and grant Teamsters' Motion for Summary Judgment, dismissing the claim in its entirety and any relief sought thereunder because those claims fail to state a claim for which relief may be granted and Teamsters has a valid good faith defense?

Suggested Answer: Yes.

3. Pursuant to Rule 56, with respect to Count I, should this Court dismiss for lack of standing all injunctive and equitable relief, and for mootness all monetary relief seeking remittance of dues from the date they requested to cease union membership until those dues deductions ended, because Plaintiffs are no longer members, had their dues deductions cease, and were remitted all dues deductions paid since they requested to end union membership along with interest?

Suggested Answer: Yes.

IV. ARGUMENT

A. Federal Law Is Clear That Exclusivity of Representation Is Constitutional and, Therefore, with Respect to Count II, This Honorable Court Should Deny Plaintiffs' Motion for Summary Judgment and Grant Teamsters' Motion for Summary Judgment.

1. *Knight* Forecloses Plaintiffs' Constitutional Challenge to Exclusive Representation in Count II.

Plaintiffs' principal contention in their Opening Brief with respect to Count II is their erroneous argument that *Minnesota State Bd. for Cmty. Colls. v. Knight*, 465 U.S. 271 (1984) (hereinafter "*Knight*") does not apply because that case only holds "that employees do not have a right, as members of the public, to a formal audience with the government to air their views." (Plaintiffs' Opening Brief, at 29.) As explained in Teamsters' Opening Brief, however, *Knight* constitutes binding precedent, foreclosing Plaintiffs' challenge to exclusive representation. (Teamsters' Opening Brief, at 10-16.) *Knight* held that exclusive representation in public employment does not "create an unconstitutional inhibition on [the] associational freedom" of employees who disagree with the majority-chosen union representative "restrain[] [such employees'] freedom to speak." *Knight*, 465 U.S at 288-90. Contrary to Plaintiffs' argument to the contrary, the impact of the union's role as exclusive representative on non-members' associational rights was the central focus of the challenge in *Knight*.

The Minnesota officials in *Knight* conferred with the faculty union in its role as the elected representative for the entire bargaining unit. *See id*. at 276 n.3 (stating that the union presented an "official collective faculty position as formulated by the faculty's exclusive representative.") *Knight* held that whether individual bargaining unit members' First Amendment rights not to associate with the Union were impaired under these circumstances turned not upon the union's mere status as representative of all bargaining unit employees, but upon whether bargaining unit members were required to become union members or financial supporters. *See id*. at 289-90 (finding no associational impairment because instructors were not required to become union members and any pressure they felt to become members was "inherent in our system of government"); *id*, at 289 n.11, 291 n.13 (explaining that no requirement of financial support was at issue).

Because neither membership nor financial support were required, the Supreme Court held that the dissenting instructors in *Knight* retained the "freedom … not to associate with whom they please, including the exclusive representative." Id. at 288 (emphasis added). That holding dooms Plaintiffs' compelled association theory here, as every court to consider the issue has recognized. So far, no court has concluded that exclusive representation constitutes a constitutional violation.

Since *Knight*, six (6) U.S. Court of Appeals decisions have rejected the argument advanced by Plaintiffs. *See Mentele v. Inslee*, 916 F.3d 783, 789 (9th Cir.

2019) (explaining that *Knight* "expressly concluded" that the exclusive representation system did not violate non-members freedom to decline "to associate with whom they please, including the exclusive representative,"' and "approved the requirement that bound non-union dissenters to exclusive representation") (quoting *Knight*, 465 U.S. at 288) (emphasis omitted); *Bierman v. Dayton*, 900 F.3d 570, 574 (8th Cir. 2018), *cert. denied*, 2019 U.S. LEXIS 3319 (May 13, 2019) (concluding that *Knight* "foreclosed" argument that the "'mandatory agency relationship' between [non-members] and the exclusive representative … violates their right to free association under the First and Fourteenth Amendments"); *Hill v. Serv. Employees Int'l Union*, 850 F.3d 861, 864 (7th Cir. 2017), *cert. denied,* 138 S.Ct. 446 (2017) (finding plaintiffs' argument is "foreclosed" by *Knight* which holds that exclusive representation does not give rise to a "constitutionally impermissible burden on [non-members'] right to free association"); *Jarvis v. Cuomo*, 660 Fed. Appx. 72, 74 (2nd Cir. 2016), *cert. denied*, 137 S.Ct. 1204 (2017) (concluding that *Knight* "foreclosed" argument that a union's designation as "the exclusive bargaining representative exclusive representative violates [plaintiffs'] First Amendment Rights"); *D'Agostino v. Baker*, 812 F.3d 240, 243 (1st Cir. 2016), *cert. denied*, 136 S.Ct. 2473 (2016) (Souter, J., sitting by designation) (concluding that, because "non-union professionals, college teachers, could claim no violation of associational rights by an exclusive bargaining agent speaking for their entire

bargaining unit when dealing with the state even outside collective bargaining, the same understanding of the First Amendment should govern the position taken by [plaintiffs] whose objection only goes to bargaining representation").[2]

Similarly, following the Supreme Court's decision in *Janus v. AFSCME, Council 31*, 138 S. Ct. 2448 (2018), a rash of constitutional challenges to exclusive representation were filed in U.S. district courts, resulting in multiple decisions rejecting such claims. *See O'Callaghan v. Regents of the Univ. of Cal.*, No. CV-19-02289-JVS (DFMx), 2019 U.S. Dist. LEXIS 110570, *12 (C.D. Cal. June 10, 2019) ("Because both Supreme Court and Ninth Circuit precedent have 'specifically acknowledged that exclusive representation is constitutionally permissible' the Court finds that Plaintiffs are unlikely to succeed on their claim and do not pose serious questions going to the merits of their claim that exclusive representation by the Union violates their First Amendment rights.") (quoting *Mentele*, 916 F.3d at 791); *Grossman v. Hawaii Gov't Employees Ass'n*, __ F. Supp. 3d ___, No. 18-00493-DKW-RT, 2019 U.S. Dist. LEXIS 85668, *7 (D. Hi. May 21, 2019) (rejecting plaintiff's argument that the court should overrule *Knight* and *Mentele* when they constitute binding precedent); *Babb v. Cal. Teachers Ass'n*, 378 F. Supp. 3d 857,

[2] The Eighth Circuit in an unpublished decision upheld the district court's denial of a request for preliminary injunctive relief, seeking to enjoin Minnesota's public labor law statute to the extent it permitted public sector labor unions to act as the exclusive representative of all employees. (A true and correct copy of the unpublished opinion is attached to this Response Brief as Exhibit "A.") Recently, the Supreme Court denied requests for review filed by defendant-appellants in *Uradnik* and *Bierman*.

888 C.D. Cal. 2019) (rejecting plaintiff's attempt to limit the holding in *Mentele*, arguing that "*Mentele*'s analysis of the impact of exclusive representation on non-member's associational rights contains no such limitation, however, and was based entirely on *Knight*'s analysis");[3] *Akers v. Md. State Educ. Ass'n*, 376 F. Supp. 3d 563, 573 (D. Md. 2019) (noting plaintiff agreed that *Knight* "foreclosed" her constitutional challenge to exclusive representation); *Crockett v. NEA-Alaska*, 367 F Supp. 996, 1009 (D. Alaska 2019) (finding *Janus* did not overrule or unsettle *Knight*, which still constitutes binding precedent); *Thompson v. Marietta Educ. Ass'n*, 371 F. Supp. 3d 431, 438 (S.D. Ohio 2019) (same); *Reisman v. Associated Faculties*, 356 F.Supp.3d 173, 178 (D. Me. 2018) (same); *Uradnik v. Inter Faculty Org.*, 212 L.R.R.M. 3144, 2018 U.S. Dist. LEXIS 165951, *6-7 (D. Minn. Sept. 27, 2018), *aff'd*, No. 18-3086 (8th Cir. Dec. 3, 2018), *cert denied*, No. 18-719 (Supreme Court April 29, 2019) (same).[4] No federal court has rendered a decision supporting the legal validity of a constitutional challenge to exclusive representation.

Moreover, counsel for Plaintiffs in this case, Jeffrey Schwab, Esquire, and the Liberty Justice Center for whom he works, were counsel for plaintiffs in *Grossman* and *Few*, *supra*, in which those plaintiffs raised the very same constitutional

[3] *Babb* involved motions to dismiss in several cases, including *Thomas Few v. United Teachers of Los Angeles, et al*, 2-18-cv-09531-JLS-DFM (C.D. Cal) (hereinafter "Few"). The citation above concerns the district court's decision dismissing Few's constitutional challenge to exclusive representation.

[4] All unreported cases cited in this brief are attached to this Response Brief as Exhibit "A."

challenge to exclusive representation as their clients do in this case. The district courts summarily dismissed those exclusive representation claims.

In *Grossman*, after rejecting plaintiff's argument that *Knight* no longer represented good law after *Janus*, the district court wrote:

> [Plaintiff] attempts to evade *Mentele* by identifying herself as a 'full-fledged public employee' in contrast to the quasi-government employees at issue in *Mentele*…. This is a distinction without a substantive difference. "*Mentele*'s analysis of the impact of exclusive representation on non-member's associational rights contains no [] limitation" on its application to so-called "full-fledged" versus quasi-public employees. Indeed, *Mentele* "was based entirely on *Knight*'s analysis, which involved full-fledged public employees."

Grossman, 2019 U.S. Dist. LEXIS 85668, *9 (citations omitted). The district court was equally dismissive of Grossman's request that if *Knight* (and *Mentele*) cannot be distinguished, they should be overruled. "***How this district court is supposed to simply overrule controlling decisions from the Supreme Court and the Ninth Circuit—even if it were inclined to do so—is something Grossman never explains.***" *Id*. (emphasis added). In *Few*, another case in which Mr. Schwab and the Liberty Justice League represented a plaintiff asserting a constitutional challenge to exclusive representation, the district court rejected the same arguments advanced in *Grossman*, finding that both *Knight* and *Mentele* were still binding precedent.

Babb, 378 F. Supp. at 888.[5]

Because *Knight* remains good law, this Honorable Court with respect to Count II should deny Plaintiffs' Motion for Summary Judgment and grant Teamsters' Motion for Summary Judgment.

2. *Janus* Has No Relevance to Plaintiffs' Challenge to Exclusive Representation.

In Plaintiffs' Opposition Brief, they rely heavily on the Supreme Court's decision in *Janus*, *supra*. But *Janus* only held that non-member public employees cannot be required to pay fees to an exclusive representative, not that exclusive representation itself violates the First Amendment, and the *Janus* decision states several times that exclusive representation in public employment remains constitutionally permissible. Teamsters' Opening Brief, at 15-16; *Janus*, 138 S. Ct. at 2460; *Bierman*, 900 F.3d at 574 (concluding *Janus* "never mentioned *Knight*, and the constitutionality of exclusive representation standing along was not an issue"); *Branch v. Commonwealth Employment Relations Board*, 120 N.E.3d 1163, 1174 (Mass. 2019) ("*Janus* … did not in any way question the centrality of exclusive representation … in the collective bargaining process." Plaintiffs do not even attempt to address the *Janus* majority's repeated statements that States may continue

[5] In fact, given that there is no circuit split at this time, there is no grounds for the Supreme Court to take review of a challenge to exclusive representation under Rule 10 of the Supreme Court Rules.

using exclusive representation in public employment.

In fact, every federal court that has addressed the claim that *Janus* overruled *Knight*, or otherwise changed the law such that a constitutional challenge to exclusive representation is now permissible, has rejected it *See Mentele*, 916 F.3d at 788 ("[Plaintiff] argues that *Janus* overruled *Knight* and that *Janus* controls the outcome of this case, but we are not persuaded."); *Bierman*, 900 F.3d at 574 ("Recent holdings in [*Janus*] and [*Harris*] do not supersede *Knight*."); *O'Callaghan*, 2019 U.S. Dist. LEXIS 110570, *11 (finding that statements in *Janus* support the premise "that a state interest can still justify a union action as an exclusive representative for members and nonmembers"); *Grossman*, 2019 U.S. Dist. LEXIS 85668, *7 ("Nothing in the *Janus*' reasoning … calls into question the holding in *Knight* regarding exclusive representation.");, 378 F. Supp. 3d at 888 ("*Janus* essentially reaffirmed *Knight* because it distinguished between financial support for a union and the 'underlying system of exclusive representation.'"); *Akers*, 376 F. Supp. 3d at 573 ("Plaintiffs have agreed with Defendants that this [exclusive representation] claim is foreclosed by Supreme Court precedent in [*Knight*]."); *Crockett*, 367 F Supp. at 1009 (rejecting plaintiff's claim that *Janus* changed to the law to allow constitutional challenges to exclusive representation because "[b]inding Supreme Court precedent [in *Knight*] flatly rejects her position."); *Thompson*, 371 F. Supp. 3d at 438 ("In sum, even after *Janus*, it remains the case that 'the Supreme Court has

not … revisited *Knight* or otherwise overturned legislative authorizations of collective and exclusive bargaining.'") (citation omitted); *Reisman* 356 F.Supp.3d at 178 ("Accordingly, *Janus* did not overrule or unsettle the *Knight* or *D'Agostino* decisions, both of which are binding precedent."); *Uradnik*, 2018 U.S. Dist. LEXIS 165951, *6 (rejecting plaintiff's claim that *Janus* supports her constitutional challenge to exclusive representation and finding *Knight* remains good law).

Because *Janus* offers no support for Plaintiffs' exclusive representation claim, this Honorable Court with respect to Count II should deny Plaintiffs' Motion for Summary Judgment and grant Teamsters' Motion for Summary Judgment.

3. Because Exclusive Representative Bargaining Does Not Infringe First Amendment Rights, Heightened Scrutiny Does Not Apply.

Plaintiff contends that allowing Teamsters to speak on their behalf regarding collective bargaining constitutes an issue of "public concern" and "demeans their First Amendment rights" such that "exclusive representation is … subject to at least exacting scrutiny." Plaintiffs' Opening Brief, at 26, 28. The holding of *Knight,* however, is that exclusive representation, by itself, is not an infringement on First Amendment rights. 465 U.S. at 290 ("The interest of [plaintiffs below] that is affected -- the interest in a government audience for their policy views -- finds no special protection in the Constitution.") Other federal courts since *Janus* was decided have agreed. *See Mentele*, 916 F.3d at 789 ("[W]e apply *Knight*'s more

directly applicable precedent … and hold that [the state of] Washington's authorization of an exclusive bargaining representative does not infringe [plaintiff's] First Amendment rights.") In fact, the *Mentele* court correctly recognized that "*Janus* specifically acknowledged that exclusive representation is constitutionally permissible." *Id*. at 791 (citing *Janus*, 138 S.Ct. at 2478). When the government "does not infringe any First Amendment right," the government "need not demonstrate any special justification" for its law. *Univ. of Pa. v. EEOC*, 493 U.S. 182, 201 (1990).

Even if exclusive representation did infringe First Amendment rights, which Teamsters deny, the collective bargaining system would satisfy "exacting scrutiny" because it serves the "compelling—and enduring—state interest of labor peace. *Mentele*, 916 F.3d at 790; *see also Uradnik*, 2018 U.S. Dist. LEXIS 165951, *7-8 (finding exclusive representation statute serves a compelling state interest of "providing Minnesota's public sector labor employees with representation and greater bargaining power" and well as "labor peace"). Despite Plaintiffs claims to the contrary, it is not true that "Janus has already dispatched 'labor peace' … as a sufficiently compelling interest[] to justify [exclusive representation.]" Plaintiffs' Opening Brief, at 28. Instead, *Janus* simply concluded that "labor peace" is not a sufficiently compelling state interest ***to allow labor organizations to collect agency fees***. *Janus*, 138 S.Ct. at 2480. While reaching that conclusion, *Janus* still

acknowledged that exclusive representation remains constitutionally permitted. *Id*. at 2478, 2485 n.27; *see also id*. at 2466, 2485 n.27. Because there is no infringement to trigger heightened scrutiny, this Court should ignore Plaintiffs' argument and dismiss Count II for reasons indicated above.

Because Plaintiffs have failed to state a claim for which relief can be granted, this Honorable Court should deny their Motion for Summary Judgment and grant Teamsters' Motion for Summary Judgment, dismissing with prejudice Count II and all relief sought thereunder.

B. Plaintiffs' "Unconstitutional Choice" Claim in Count I Fails as a Matter of Law, and Therefore, This Honorable Court Should Deny Plaintiffs' Motion for Summary Judgment and Grant Teamsters' Motion for Summary Judgment with Respect to That Claim.

1. Plaintiffs' "Unconstitutional Choice" Claim Fails a Matter of Law.

Despite their attempts to argue to the contrary, Count I of Plaintiffs' Complaint is based on the erroneous legal theory that they have a valid Section 1983 claim against Teamsters for violation of their First Amendment rights after *Janus*. Specifically, Plaintiffs allege in their Complaint and Opening Brief that their decision to sign their dues authorization forms was the result of an "unconstitutional choice," in which they were required to either become union members who pay dues or nonmembers who pay fair share fees (Complaint, ¶¶ 23, 24, 25, 26, 43; Plaintiffs' Opening Brief, at 1, 3-7.) They allege that if they had been given the choice to pay

membership dues or not pay anything (as *Janus* now allows), they would have chosen the latter. (Complaint, ¶ 44; Plaintiffs' Opening Brief, at 4.)[6] They thus seek to be reimbursed for all dues paid to Teamsters from the date they signed those dues authorization forms until Janus was decided as well as all dues paid since *Janus* decided. (Complaint, ¶¶ 50, 51; Plaintiffs' Opening Brief, at 7.)

Critically, Plaintiffs' rights were not impacted by the Supreme Court's decision in *Janus* – unlike Mark Janus, Plaintiffs were union members at the time they sought to revoke membership who voluntarily agreed to pay dues per the terms of their dues authorization forms, not a fair-share fee payer. Nor do Plaintiffs explain why, when faced with this purported "unconstitutional choice," Plaintiff Unger chose to be a nonmember who paid fair share fees and then two (2) years later voluntarily decided to become a union member.[7] Regardless, as set forth below, every court to consider a "unconstitutional choice" argument, such as the one brought by Plaintiffs post-*Janus*, have rejected it.

Plaintiffs "unconstitutional choice" claim is an attempt to create a new legal doctrine under Section 1983 that one has a valid legal claim if one is faced with an undesired, but legally valid, choice under the law at the time that the choice is made.

[6] Plaintiffs offer no evidence other than this purported "unconstitutional choice" to claim they were coerced in any way in signing dues authorization forms.

[7] Nowhere in Plaintiffs' Complaint or in Plaintiffs' Opening Brief do they make any argument that Plaintiff Unger is seeking fair share fees. In fact, the Complaint does not mention that Plaintiff Unger began as a non-member paying fair share fees. As she has not pled or argued for remittance of fair share fees, she is not entitled to such relief.

No such claim is currently recognized, and Plaintiffs cite no case in support for such a claim. In fact, Plaintiff's theory ignores well-established Pennsylvania public sector labor law, as well as Supreme Court precedent existing at the time that Plaintiffs became a union members and signed membership applications and dues authorization forms.

Until the Supreme Court decided *Janus*, Pennsylvania's Public Employee Fair Share Fee Law authorized public sector unions to negotiate provisions within collective bargaining agreements for the payment of fair share fees for bargaining unit employees who choose to be a non-member of a union. 43 Pa.C.S.A. §1102.1 *et seq*. The CBA between the County and Teamsters included such a provision. (See Exhibit 1 to Complaint, at Article 3, Section 2). Fair share fee laws, like Pennsylvania's, were found constitutional by the Supreme Court in *Abood v. Detroit Board of Education*, 431 U.S. 209 (1977), and remained so until the *Janus* decision. Thus, at the time Plaintiffs voluntarily became members of Teamsters, the collection of fair share fees by public sector unions was constitutional per the United States Supreme Court. Plaintiff's "unconstitutional choice" thus amounted to complying with what Pennsylvania law authorized and what the Supreme Court held constitutional at the time Plaintiffs chose to join the Union and pay dues.

Every court to consider this type of retroactive "unconstitutional choice" claim brought by union members post-*Janus* has rejected it. *Babb*, 378 F. Supp. at

876- 77 ("The fact that plaintiffs 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.") (quoting *Crockett*, 367 F. Supp. 3d at 1008); *Bermudez v. Serv. Emp. Int'l Union, Local 521*, No. 18-cv-04312-VC, No. 18-cv-04312-VC, 2019 U.S. Dist. LEXIS 65182, at *3 (N.D. Cal. April 16, 2019) ("…[T]here is a strong argument that when the highest judicial authority has previously deemed conduct constitutional, reversal of course by that judicial authority should never, as a categorical matter, result in retrospective monetary relief based on that conduct."); *Hernandez v. AFSCME Ca.*, No. 2:18-cv-2419, 2019 U.S. Dist. LEXIS 103735 (E.D. Cal. June 20, 2019) (same).

In *Crockett*, the court noted that union members, unlike fee payers, voluntarily "made a decision to pay union membership dues in exchange for certain benefits … preclud[ing] an argument that they were compelled to subsidize the Union Defendants' private speech" in violation of *Janus*. *Crockett*, 367 F. Supp. 3d at 1008. *Janus*, as noted in the *Crockett* case, says nothing about members who join the union but later change their mind about paying dues. *Id.* Rather, the *Crocket* court held: "Plaintiffs cannot seek to claw back money paid in exchange for already-provided contractual benefits based on later changes in the law." *Id.* (quotation and alteration omitted).

Because Plaintiffs have failed to state a valid claim based on the novel theory

of facing an "unconstitutional choice," this Honorable Court should deny their Motion for Summary Judgment and grant Teamsters' Motion for Summary Judgment, dismissing with prejudice Count I and all relief sought thereunder.

2. Plaintiffs' "Unconstitutional Choice" Claim Fails Because They Voluntarily Agreed to Become Union Members.

Rather than accept their voluntarily decision to become a member of Teamsters, Plaintiffs' argue that their choice was invalid because they faced an "unconstitutional choice" between becoming a union member who pays union dues or a nonmember fails who pays fair share fees. Such an argument fails when considering federal case law in which plaintiffs asserted a Section 1983 claims based on dues authorization forms.

As discussed in Teamsters' Opening Brief, a requisite to a successful claim under Section 1983 is that the challenged action must have been performed under "color of state [law]." 42 U.S.C. § 1983. In actions against a private party, the plaintiff must show "that the conduct allegedly causing the deprivation of a federal right be fairly attributable to the State." *Lugar v. Edmonson Oil*, 457 U.S. 922, 937 (1982). This means the plaintiff must establish both that the deprivation is "caused by the exercise of some right or privilege created by the State or by a rule of conduct imposed by the state or a person for whom the State is responsible" and that the party charged with the deprivation is "a person who may be fairly said to be a state actor."

Id.

At least one court considering First Amendment claims challenging union authorization forms has concluded that no requisite state action was involved and, therefore, dismissed plantiffs' claims. *See Belgau v. Inslee*, 359 F. Supp. 3d 1000, 1012, 1015 (W.D. Wash. 2019) (plaintiffs "fail[ed] to show that the contents of the agreements are in any way attributable to the State" as the "Union, a private entity, drafted the agreements and asked the Plaintiffs to sign them"); *see also Blum v. Yaretsky*, 457 U.S. 991 (1982) (no state action where insufficient governmental nexus). When a union instructs a public employer to deduct union dues from an employee's paycheck pursuant to a dues-deduction authorization, that decision is made by a private party – the union – such that there is no state action.

Furthermore, in *Fisk v. Inslee*, 759 Fed. Appx. 632, 633 (9th Cir. 2019), the Ninth Circuit, relying upon *Cohen v. Cowles Media Co*., 501 U.S. 663 (1991), concluded that "the First Amendment does not preclude the enforcement of 'legal obligations' that are bargained-for and 'self-imposed' under state contract law." In *Cohen*, the Supreme Court rejected the claim that the First Amendment prohibited enforcement of a newspaper's promise not to disclose a confidential source. Recognizing the doctrine of promissory estoppel, the Supreme Court explained: "[T]he First Amendment does not confer . . . a constitutional right to disregard promises that would otherwise be enforced under state law." 501 U.S. at 672. The

same is true with respect to enforcement of a voluntary dues authorization forms that Plaintiffs' signed.

In this case, all four Plaintiffs voluntarily signed dues authorization forms at some point after being hired. (*Defendants' Joint Statement of Material Facts Not in Dispute* [hereinafter "*Jt. St.*"], ¶¶ 20, 44, 54; Jt. Supp. St., ¶ 1, 2, 5.) While three Plaintiffs signed shortly after they were hired, Plaintiff Unger was initially not a member and paid fair share fees for approximately two years, but, in 2017, signed a dues authorization form. (*Jt. St*, ¶¶ 20, 44, 54; Jt. Supp. St., ¶ 1, 2, 5). The dues authorization forms signed by Plaintiffs state in pertinent part **"*[t]his authorization is voluntary and is not conditioned on my present or future membership in the Union.***" (Jt. Supp. St., ¶ 6 (emphasis added)). Bargaining unit employees, including all four Plaintiffs, signed a dues authorization form after they had signed a membership application. (Jt. Supp. St., ¶ 8.) The membership application reads in pertinent part: "***I voluntarily submit this Application for Membership in Local Union*** _____, affiliated with the International Brotherhood of Teamsters…. ***I understand that under the current law, I may elect "nonmember" status*** …. (Jt. Supp. St., ¶ 4 (emphasis added)).

Clearly, all four Plaintiffs were provided more than sufficient information detailing their rights to choose to become a member or a nonmember in the membership applications that they all signed. Furthermore, they also voluntary

chose to sign a union authorization form, granting the authority for the County to make dues deductions and acknowledging that they made such a choice voluntarily. In fact, Plaintiff Unger demonstrated her understanding of the terms of the deal by first remaining a non-member and two years later becoming a member.

Because Plaintiffs voluntarily entered into contracts with the Teamsters, agreeing to be members and have dues deducted from their paychecks, this Honorable Court should deny their Motion for Summary Judgment and grant Teamsters' Motion for Summary Judgment, dismissing with prejudice Count I and all relief sought thereunder.

3. Plaintiffs' "Unconstitutional Choice" Claim Fails Because They Waived Their First Amendment Rights When They Voluntarily Agreed to Become Union Members.

Despite Plaintiffs argument that they could not affirmatively waive their First Amendment rights under a regime existing prior to *Janus*, district courts addressing preliminary injunction motions to terminate dues deductions have held that plaintiffs challenging a waiver of their rights post-*Janus* could not establish a likelihood of success on the merits.

In *Smith v. Superior Court, County of Contra Costa*, the court held:

> Smith wants *Janus* to stand for the proposition that any union member can change his mind at the drop of a hat, invoke the First Amendment, and renege on his contractual obligation to pay dues. Far from standing for that proposition, *Janus* actually acknowledges in its concluding paragraph that employees can waive their First Amendment rights by

> affirmatively consenting to pay union dues. *Id.* That's what Smith did, and he is likely on the hook to pay dues through the end of the contractual period (November 30, 2018). Smith argues his consent to pay wasn't "knowing" before *Janus* because he couldn't yet have known or understood the rights the case would clarify he had. But it's not the rights clarified in *Janus* that are relevant to Smith - Smith'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.

No. 18-cv-05472, 2018 U.S. Dist. LEXIS 196089, at *2-3 (N.D. Cal. Nov. 16, 2018); *see also Cooley v. Calif. Statewide Law Enforcement Ass'n*, No. 2:18-cv-02961, 2019 U.S. Dist. LEXIS 12545, at *9-10 (E.D. Cal. Jan. 25, 2019) ("This Court is not persuaded by [plaintiff]'s arguments that the . . . application is not a valid contract . . . Therefore, this Court finds [plaintiff] is not likely to succeed on the merits of his First Amendment claim as underpinned by an invalid contract or invalid waiver of rights."); *Belgau*, 359 F. Supp.3d at 1016. The *Belgau* court stated:

> Plaintiffs' assertions that the agreements are not valid because they had not waived their First Amendment rights under *Janus* in their authorization agreements because they did not know of those rights yet, is without merit. Plaintiffs seek a broad expansion of the holding in *Janus*. *Janus* does not apply here - *Janu*s was not a union member, unlike the Plaintiffs here, and *Janus* did not agree to a dues deduction, unlike the Plaintiffs here.

Id.

The language of the membership applications and dues authorization forms signed by all four Plaintiffs, as set forth in detail above, constitutes a valid waiver of their First Amendment rights. Plaintiffs affirmatively consented to pay union dues,

and *Janus* does not alter that fact. Because Plaintiffs voluntarily waived their rights when they agreed to become members and have dues deducted from their paychecks, this Honorable Court should deny their Motion for Summary Judgment and grant Teamsters' Motion for Summary Judgment, dismissing with prejudice Count I and all relief sought thereunder.

4. Plaintiffs' Argument That Retroactivity Applies to Their "Unconstitutional Choice" Claim Fails as a Matter of Law.

To support their Motion for Summary Judgment regarding their "unconstitutional choice" claim, Plaintiffs argue that the new constitutional rule asserted in *Janus* necessitates that its holding retroactively applies to its novel "unconstitutional choice" claim, citing *Harper v. Va. Dep't of Taxation*, 509 U.S. 86 (1993) in support. Plaintiffs' argument fails for several reasons.

As an initial matter, the Supreme Court's retroactivity doctrine only applies when it has announced a new constitutional rule applicable to litigants whose case and claims are similar to those under which the new rule arose. As stated in *Harper*, "[o]ur approach to retroactivity heeds the admonition that 'the Court has no more constitutional authority in civil cases than in criminal cases to disregard current law or to treat ***similarly situated litigants differently***.'" *Id*. at 97 (citation omitted) (emphasis added). At this point, the Supreme Court has not announced a new constitutional rule that union members constitutional rights were violated when they

faced a decision to become union members or nonmembers in an era in which fair share fees were permissible. Quite frankly, *Janus* in no manner addressed such a claim, but instead considered whether a state statute imposing fair share fees on nonmembers is constitutionally allowed. *Janus*, 138 S. Ct. at 2460. Thus, *Janus* in no way addressed whether union members were faced with an "unconstitutional choice" between becoming members and paying dues or becoming nonmembers and paying fair share fees. Because the Supreme Court has not yet articulated a new constitutional rule on the claim advanced by Plaintiffs, the doctrine of retroactivity is inapplicable.

Even if retroactivity might apply, *Janus* in no way mandated that the decision apply retroactively. *See, e.g.*, *id.*, 138 S.Ct. at 2486 (holding that fair share fees "cannot be allowed ***to continue*** and that pubic unions extract agency fees from nonconsenting employees" (emphasis added). Regardless, retroactivity is not synonymous with automatic, retroactive relief for Plaintiffs. As detailed in Teamsters' Opening Brief and in this Response Brief, courts have consistently used the good faith defense to preclude non-members from obtaining retroactive monetary relief and to deny members, such as Plaintiffs, alleging the "unconstitutional choice" argument (even if such an argument were meritorious, which it is not) retroactive monetary relief. *See* Teamsters' Opening Brief, at 23-24; Teamsters' Response Brief, at 27-31, *supra*.

Second, despite the new rule announced in *Janus*, federal district courts have rejected the doctrine of retroactivity for litigants seeking remittance of fair share fees paid prior to the Supreme Court's decision, basing their decisions on the good faith defense. In all of those cases, the courts held that such fees are not recoverable. *See e.g.*, *Crockett*, 367 F. Supp. 3d at 1007; *Lee v. Ohio Educ. Ass'n*, 366 F. Supp. 3d 980, 981 (N.D. Ohio 2019); *Carey v. Inslee*, 364 F. Supp. 3d 1220, 1233 (W.D. Wash. 2019); *Cook v. Brown*, 364 F. Supp. 1184, 1192 (D. Or. 2019); *Danielson v. AFSCME, Council 28, AFL-CIO*, 340 F. Supp. 3d 1083, 1087 (W.D. Wash. 2018); *Mooney v. Ill. Educ. Ass'n*, 372 F. Supp. 3d 690, 707 (C.D. Ill. 2019); *Babb*, 378 F. Supp. 3d at 876-77; *Ogle v. Ohio Civ. Serv. Employees Ass'n, AFSCME Local 11*, No. 2:18-cv-1227, 2019 U.S. Dist. LEXIS 119142, at *14-30 (S.D. Ohio July 17, 2019); *Bermudez*, No. 18-cv-04312-VC, 2019 U.S. Dist. LEXIS 65182, at *1; *Hough v. SEIU Local 521*, No. 18-cv-4902, 2019 U.S. Dist. LEXIS 46356, at *1 (N.D. Cal. Mar. 20, 2019); *Janus v. AFSCME, Council 31*, No. 15-C-1235, 2019 U.S. Dist. LEXIS 43152, at *8-9 (N.D. Ill. March 18, 2019).

More to the point, in the few instances where union members like Plaintiffs have attempted to utilize *Janus* to claw back dues paid as a union member for benefits already received, courts have rejected that argument as well. *See Babb*, 378 F. Supp. 3d at 876-77 (citing *Crockett*, 367 F. Supp. 3d, at *7); *Bermudez*, U.S. Dist. LEXIS 65182, at *2, 3; *Hernandez v. AFSCME Ca.*, 2019 U.S. Dist. LEXIS 103735,

at *3, 5-7. Since the actual fair share fee payers themselves are not entitled to reimbursement, the dues paid by actual members are not recoverable on the same basis.

5. Plaintiffs' Wrongly Assert That the Good Faith Defense Does Not Apply.

Even assuming that Plaintiffs have legal grounds to claw back membership dues prior to the *Janus* decision, which Teamsters deny, the good faith defense bars such recovery. In their Opening Brief, Plaintiffs spend a substantial amount of time arguing against the existence of a good faith defense regarding Section 1983 claims. They allege that the defense (1) is inconsistent with the text of the statute and undermines its remedial purpose, (2) is incompatible with the statutory basis for qualified immunity, (3) is inconsistent with equitable principles that injured parties be compensated for losses, (4) has never been applied to a First Amendment cases such as the one advanced by Plaintiffs. Plaintiffs' Opening Brief, at 12-23.

The essential problem with Plaintiffs' argument is that both the Supreme Court and several U.S. Courts of Appeal have found that the good faith defense is in fact a viable defense for private parties sued under Section 1983. In *Lugar*, 457 U.S. at 942 (1982), the Court first found that private parties may be liable under Section 1983 in situations where they act according to a state-created system. Later, *Wyatt v. Cole*, 504 U.S. 158, 169 (1992), while not affording private parties qualified immunity to Section 1983 claims, the Supreme Court stated that "we do not foreclose

the possibility that private defendants faced with [Section] 1983 liability … could be entitled to an affirmative defense based on good faith… or that [Section] 1983 suits against private, rather than governmental, parties could require plaintiffs to carry additional burdens." The Supreme Court was concerned that "principals of equality and fairness may suggest … that private citizens who rely unsuspectingly on state laws they did not create and may have no reason to believe are invalid should have some protection from liability, as do their government counterparts." *Id*. at 168. Chief Justice Rehnquist and Justice Kennedy, writing in dissent and concurrence, respectively, argued that a good-faith defense existed but differed on its application. *Id*. at 169-70 (Kennedy, J., concurring), 175-77 (Rehnquist, C.J., dissenting).

Since *Wyatt*, several federal appellate court, including the U.S. Court of Appeals for the Third Circuit, that has considered the good faith defense has held it exists for private parties sued under Section 1983. *See Pinsky v. Duncan*, 79 F.3d 306, 311-12 (2d Cir. 1996); *Jordan v. Fox, Rothschild, O'Brien & Frankel*, 20 F.3d 1250, 1275-78 (3d Cir. 1994); *Wyatt v. Cole*, 994 F.2d 1113, 1118-21 (5th Cir. 1993); *Vector Research, Inc. v. Howard & Howard Attorneys P.C.*, 76 F.3d 692, 698-99 (6th Cir. 1996); *Clement v. City of Glendale*, 518 F.3d 1090, 1096-97 (9th Cir. 2008).

In *Jorda*n, the Third Circuit recognized a good faith defense in a Section 1983 suit brought tenants against a law firm and some of its at attorneys, arguing that the practice on the entry of judgments by confession and the practice of execution on them without prior notice or hearing violated the requirement of due process in the Fourteenth Amendment. *Id.* at 1253. While an appeal was pending before the Third Circuit, the Supreme Court decided *Wyatt* and defendants asserted a good faith defense to any Section 1983 liability. *Id*. at 1255. The Third Circuit held that "we believe private actors are entitled to a defense of subjective good faith…." *Id*. at 1277.

Importantly, despite Plaintiffs attempt to argue that a good faith defense is impermissible to private actors sued under Section 1983, multiple courts have found that the good faith defense applies to claims seeking remittance of fair share fees received pre-Janus. *See* Teamsters' Opening Brief, at 23-24; Teamsters' Response Brief, at 28. Furthermore, in the cases addressing claims seeking a claw back of union dues, as Plaintiffs do here, federal courts held that the good faith defense applies. *See* Teamsters Response Brief, at 28.

To the extent that this Honorable Court finds legal validity to Plaintiffs' "unconstitutional choice" claim and that retroactivity applies, the Teamsters have a valid good faith defense. The Union relied upon nearly three (3) decades of established Pennsylvania labor law and over four (4) decades of federal law, holding

and reaffirming that bargaining unit employees either become members and pay dues or remain nonmembers and pay fair share fees. Plaintiffs voluntarily signed both membership applications and dues authorization forms. Under these facts, Teamsters have demonstrated their right to the good faith defense.

For these reasons, this Honorable Court should deny Plaintiffs' Motion for Summary Judgment and grant Teamsters' Motion for Summary Judgment, dismissing with prejudice Count I and all relief sought thereunder.

C. With Respect to Count I, this Court Lacks Jurisdiction to Hear Plaintiff's Claims for Declaratory, Injunctive, and Monetary Relief Retroactive to the Time They Requested to End Union Membership.

1. Plaintiffs Lack Standing to Assert Claims for Declaratory and Injunctive Relief.

Despite their lack of standing to assert claims for declaratory and injunctive relief, Plaintiffs insist that they are entitled to the same. They are grossly mistaken. Federal courts have subject matter jurisdiction to hear a claim only if the plaintiff has standing. To establish Article III standing, a plaintiff "bears the burden of establishing the minimal requirements of Article III standing: '(1) . . . an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision.'" *Cottrell v. Alcon Labs.*, 874 F.3d 154, 162 (3rd Cir. 2017) (quoting *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1547 (2016)). "[T]he "[f]irst and foremost" of the three standing elements,

injury in fact. *Id*. (citing *Spokeo*, 135 S.Ct. at 1547). To allege injury in fact sufficiently, a plaintiff must claim "that he or she suffered 'an invasion of a legally protected interest' that is 'concrete and particularized' and 'actual or imminent, not conjectural or hypothetical.'" *Id*. (quoting *Spokeo*, 136 S. Ct. at 1548).

A court's subject matter jurisdiction likewise depends upon the existence of an actual case or controversy. *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 101 (1997). When a lawsuit no longer presents a live controversy, the matter is moot and the case loses subject matter jurisdiction. *Id*. at 94 (quoting *Ex parte McCardle*, 74 U.S. 506, 514 (1869)); *see also* Teamsters' Opening Brief, at 26-33.

Plaintiffs have no standing to assert claims for declaratory or injunctive relief under Count I. Plaintiffs are no longer members of the Teamsters. They are no longer paying union dues. Teamsters provided remittance checks for all dues from the time that each Plaintiff made the request to cease union membership and all those checks were cashed. They lack any standing at this point to seek declaratory or injunctive relief. *See Molina v. Pa. Soc. Serv. Union*, No. 1-19-cv-00019, 2019 U.S. Dist. LEXIS 120040, at *24-25 (M.D. Pa. July 18, 2019); *Ogle*, 2019 U.S. Dist. LEXIS 119142, at *14.

To the extent that Plaintiffs argue that their claims for declaratory and injunctive relief in Count I are saved by the capable-of-repetition doctrine, they are in error. "[T]he capable-of-repetition doctrine applies only in exceptional situations,

and ***generally only where the named plaintiff can make a reasonable showing that he will again be subjected to the alleged illegality***." *City of Los Angeles v. Lyons*, 461 U.S. 95, 111 (1983). Plaintiffs cannot make such a showing justifying declaratory or injunctive relief with respect to Count I.

Teamsters ultimately granted each Plaintiffs' requests to revoke their union membership and the County, upon request by the Union, ceased dues deductions. (*Jt. St.*, ¶¶ 26-30, 36-38, 40, 47-49, 50, 59-61, 63.) Thus, Plaintiffs are no longer subject to the provisions of the collective bargaining agreement and the Pennsylvania Employe Relations Act, 43 P.S. § 1101.101, *et seq.* ("PERA") regarding membership applications, maintenance of membership, dues authorization forms, or dues deduction, or any purported practice of Teamsters concerning the same. Nor can they claim that they or anyone else in the future will face the "unconstitutional choice" between becoming a member and paying dues or remaining a non-member and paying fair share fees. *Janus*' holding that fair share fees are unconstitutional makes that an impossibility.

For all these reasons, Plaintiffs lack standing to assert claims for declaratory and injunctive relief in Count I. Thus, with respect to such relief, this Court should deny Plaintiffs' Motion for Summary Judgment and grant Teamsters' Motion for Summary Judgment, dismissing with prejudice Plaintiffs' request for declaratory and injunctive relief.

2. Plaintiffs' Claims for Monetary Relief for Remittance of Dues Paid from the Time They Requested to End Union Membership Until Dues Deductions Ceased Are Moot.

In Count I, Plaintiffs seek retroactive dues from the date that they first started paying union dues until those dues deductions ceased. Teamsters have remitted in the form of a checks all dues from the date Plaintiffs made their individual requests to end membership in the Union until the date those dues deductions ceased. Because there is no actual case or controversy regarding the dues remitted between the date of those requests until the date those dues deductions ceased, and Plaintiffs have in fact received and cashed those remittance checks, that portion of Plaintiffs' request for monetary relief should be dismissed as moot. *See Molina v. Pa. Soc. Serv. Union,* 2019 U.S. Dist. LEXIS 120040, at *26-28.

V. CONCLUSION

Based on the above, this Court should dismiss with prejudice in their entirety Counts I and II asserted against Teamsters and all claims for relief sought thereunder.

Respectfully submitted:

WILLIG, WILLIAMS & DAVIDSON
s/ John R. Bielski
JOHN R. BIELSKI, ESQUIRE
1845 Walnut Street, 24th Floor
Philadelphia, PA 19103
Office: 215-656-3652
Facsimile: (215) 561-5135
jbielski@wwdlaw.com

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Attorneys for Teamsters