

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

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BLAKE LEITCH, SHERI LASH, BETH	)	
POLLO, HEIDI PARENT, JIM SODARO,	)	
TONI HEAD, CONNIE AMETER,	)	No. 1:19-cv-02921
TAIRANCE McGEE, and JACK DEHEVE	)	
	)	
Plaintiffs,	)	
	)	Honorable Judge Jorge L. Alonso
v.	)	
	)	
AMERICAN FEDERATION OF STATE,	)	
COUNTY AND MUNICIPAL	)	
EMPLOYEES, COUNCIL 31, AFL-CIO,	)	
	)	
Defendant.	)	

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**JOINT MOTION TO STAY THE CASE**

Plaintiffs Blake Leitch, Sheri Lash, Beth Pollo, Heidi Parent, Jim Sodaro, Toni Head, Connie Ameter, Tairance McGee, and Jack Deheve, and Defendant American Federation of State, County and Municipal Employees, Council 31, AFL-CIO (“Council 31”) jointly and respectfully move this Court to stay all proceedings in this matter pending decisions by the United States Court of Appeals for the Seventh Circuit in *Janus v. American Federation of State, County and Municipal Employees, Council 31, et al.*, No. 19-1553 and *Mooney v. Illinois Education Association et al.*, No. 19-1774.

1. On May 1, 2019, Plaintiffs filed this action seeking the return of agency fees paid on behalf of themselves and as representatives of a class of employees who were compelled to pay agency fees to Council 31 as non-members before the Supreme Court decision in *Janus v. AFSCME Council 31*, 138 S. Ct. 2448 (2018).

2. On June 6, 2019, Defendant filed a motion to dismiss arguing that Plaintiffs' claim is barred by the good-faith defense available to private parties sued under 42 U.S.C. § 1983. *See* ECF No. 15. In support, among other things, Defendant cites the opinion by the district court in *Janus* after the case was remanded by the Supreme Court.

3. In *Janus*, the Supreme Court found that the practice of compelling agency fees from non-members of a union without affirmative consent was unconstitutional. On remand to the district court (Hon. Robert W. Gettleman), Janus moved for summary judgment to recoup from Council 31 the agency fees remitted on his behalf to Council 31 before the Supreme Court's *Janus* decision. Council 31 filed a cross-motion for summary judgment on Janus' damages claim.

4. On March 18, 2019, Judge Gettleman issued a Memorandum Opinion and Order granting Council 31's motion for summary judgment and denying Janus' motion for summary judgment. While recognizing that the Seventh Circuit has not yet addressed whether there is a good-faith defense available to private parties sued under 42 U.S.C. § 1983, Judge Gettleman concluded that there is such a good-faith defense and that it applied to bar Janus' claim for the repayment of pre-*Janus* agency fees, because those fees were remitted to Council 31 in accord with an Illinois statute that, at the time, was constitutional under Supreme Court precedent.

5. On March 27, 2019, Janus appealed Judge Gettleman's decision to the Seventh Circuit. Both appellant and appellee briefs have been filed before the Seventh Circuit, and the reply brief is due July 3, 2019. In addition, the *Mooney* case—which also raises the issue of whether the good-faith defense bars the repayment of pre-*Janus* agency fees as a matter of law—is also before the Seventh Circuit. In *Mooney*, the appellant's brief has been filed, and the

appellees' brief is due to be filed on June 27, 2019. The Seventh Circuit has issued an order that the appeals in *Janus* and *Mooney* will be argued on the same day before the same panel.

6. Defendant's motion to dismiss in this case is premised on the argument that the good-faith defense bars plaintiffs' claims for the repayment of pre-*Janus* agency fees. This is the same issue that is before the Seventh Circuit in the *Janus* and *Mooney* appeals.

7. Counsel for Plaintiffs in this case are also counsel for the plaintiff in *Janus*. Council 31 is a defendant in this case and in *Janus*, and is represented by the same counsel in both cases. Lead counsel for Defendant in this case is also counsel for the defendant unions in *Mooney*.

8. The parties recognize that decisions by the Seventh Circuit in *Janus* and *Mooney* will at least have a significant impact on the legal arguments made in this case, if not be dispositive of plaintiffs' claims.

9. Thus, the parties jointly move that this Court stay this case pending decisions by the Seventh Circuit in the *Janus* and *Mooney* cases.

10. Counsel for the parties propose this stay in order to save judicial resources and to avoid having to duplicate their efforts in this case and in the appeals currently pending before the Seventh Circuit.

11. The parties propose that the Court stay this case and set a status hearing for approximately one year, with leave for the parties to request a status hearing sooner should the Seventh Circuit issue decisions in *Janus* and *Mooney* before then. The parties further propose that discovery and the status hearing currently scheduled for June 25, 2019 be indefinitely continued in line with this stay.

12. In addition, if the Court grants this joint motion to stay, Defendant agrees to withdraw its motion to dismiss, so long as that withdrawal is without prejudice to Defendant re-filing a motion to dismiss after the stay is lifted.

WHEREFORE, Plaintiffs and Defendant respectfully request that the Court stay all further proceedings in this case until after the United States Court of Appeals for the Seventh Circuit has issued its decisions in *Janus v. AFSCME Council 31*, No. 19-1553, and *Mooney v. Illinois Education Association*, No. 19-1774.

Dated: June 19, 2019

Respectfully Submitted,

By: /s/ Jeffrey Schwab

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