No. 19-2391

IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

GREGORY J. HARTNETT; ELIZABETH M. GALASKA;
ROBERT G. BROUGH, JR.; JOHN M. CRESS,
Appellants,

v.

PENNSYLVANIA STATE EDUCATION ASSOCIATION; HOMER-CENTER EDUCATION ASSOCIATION; TWIN VALLEY EDUCATION ASSOCIATION; ELLWOOD AREA EDUCATION ASSOCIATION; HOMER-CENTER SCHOOL DISTRICT; TWIN VALLEY SCHOOL DISTRICT; ELLWOOD CITY AREA SCHOOL DISTRICT,
Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

BRIEF OF APPELLANT

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I. INTRODUCTION

This appeal raises issues surrounding a trial court's responsibility to apply United States Supreme Court precedent to undisputed facts where a party raises the defense of "voluntary cessation." Moreover, it presents a scenario in which the parties raising such defense continue to act pursuant to a state statute, which is constitutionally suspect under a recent Supreme Court ruling, and the trial court could have provided immediate, effective declaratory and injunctive relief.

In 2017, Appellants, public school teachers Gregory J. Hartnett, Elizabeth M. Galaska, Robert G. Brough, Jr., and John M. Cress ("Teachers"), filed a civil rights action requesting, among other relief, that the trial court declare portions of Pennsylvania law—and sections of Unions' collective bargaining agreements ("CBAs") implementing those laws—invalid. The following year, after the Supreme Court invalidated a similar Illinois law, Appellees[1] (collectively, "Unions") stopped defending Pennsylvania law and attempted to unilaterally moot this case in an apparent effort to prevent any provision of relief to Teachers.

The trial court should have applied Supreme Court precedent to Pennsylvania law and provided the declaratory and injunctive relief Teachers requested. Instead, it concluded that Unions' voluntary change in position deprived it of subject matter jurisdiction to do so, and it dismissed Teachers' case. Because the trial court erred in

[1] Appellees include Teachers' public-sector unions—Pennsylvania State Education Association, Homer-Center Education Association, Twin Valley Education Association, and Ellwood Area Education Association.

failing to grant requested relief and concluding that Teachers' case was moot, on appeal, Teachers request that this Court reverse the trial court and remand for further proceedings, as Teachers are ultimately entitled to judgment and relief on the merits.

II. STATEMENT OF SUBJECT MATTER AND APPELLATE JURISDICTION

Teachers appeal from a final order of the United States District Court of the Middle District of Pennsylvania, which granted a motion to dismiss Teachers' claims, denied Teachers' motion for summary judgment, and disposed of all claims. (1:4).[2] In ruling against Teachers, the trial court erroneously determined that "voluntary cessation" of admittedly unconstitutional practices deprived it of subject matter jurisdiction to issue declaratory and injunctive relief on the merits. (1:9, 17–20).

This civil rights action was initiated by complaint on January 18, 2017, and alleged violations of Teachers' First and Fourteenth Amendment rights pursuant to 42 U.S.C. § 1983 under the trial court's federal question and civil rights jurisdiction, 28 U.S.C. §§ 1331, 1343. (2:26). The trial court's final order in this matter was entered May 17, 2019 (1:4; 2:33); and, on June 13, 2019, Teachers timely filed and served on Appellees their notice of appeal to this Court pursuant to 28 U.S.C. § 1291 (1:1–2; 2:33).

[2] References to the Joint Appendix appear as follows: "([volume number]:[page number])."

III. STATEMENT OF THE ISSUES

A. Whether Teachers Were Entitled to Judgment as a Matter of Law Under United States Supreme Court Precedent (Raised by Motion for Summary Judgment (2:334–40) and Ruled Upon by Final Order (1:4))

B. Whether the Trial Court Erred in Concluding that Unions' Voluntary Change in Position Deprived It of Subject Matter Jurisdiction to Address Teachers' Claims (Raised by Motion to Dismiss (2:341–45), Objected to by Brief, ECF 71, and Ruled Upon by Final Order (1:4))

IV. STATEMENT OF RELATED CASES AND PROCEEDINGS

Similar issues have been raised against Appellee Pennsylvania State Education Association ("PSEA") in a Pennsylvania Commonwealth Court proceeding, captioned *Ladley v. Pennsylvania State Education Association*, No. 158 C.D. 2019 (docketed Feb. 13, 2019), and in two Middle District of Pennsylvania cases, captioned *Misja v. Pennsylvania State Education Association*, No. 1:15-cv-1199, and *Williams v. Pennsylvania State Education Association*, No. 1:16-cv-2529. *Misja* and *Williams* are currently stayed pending the outcome of *Ladley*.

V. STATEMENT OF THE CASE

A. Statement of Facts

Pennsylvania state law allows public-sector unions and public employers to force public employees into subsidizing union speech against their will and as a condition of employment. *See* 71 P.S. § 575 ("section 575"); *and see* 24 P.S. §§ 1-101–27-2702; 43 P.S. §§ 1102.1–1102.9, 43 P.S. §§ 1101.101–1101.2301. Section 575, in particular, makes clear that such requirements may be enforced via CBA against

public school teachers who have, like Teachers, declined to become or remain members of a union. 71 P.S. § 575(b) ("If the provisions of a [CBA] so provide, each nonmember of a collective bargaining unit shall be required to pay to the exclusive representative a fair share fee.").

Teachers, who declined to become or remain union members, were each forced to pay these so-called "fair share fees" pursuant to state law and their respective implementing CBAs. (2:44–45). However, in 2017, Teachers filed suit, challenging the constitutionality of Pennsylvania's fair share fee statutes, on their face and as applied, as well as the sections of Teachers' respective CBAs implementing these statutes, and sought declaratory judgment that both the statutes and all the implementing CBA sections were unconstitutional. (2:57). Teachers also sought injunctive relief requiring the expungement and prohibition of such requirements from current and future CBAs, respectively. (1:8). Unions—PSEA and local affiliates which together had imposed fair share fee requirements against Teachers for years pursuant to section 575—were diametrically opposed to Teachers' requests. (1:6; 2:313–333).

In 2018, the Supreme Court held that a similar statutory scheme in Illinois was unconstitutional:

> Under Illinois law, public employees are forced to subsidize a union, even if they choose not to join and strongly object to the positions the union takes in collective bargaining and related activities. We conclude that this arrangement violates the free speech rights of nonmembers by compelling them to subsidize private speech on matters of substantial public concern.

Janus v. AFSCME, Council 31, 585 U.S. __, 138 S. Ct. 2448, 2459–60 (2018). In striking down Illinois law, *Janus* overruled *Abood v. Detroit Board of Education*, 431 U.S. 209 (1977), but made no reference to Pennsylvania law.

Shortly after *Janus* was decided, PSEA issued $100 checks to Teachers in an effort to moot out the compensatory and nominal damages requests, *see* (2:349), and Unions filed their motion to dismiss with the trial court, arguing that Teachers' case had become moot. In support of their motion to dismiss, Unions provided, *inter alia*, declarations from various lower-level union officials and employers representing that they would voluntarily comply with *Janu*s.

Yet Unions were not complying with *Janus*. For one, Unions never amended the challenged section implementing the fair share fee statute in one of the Teachers' CBAs,[3] stating instead that it would be unnecessary because the CBA is unenforceable and no one would follow it. (1:18). Further, while dispositive motions were pending, Teachers learned that PSEA and other local affiliates *continued* to enter into CBAs—well after and despite *Janus*—that included fair share fee provisions.[4] (3:499–735). In fact, at least seven school districts had, as recently as February 2019, agreed to CBAs with fair share fee requirements after and in defiance of *Janus*. *Id.*

[3] Appellant Elizabeth M. Galaska's CBA with her employer, negotiated by PSEA and Appellee Twin Valley Education Association, continues to mandate that nonmembers pay fair share fees as a condition of employment. (1:18; 2:45, 323).

[4] As Appellees acknowledged below, "PSEA provides to its local affiliates assistance, in the form of PSEA employees and/or various other resources, including financial assistance, for use by the affiliates in collective bargaining." (2:46, 324).

Still, the trial court determined that Unions had carried their "heavy burden" of demonstrating "voluntary cessation" and concluded that Unions unilateral change in position deprived the trial court of subject matter jurisdiction to address Teachers' case on the merits, including their request for declaratory and injunctive relief. (1:9–10, 17–20). As for the CBAs entered into by PSEA and local affiliates in defiance of *Janus*, the trial court found them "surprising" but "irrelevant" to whether Unions had carried their heavy burden. (1:19). It denied Teachers' motion for summary judgment, granted Unions' motion to dismiss, and dismissed Teachers' claims. (1:4).

B. Procedural History

Teachers initiated this § 1983 action by complaint, filed January 18, 2017. (1:5; 2:26). Subsequently, on March 21, 2017, Teachers filed their First Amended Complaint, which became the operative complaint below. (1:5; 2:30, 35–312). Unions filed an answer to the amended complaint, whereas Teachers' school districts, who were defendants at that time, filed motions to dismiss. (2:28, 313–333). The school districts were eventually dismissed with prejudice.[5] (1:6; 2:30a).

On October 2, 2017, Teachers and Unions jointly requested that the trial court stay proceedings until after the Supreme Court decided *Janus*, in which it had just granted *certiorari*. (1:7; 2:30). As the parties acknowledged in their joint motion to stay,

[5] Teachers are not appealing from the trial court's judgment with respect to the school districts, which were dismissed pursuant to *Abood*.

Janus "[wa]s nearly certain to impact and *control* the disposition of this matter." (1:7) (Emphasis added). Two days later, the Court granted the stay. (1:7; 2:30).

On August 9, 2018, after the decision in *Janus* was issued, the trial court ordered Teachers and Unions to file and brief their respective dispositive motions. (1:7; 2:30). On September 14, 2018, in keeping with the trial court's direction, Teachers filed their motion for summary judgment (1:7–8; 2:30, 334–40), and Unions filed their motion to dismiss (1:8; 2:30–31, 341–45). The parties subsequently filed responsive and reply briefs. (1:8–9; 2:30–31).

On May 17, 2019, the trial court entered its memorandum and final order dismissing and directing closure of Teachers' case. (1:4–20; 2:33). And, on June 13, 2019, Teachers timely filed their notice of appeal. (1:1–2; 2:33).

C. Rulings Presented for Review

Teachers present for review the trial court's final order (1) granting Unions' motion to dismiss; (2) dismissing Teachers' claims with prejudice; (3) denying as moot Teachers' motion for summary judgment; and (4) directing the clerk of court to close the proceedings below. (1:4).

VI. SUMMARY OF ARGUMENT

The trial court erred in refusing to grant Teachers' motion for summary judgment, which was supported entirely by undisputed facts and merely called on the trial court to do what it is already obligated to do: apply binding Supreme Court precedent. Because Teachers were entitled to a ruling on, and granting of, summary

judgment, this Court should reverse the trial court and remand for further proceedings.

The trial court also erred in concluding that Unions' voluntary change in position deprived it of subject matter jurisdiction to address Teachers' claims on the merits. First, it was not impossible for the trial court to grant effective relief to Teachers—namely, the invalidation and injunction of fair share fee language in Pennsylvania law and Teachers' CBAs. Second, Unions were required—but failed—to carry their "formidable" burden of demonstrating that their assurances of compliance with *Janus* unilaterally moot this case. Finally, even if the trial court did believe Unions' claims of "voluntary cessation," it should not have concluded that it lacked subject matter jurisdiction; instead, it should have provided declaratory relief to Teachers and appropriately tailored the scope of permanent injunctive relief.

Ultimately, this Court should reverse the trial court and remand for further proceedings, so that Teachers can obtain their requested relief, including an award of reasonable attorneys' fees and costs.

VII. ARGUMENT

A. Teachers Were Entitled to Judgment as a Matter of Law Under United States Supreme Court Precedent

1. Scope and Standard of Review

This Court reviews a trial court's ruling on a motion for summary judgment *de novo* and "appl[ies] the same test the District Court should have used." *In re Processed*

Egg Products Antitrust Litig., 881 F.3d 262, 267 (3d Cir. 2018) (quoting *Howard Hess Dental Labs., Inc. v. Dentsply Int'l, Inc.*, 602 F.3d 237, 246 (3d Cir. 2010)). That is, "[s]ummary judgment is appropriate when 'there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.'" *Id.* at 268 (quoting Fed. R. Civ. P. 56(a)). The scope of review is plenary. *Gorum v. Sessoms*, 561 F.3d 179, 184 (3d Cir. 2009).

2. Discussion

The trial court erred in denying Teachers' motion for summary judgment. Teachers were entitled to judgment as a matter of law under the Supreme Court's recent pronouncement in *Janus*, in which it held a similar Illinois law unconstitutional.[6] *See Janus*, 138 S. Ct. at 2459–60. Accordingly, the trial court should have applied *Janus* in Pennsylvania, declared fair share fee requirements in Pennsylvania law and Teachers' CBAs unconstitutional on Teachers' motion for summary judgment, and permanently enjoined Unions from further violations of Teachers' constitutional rights.

With regard to interpretation of the United States Constitution, the Supreme Court is "the final expositor and arbiter of all disputed questions touching the scope and meaning of that sacred instrument, and its decisions thereon are binding upon all courts, both state and federal." *Mugler v. Kansas*, 123 U.S. 623, 8 S. Ct. 273, 276 (1887);

[6] As the trial court appeared to recognize, *see* (1:11–18), there were no issues of material fact because Teachers' motion was based on undisputed facts admitted by Unions in their answer (2:313).

see Hutto v. Davis, 454 U.S. 370, 375 (1982) ("[U]nless we wish anarchy to prevail within the federal judicial system, a precedent of this Court must be followed by the lower federal courts no matter how misguided the judges of those courts may think it to be.").

This is no less true when the job is relatively straightforward. By way of illustration, when the Supreme Court decided another high-profile case with national implications, *Citizens United v. Federal Election Commission*, 558 U.S. 310 (2010), there was little doubt that many state statutes were constitutionally dubious; however, lower courts were still required to apply that decision to other federal and state statutes.[7]

Here, Teachers and PSEA do not actually dispute that *Janus* controls. Pennsylvania law, like the Illinois law that was at issue in *Janus*, still permits public-

[7] *See, e.g., General Majority PAC v. Aichele*, No. 1:14-CV-332, 2014 WL 3955079, at *1, *4 (M.D. Pa. Aug. 13, 2014) (relying on *Citizens United* to strike down as unconstitutional a portion of Pennsylvania statute prohibiting contributions for independent expenditures); *and see Republican Party of N.M. v. King*, 741 F.3d 1089, 1090-91 (10th Cir. 2013) (interpreting a New Mexico statute in light of *Citizens United* and finding law irreconcilable); *N.Y. Progress and Protection PAC v. Walsh*, 733 F.3d 483, 487 (2d Cir. 2013) (citing *Citizens United* as a basis for granting injunction enjoining enforcement of New York law limiting contributions); *Texans for Free Enterprise v. Tex. Ethics Comm'n*, 732 F.3d 535, 538 (5th Cir. 2013) (applying *Citizens United* to a suit challenging Texas law on contributions); *Wis. Right to Life State PAC v. Barland*, 664 F.3d 139, 143 (7th Cir. 2011) (holding a Wisconsin statute limiting campaign contributions to independent groups unconstitutional after *Citizens United*); *Long Beach Area Chamber of Commerce v. Long Beach*, 603 F.3d 684, 695 (9th Cir. 2010) (striking down a portion of a city campaign ordinance based on *Citizens United*); *SpeechNow.org v. FEC*, 599 F.3d 686, 689 (D.C. Cir. 2010) (holding that a Supreme Court opinion in *Citizens United* resolved the issue, thereby requiring that statute be stricken); *see also N.Y. Progress*, 733 F.3d at 487 n.2 (citing six federal district court cases striking down analogous laws).

sector unions to collect agency (or "fair share") fees without the affirmative consent of nonmembers.[8] Section 575(b) obligates nonmembers to pay fair share fees to their public-sector union if required by a collective bargaining agreement, and subsections (c) through (i) set forth the legal regime for the exaction of fair share fees from nonmembers' wages and nonmembers' challenges to paying "nonchargeable" fair share fees. Only subsections (j) through (m), which set forth certain union reporting requirements, may lawfully be enforced after *Janus*.[9] In short, section 575 violates nonmembers' First Amendment rights in the same way Illinois law did in *Janus*.

Curiously, the trial court appeared to adopt Unions' argument below that only "self-enforcing legislative mandates" need be addressed by lower courts following a Supreme Court decision, whereas section 575 requires Unions' continued participation to have its intended effect. *See* (1:18a). Even if an accurate distinction could be drawn here, the trial court cited no case hinting that such a distinction would be meaningful in the context of whether it should apply Supreme Court precedent to the undisputed facts before it. (1:18a). Lower courts are not relieved of their obligation just because a statute must be implemented. And in fact, the statute had

[8] *Compare* 71 P.S. § 575(b) ("If the provisions of a collective bargaining agreement so provide, each nonmember of a collective bargaining unit shall be required to pay to the exclusive representative a fair share fee.") *with Janus*, 138 S. Ct. at 2459–60 ("Under Illinois law, public employees are forced to subsidize a union, even if they choose not to join and strongly object to the positions the union takes in collective bargaining and related activities.").

[9] Subsection (a) sets forth definitions for terms used throughout section 575, including nonoffending subsections (j) through (m).

been implemented in each of the three school districts at issue here by the CBA, and one of those CBAs still has the implementing section more than a year after *Janus*.

In sum, given the Supreme Court's decision in *Janus*, the lower court had no choice but to declare that portions of Pennsylvania law, like portions of the Illinois law at issue in *Janus*, violate the First Amendment and are invalid, along with the implementing CBAs sections. Stated simply, Supreme Court precedent controlled on the issue Teachers' presented on summary judgment. Accordingly, the trial court should be reversed and, on remand, section 575(b) through (i) should be declared unconstitutional under the rationale set forth in *Janus*, along with the implementing sections in the CBAs at issue.

B. Unions' Voluntary Change in Position Did Not Deprive the Trial Court of Subject Matter Jurisdiction to Address Teachers' Claims

1. Scope and Standard of Review

"The question of whether the District Court had subject matter jurisdiction is an issue of law that [this Court] review[s] *de novo*." *Hartig Drug Co., Inc. v. Senju Pharmaceutical Co. Ltd.*, 836 F.3d 261, 267 n.8 (3d Cir. 2016). The scope of review is plenary. *Weitzner v. Sanofi Pasteur, Inc.*, 819 F.3d 61, 63 (3d Cir. 2016).

2. Discussion

The trial court erred in concluding that Unions' voluntary change in position deprived it of subject matter jurisdiction to provide Teachers' requested relief, and the PSEA's and its locals' maintenance and execution of CBAs with fair share fee

provisions after *Janus* underscores its error. *See Guppy v. City of L.A.*, No. SACV 18-1360, slip op. at 8–9 (C.D. Cal. June 5, 2019), ECF No. 67[10] ("While the City Defendants may have since stopped seizing Plaintiff's wages in violation of *Janus*, their "voluntary cessation of a challenged practice does not deprive a federal court of its power to determine the legality of the practice." (quoting *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc.*, 528 U.S. 167, 189 (2000))).

The trial court erred in at least three respects, each of which are discussed more fully in turn below. First, it was not "impossible for [the trial] court to grant 'any effectual relief whatever'" to Teachers—namely, the invalidation of and injunction against fair share fee language in Pennsylvania law and Teachers' CBAs. *Knox v. SEIU, Local 1000*, 567 U.S. 298, 307 (2012) (quoting *Erie v. Pap's A.M.*, 529 U.S. 277, 287 (2000)). Second, Unions have failed to carry their "'heavy,' even 'formidable'" burden of demonstrating that their assurances of compliance with *Janus* unilaterally moot this case. *DeJohn v. Temple Univ.*, 537 F.3d 301, 309 (3d Cir. 2008) (quoting *United States v. Gov't of Virgin Islands*, 363 F.3d 276, 285 (3d Cir. 2004)). And third, to the extent that the trial court believed Unions would comply with *Janus*, such "voluntary cessation" would not moot the need for a declaration as to the constitutionality of Pennsylvania law or the CBAs but would merely impact the scope of injunctive relief. *See United States v. W. T. Grant Co.*, 345 U.S. 629, 633 (1953) ("Such a profession does not suffice

[10] A slip copy of the district court's decision in *Guppy* is appended hereto.

to make a case moot although it is one of the factors to be considered in determining the appropriateness of granting an injunction against the now-discontinued acts.").

a. *This case is not moot because it was not impossible for the trial court to grant effective relief to Teachers.*

"A case becomes moot only when it is impossible for a court to grant 'any effectual relief whatever' to the prevailing party." *Knox*, 567 U.S. at 307 (quoting *Erie*, 529 U.S. at 287). That is, "[a]s long as the parties have a concrete interest, however small, in the outcome of the litigation, the case is not moot." *Id.* at 307–08 (quoting *Ellis v. Bhd. of Ry. Clerks*, 466 U.S. 435, 442 (1984)).

Indeed, as this Court states, "[t]he court's ability to grant effective relief lies at the heart of the mootness doctrine." *DeJohn*, 537 F.3d at 308–09 (quoting *Donovan ex rel. Donovan v. Punxsutawney Area Sch. Bd.*, 336 F.3d 211, 216 (3d Cir. 2003)). "[W]hen a court can fashion '*some* form of meaningful relief,' even if it only partially redresses the grievances of the prevailing party, the appeal is not moot." *In re Swedeland Dev. Grp., Inc.*, 16 F.3d 552, 560 (3d Cir. 1994) (quoting *Church of Scientology v. United States*, 506 U.S. 9, 12 (1992)).

Here, it was not "impossible for [the trial] court to grant 'any effectual relief whatever.'" *Knox*, 567 U.S. at 307 (quoting *Erie*, 529 U.S. at 287). Most obviously, it could and should have declared unconstitutional fair share fee requirements within Pennsylvania law. Such relief is available—and necessary—because Pennsylvania's fair share fee statutes were not at issue in *Janus*.

Indeed, *Janus* involved Illinois litigants and Illinois law,[11] and the Supreme Court could not and did not strike down Pennsylvania law when it decided *Janus*. *See Martin v. Wilks*, 490 U.S. 755, 762 (1989) ("A judgment or decree among parties to a lawsuit resolves issues among them, but it does not conclude the right of strangers to those proceedings." (superseded on other grounds by statute)); *Doran v. Salem Inn, Inc.*, 422 U.S. 922, 931 (1975) ("[N]either declaratory nor injunctive relief can directly interfere with enforcement of contested statutes or ordinances except with respect to the particular federal plaintiffs . . . ."). [12] It is the work of lower courts—and should have been the work of the trial court here—to apply the Supreme Court's ruling in their respective jurisdictions. *See Waters v. Ricketts*, 798 F.3d 682, 685 (8th Cir. 2015) ("The [Supreme] Court invalidated laws in Michigan, Kentucky, Ohio, and Tennessee—not Nebraska."); *see also Rosenbrahn v. Daugaard*, 799 F.3d 918, 922 (8th Cir. 2015) ("not South Dakota"); *Jernigan v. Crane*, 796 F.3d 976, 979 (8th Cir. 2015) ("not Arkansas").

Accordingly, in an ongoing federal district court case also involving *Janus*, the court recently determined that the "case is not moot as it pertains to the declaratory

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[11] Ill. Comp. Stat. ch. 5 §§ 315/1–315/28.

[12] *See also* Edward A. Hartnett, *A Matter of Judgment, Not A Matter of Opinion*, 74 N.Y.U. L. Rev. 123, 126 (1999) ("The operative legal act performed by a court is the entry of a judgment; an opinion is simply an explanation of reasons for that judgment."); Thomas W. Merrill, *Judicial Opinions as Binding Law and as Explanations for Judgments*, 15 Cardozo L. Rev. 43, 62 (1993) ("[J]udicial opinions are simply explanations for judgments—essays written by judges explaining why they rendered the judgment they did.").

relief sought" and that the defendant's "acknowledgement that post-*Janus* deductions were illegal does not moot the case." *Guppy*, No. SACV 18-1360, slip op. at 8. As the court succinctly stated, "[t]hat other remedies exist and have been afforded 'does not preclude a declaratory judgment that is otherwise appropriate.'" *Id.* at 9 (quoting Fed. R. Civ. P. 57).

Similar relief was granted throughout the country in lower court decisions following the Supreme Court's decision in *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015),[13] even over objections of mootness.[14] For example, in *Waters v. Ricketts*, 798 F.3d 682 (8th Cir. 2015), the State of Nebraska argued that a challenge to its state statute was moot because *Obergefell* had addressed the constitutionality of Michigan's, Kentucky's, Ohio's, and Tennessee's bans on same-sex marriage in a manner that made clear Nebraska could not enforce its same-sex marriage ban. The Eighth Circuit did not agree:

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[13] *See, e.g., Rosenbrahn v. Daugaard*, 799 F.3d 918, 922 (8th Cir. 2015); *Jernigan v. Crane*, 796 F.3d 976, 979 (8th Cir. 2015); *Waters v. Ricketts*, 798 F.3d 682, 685 (8th Cir. 2015); *Robicheaux v. Caldwell*, 791 F.3d 616, 619 (5th Cir. 2015); *Conde Vidal v. Garcia-Padilla*, 167 F. Supp. 3d 279, 283 (D.P.R. 2016); *Marie v. Mosier*, 122 F. Supp. 3d 1085, 1102 (D. Kan. 2015).

[14] *See, e.g., Waters v. Ricketts*, 159 F. Supp. 3d 992, 999–1001 (D. Neb. 2016) (explaining that, in light of *Obergefell*, "there is no argument now that plaintiffs have won on the merits," and granting summary judgment to plaintiffs and entering declaratory and permanent-injunctive relief); *Marie v. Mosier*, 122 F. Supp. 3d 1085, 1106, 1112–13 (D. Kan. 2015) (granting plaintiffs' motion for summary judgment in challenge to Kansas same-sex marriage ban and awarding declaratory relief, notwithstanding that "the record [ ] suggests that defendants have taken some affirmative steps to accord the relief plaintiffs seek").

> Nebraska suggests that *Obergefell* moots this case. But the Supreme Court specifically stated that "the State laws *challenged by Petitioners in these cases* are now held invalid." *Id.* at 2605 (emphasis added). . . . The Court invalidated laws in Michigan, Kentucky, Ohio, and Tennessee—not Nebraska. The Court also did not consider state benefits incident to marriage, which were addressed by Plaintiffs and the district court here. Nebraska has not repealed or amended the challenged constitutional provision.
>
> Nebraska's assurances of compliance with *Obergefell* do not moot the case. *See Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc.*, 528 U.S. 167, 190 (2000) ("[A] defendant claiming that its voluntary compliance moots a case bears the formidable burden of showing that it is absolutely clear the allegedly wrongful behavior could not reasonably be expected to recur."). These assurances may, however, impact the necessity of continued injunctive relief. The district court should consider Nebraska's assurances and actions and the scope of any injunction, based on *Obergefell* and Federal Rule of Civil Procedure 65(d).

798 F.3d at 685–86 (some citations omitted).

Likewise, the Fifth Circuit remanded with instructions to various district courts to enter final judgment on the merits in light of the Supreme Court's decision—even though all parties conceded that *Obergefell* dictated a particular outcome—because any change in law in another jurisdiction did not finally and conclusively dispose of the controversy. *See Robicheaux v. Caldwell*, 791 F.3d 616, 619 (5th Cir. 2015) ("[The parties] are agreed that the judgment should be reversed and remanded for entry of judgment in favor of plaintiffs."); *Campaign for Southern Equality v. Bryant*, 791 F.3d 625, 627 (5th Cir. 2015) ("Because, as both sides now agree, the injunction appealed from is correct in light of *Obergefell*, the preliminary injunction is AFFIRMED. This matter

is REMANDED for entry of judgment in favor of the plaintiffs."); *De Leon v. Abbott*, 791 F.3d 619, 625 (5th Cir. 2015) (same). Suffice it to say, lower court cases turning on Supreme Court precedent do not automatically resolve themselves.

Teachers' need for a declaratory judgment—and the possibility of additional meaningful remedies—is only underscored by the unfortunate reality that PSEA and other local affiliates *continue* to execute CBAs with fair share fee requirements in other school districts and that Unions left in place a fair share fee requirement within one of Teachers' CBAs. (3:499–735). Regardless of whether PSEA, a party before this Court, is intentionally or negligently defying *Janus*, it is practically begging for an injunction preventing it from imposing such requirements on Teachers. In every Pennsylvania school district in which it has an affiliate, PSEA "provides . . . assistance, in the form of PSEA employees and/or various other resources, including financial assistance, for use by the affiliates in collective bargaining." (2:46, 324)

Simply put, PSEA is part of, if not controlling, the collective bargaining process in nearly every school district in Pennsylvania, and PSEA's inability to honor teachers' rights in one place calls into serious question their ability to do so elsewhere. The trial court could and should have, *at the very least*, invalidated the Twin Valley CBA fair share fee section implementing Pennsylvania law and permanently enjoined Unions from implementing any fair share fee requirements in the future. *See In re Swedeland Dev. Grp., Inc.*, 16 F.3d at 560 ("[W]hen a court can fashion '*some* form of meaningful

relief,' even if it only partially redresses the grievances of the prevailing party, the appeal is not moot." (quoting *Church of Scientology*, 506 U.S. at 12).

In sum, *Janus* controls this matter, but that alone does not mean the work of the federal courts is *impossible*. *See Knox*, 567 U.S. at 307. Because the Supreme Court did not invalidate Pennsylvania law or address Teachers' CBAs, the trial court could have "fashion[ed] '*some* form of meaningful relief,' even if it only partially redresses the grievances of the prevailing party." *In re Swedeland Dev. Grp., Inc.*, 16 F.3d at 560 (quoting *Church of Scientology*, 506 U.S. at 12).

b. *Unions did not carry their "heavy," even "formidable" burden to demonstrate mootness.*

The Supreme Court has long maintained that "[t]he burden of demonstrating mootness is a heavy one." *L.A. Cty. v. Davis*, 440 U.S. 625, 631 (1979) (citation omitted). This Court "has articulated the burden for the party alleging mootness as "'heavy,' even 'formidable.'" *DeJohn*, 537 F.3d at 309 (quoting *Gov't of Virgin Islands*, 363 F.3d at 285).

This "formidable" burden is not satisfied by merely disclaiming any intent to resume illegal activity. *See W. T. Grant Co.*, 345 U.S. at 633 ("Such a profession does not suffice to make a case moot . . . ."). "It is well settled that a defendant's voluntary cessation of a challenged practice does not deprive a federal court of its power to determine the legality of the practice" unless it is "*absolutely clear* that the allegedly wrongful behavior could not reasonably be expected to recur." *Friends of the Earth*, 528

U.S. at 189 (emphasis added) (citations omitted). Mootness arises based on voluntary cessation only if "(1) it can be said with assurance that there is no reasonable expectation that the alleged violation will recur, *and* (2) interim relief or events have completely and irrevocably eradicated the effects of the alleged violation." *DeJohn*, 537 F.3d at 309 (emphasis added).

Here, Unions have not satisfied either prong for demonstrating mootness under *DeJohn*. In fact, they have continued conduct that only fuels the ongoing controversy here. Self-serving statements of policy from lower level employees promising to comply with Janus, along with issuance of $100 checks—all concessions made in the context of litigation and for the purpose of arguing mootness—hardly prove Unions will no longer frustrate nonmembers' rights or press its authority under Pennsylvania law in the future. Given PSEA's instrumental presence in collective bargaining throughout Pennsylvania school districts and its apparent willingness to continue to bargain for and encourage the execution of CBAs in defiance of *Janus* means a reasonable expectation that the violations will recur and that Unions' efforts to eradicate the violations have hardly proven complete and irrevocable.

In fact, historically, PSEA has evidenced a willingness to challenge or ignore Supreme Court precedent.[15] Most notably, for years, PSEA ignored *Chicago Teachers*

[15] *See Christian Legal Soc'y Chapter of the Univ. of Cal., Hastings Coll. of the Law v. Martinez,* 561 U.S. 661, 723 n.3 (2010) (Alito, J., dissenting) ("Particularly in light of Hastings' practice of changing its announced policies, these requests are not moot."); *Bowers v. City of Phila.*, No. CIV.A. 06-CV-3229, 2007 WL 219651, at *32 (E.D. Pa. Jan.

Union, Local No. 1 v. Hudson, 475 U.S. 292, 307 n.18 (1986), in which the Supreme Court determined that public-sector unions exacting agency fees must provide "adequate disclosure" of expenditures to nonmembers, explaining that "adequate disclosure surely would include the major categories of expenses, *as well as verification by an independent auditor*." (Emphasis added). *See Otto v. Pennsylvania State Educ. Ass'n–NEA*, 330 F.3d 125 (3d Cir. 2003). It also ignored this Court in *Hohe v. Casey*, 956 F.2d 399, 415 (3d Cir. 1992), which, years after *Hudson*, explained that "the purpose of requiring the verification . . . is to give the nonmembers some prior assurance that the fee was properly calculated" and that, "[w]hen nonmembers do not receive that assurance, their constitutional rights are violated under *Hudson*, and they are at least entitled to nominal damages of $1.00."

Despite the clear precedent in *Hudson* and *Hohe*, PSEA refused to secure independent audits for its local unions, relying instead on its novel theory that "*Hudson*'s independent auditor requirement was merely *dictum* or applie[d] only to large unions . . . that can afford an independent auditor." *Otto*, 330 F.3d at 131. *Hudson* was decided in 1986; but only in 2003, after nearly *seven years of litigation* against

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25, 2007) ("Furthermore, the City's history of constitutional violations in the area of prison overcrowding and its failure to make any substantial progress since the termination of the previous litigations suggest that the present voluntary cessation cannot be relied upon in the future."); *see also Gray v. Sanders*, 372 U.S. 368, 376 (1963) ("[T]he voluntary abandonment of a practice does not relieve a court of adjudicating its legality, particularly where the practice is deeply rooted and long standing.").

PSEA,[16] did PSEA receive the correction it needed. This Court merely reaffirmed what was already clearly stated by the Supreme Court in 1986 and obvious to everyone else: "We are bound by the Supreme Court's decision in *Hudson*, and its directive of 'verification by an independent auditor' means just that." *Id.* at 132.[17]

PSEA's past conduct provides context to Unions' continued refusal to amend all Teachers' CBAs and PSEA's incomprehensible, continued pursuit of CBAs with fair share fee provisions in defiance of *Janus*. It also directly contradicts Unions' self-serving promises of compliance. Unfortunately, the trial court—which admitted that these new CBAs were "surprising" but disregarded them as "irrelevant" because they impact teachers in other school districts—missed the point. At worst, these new implementing CBAs demonstrate that Unions are not only willing but able to impose fair share fee requirements even after *Janus* and despite their own promises to the trial court to end the practice. (2:354–57, 375–79). At best, they demonstrate that PSEA merely—perhaps conveniently—*forgot* its promises to comply with *Janus* as it

[16] *See Otto v. Pennsylvania State Educ. Ass'n–NEA*, No. CIV. 1:CV–96–1233, 1999 WL 177093, at *1 (M.D. Pa. Jan. 28, 1999) ("This civil action was initiated by a complaint filed on July 2, 1996.").

[17] Equally concerning, the National Education Association ("NEA"), of which PSEA is an affiliate, has long demonstrated a willingness to press its authority under Supreme Court precedent. *See, e.g.*, *Harik v. Cal. Teachers Ass'n*, 326 F.3d 1042 (9th Cir. 2003) (holding unconstitutionally inadequate union's financial disclosures); *Knight v. Kenai Peninsula Borough Sch. Dist.*, 131 F.3d 807 (9th Cir. 1997) (holding constitutionally inadequate union's provision of notice and opportunity to challenge); *Bromley v. Mich. Educ. Ass'n-NEA*, 82 F.3d 686 (6th Cir. 1996) (holding unconstitutional use of nonmember funds for "defensive organizing"); *see also Fed. Election Comm'n v. NEA*, 457 F. Supp. 1102 (D.C. Cir. 1978) (holding illegal NEA's and local unions' attempt to deduct funds for political activity without members' consent).

conducted negotiations with local school districts. But PSEA's negligence works the same evil on Teachers, who cannot be sure fair share fee requirements will not be imposed against them in future CBAs or even sooner through a side agreement executed by Unions after this case has concluded.[18]

Moreover, the proof of this negligence means Unions have not met their formidable burden that it is absolutely clear that the allegedly wrongful behavior could not recur—because it has. In fact, this recurrence has recurred at least *seven* different times since *Janus* was decided (3:499–735), and there is no reason to expect that it will not continue while this appeal is pending and thereafter if the trail court's decision is not reversed.

Additionally, if this case is ultimately dismissed, Unions' efforts to refund Teachers and end collection of fair share fees can easily be reversed in the future by simply enforcing the existing fair share fee requirement in the one District were the language remains in the CBA against Teachers, and renegotiating the fair share fee requirement into the two CBAs against the other Teachers. Both actions are still permitted under Pennsylvania's fair share fee law at issue in this matter. *Knox*, 567 U.S. at 307 ("The voluntary cessation of challenged conduct does not ordinarily

[18] Unions will surely trot out nonbinding decisions from other courts that have found unions' promises to comply with *Janus* convincing; however, none of those cases involved in-force collective bargaining agreements in blatant violation of *Janus* and instituted after *Janus* by a party before it, as is the situation here. If Unions were trying to show this Court that it could not return to fair share fees—effectively the required showing for mootness here—it has utterly failed.

render a case moot because a dismissal for mootness would permit a resumption of the challenged conduct as soon as the case is dismissed. And here . . . it is not clear why the union would necessarily refrain from collecting similar fees in the future.") (citation omitted).

And noncompliance with *Janus* after this case is dismissed is virtually cost-free for Unions. The possibility of not getting caught—with the potential penalty of $1.00 nominal damage claims and returning a limited number of plaintiffs' funds, sometimes only after years of discouraging litigation—is too tempting to resist. *See, e.g.*, *Otto*, 330 F.3d 125. It is not unreasonable to conclude, based on Unions' past and present conduct, including boldly negotiating for fair share fees in defiance of *Janus*, that without an injunction it will continue its contemptuous ways, especially once the courts are not looking.

c. *"Voluntary cessation" does not moot the need for declaratory relief but merely impacts the scope of injunctive relief.*

Finally, even if Unions' promises of compliance with *Janus* were credible—which they were not—such assurances do not moot the need for a declaration as to the constitutionality of fair share fee requirements in Pennsylvania law or Teachers' CBAs; they merely impact the scope of injunctive relief necessary. *See W. T. Grant Co.*, 345 U.S. at 633 ("Such a profession does not suffice to make a case moot although it is one of the factors to be considered in determining the appropriateness of granting an injunction against the now-discontinued acts."); *Waters*, 798 F.3d at 686

("Nebraska's assurances of compliance with *Obergefell* do not moot the case. . . . These assurances may, however, impact the necessity of continued injunctive relief."); *General Majority PAC*, 2014 WL 3955079, at *1 ("The Commonwealth of Pennsylvania concedes that the challenged provision no longer passes constitutional muster, and the only matter remaining to be decided is the scope of this court's order permanently enjoining its enforcement."). Even if the trial court believed Unions and declined to permanently enjoin them, there is no basis or explanation for its failure to declare fair share fee requirements in Pennsylvania law and Teachers' CBAs invalid.

VIII. CONCLUSION

In sum, the trial court erred in denying Teachers' motion for summary judgment and in concluding that Unions' voluntary change in position deprived it of subject matter jurisdiction. Accordingly, this Court should reverse the trial court and remand for further proceedings, as Teachers are ultimately entitled to judgment, along with declaratory and injunctive relief and an award of reasonable attorneys' fees and costs.

August 19, 2019

Respectfully submitted,

s/ David R. Osborne

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	SACV 18-1360-JVS (ADSx)	Date	June 5, 2019
Title	**Derek A. Guppy v. City of Los Angeles, et al.**		

Present: The Honorable	**James V. Selna, US District Court Judge**

Lisa Bredahl	Not Present
Deputy Clerk	Court Reporter
Attorneys Present for Plaintiffs:	Attorneys Present for Defendants:
Not Present	Not Present

Proceedings: [IN CHAMBERS] Order Regarding Motion to Dismiss

Defendants City of Los Angeles (the "City") and City Controller, Ron Galperin ("Galperin") (together—"City Defendants") filed a motion to dismiss Plaintiff Derek A. Guppy's ("Plaintiff") Complaint. (Mot., Dkt. No. 44.) Plaintiff opposed the motion. (Opp'n, Dkt. No. 62.) The City Defendants filed a reply. (Reply, Dkt. No. 63.)

For the following reasons, the Court **grants in part** Defendants' motion to dismiss

I. BACKGROUND

Plaintiff is an individual employed by the City who is in the Building Trades Rank and File Representation Unit (Memorandum of Understanding ("MOU") #2) represented by Los Angeles/Orange County Building and Construction Trades Council, AFL-CIO (the "Trades Council") and/or Local 45, International Brotherhood of Electrical Workers, AFL-CIO ("Local 45") (together—the "Union Defendants"). (Complaint, Dkt. No. 1 ¶ 7.)

The Union Defendants entered into the MOU with the City that controlled the terms and conditions of Plaintiff's employment. (Id. ¶ 12.) Pursuant to the Meyers-Milias-Brown Act, Cal. Gov't Code § 3500 et seq, there was an "Agency Shop Fees – Payroll Dues Deductions" article, which provides in relevant part:

> A. DUES/FEES
> 1. a. Each permanent employee* in this unit (who is not on an unpaid leave of absence) shall, as a condition of continued employment, become a member of the Union, or pay the Union a

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service fee in an amount not to exceed periodic dues, and general assessments of the Union for the term of this MOU. Such amounts shall be determined by the Union and implemented by - Management in the first payroll period which starts 30 days after written notice of the new amount is received by the Controller.

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b. Notwithstanding any provisions of Article 2, Section 4.203 of the Los Angeles Administrative Code (hereinafter "LAAC") to the contrary, during the term of this MOU, payroll deductions requested by employees in this Unit for the purpose of becoming a member and/or to obtain benefits offered by any qualified organization other than the Union, will not be accepted by the Controller. For the purpose of this provision qualified organization means any organization of employees whose responsibility or goal is to represent employees in the City's meet and confer process.

2. Any employees in this Unit who have authorized Union dues deductions on the effective date of this MOU or at any time subsequent to the effective date of this MOU shall continue to have such dues deductions made by the City during the term of this MOU; provided, however, that any employee in the Unit may terminate such Union dues during the thirty-day period commencing ninety days before the expiration of the MOU by notifying the Union of their termination of Union dues deduction. Such notification shall be by certified mail and should be in the form of a letter containing the following information: employee name, employee number, job classification, department name and name of Union from which dues deductions are to be cancelled. The Union will provide the City with the appropriate documentation to process these membership dues cancellations within ten (10) business days after the close of the withdrawal period.

(Agreement, Dkt. No. 1-2, Ex. A, Art. 2.8.)

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On March 13, 2013, Plaintiff resigned his membership in Local 45 via email. (Complaint, Dkt. No. 1 ¶ 14.) On January 22, 2016, Local 45 Business Manager/Financial Secretary Elaine Ocasio ("Ocasio") sent a "Hudson Notice," a copy of the IBEW's "2015 Agency Fee Payers Objection Plan," and a quarterly advance rebate check of $42.27. (Id. ¶ 15.) In a letter dated February 10, 2016, Plaintiff resigned his membership in Local 45.[1] (Id. ¶ 7.)

Plaintiff alleges that "[s]ubsequent to Plaintiff's resignation from union membership, the City continued automatically to deduct from Plaintiff's wages, and the [Union Defendants] have continued to accept payment by the City of, an amount equal to full union dues. **As of the filing of this Complaint, the deductions have continued even after the Supreme Court's decision in Janus**." (Id. ¶ 16) (emphasis in original). Plaintiff indicates that he "did not receive, after his resignation from union membership, and prior to the continued collection of fees equal to full union dues from his wages, adequate notice of his rights and the procedural safeguards which are required by the United States Supreme Court's decision in Hudson" from the Union Defendants. (Id. ¶ 19.) In addition, Plaintiff states that "portions of the dues collected by Local 45 have been or will be used by Local 45 and/or its affiliates for purposes that are not 'germane' to the collective-bargaining activity, not justified by the government's vital policy interest in labor peace and avoiding 'free riders,' and/or significantly adds to the burdening of free speech that is inherent in the allowance of an 'agency shop.'" (Id. ¶ 23.)

Plaintiff brought claims for: (1) violation of the First Amendment and (2) violation of Hudson's requirements. (Id. ¶¶ 25–46.) Plaintiff sought (1) declaratory relief that the Meyers-Milias-Brown Act unconstitutionally abridges the Plaintiff's rights under the First, Fifth, and Fourteenth Amendments and that the First and Fourteenth Amendments prevent Defendants from requiring nonmembers to pay for any of the Union Defendants' activities; (2) injunctive relief (a) enjoining Defendants from engaging in illegal behavior and enforcing the agency shop fees agreement between the Union Defendants and the City, and (b) requiring Defendants to expunge the agency shop fees provision from the Agreement and refund to Plaintiff all union dues deducted from his wages after his February 2016 resignation; (3) compensatory damages for monies deducted and not

[1] The Complaint lists both the March 2013 date and the February 2016 dates for Plaintiff's Local 45 resignation. Because the Plaintiff continually references the February 2016 date for resignation in his Prayer for Relief, the Court assumes that this is the applicable date for which he seeks relief.

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already refunded and "such amounts as principles of justice and compensation warrant, including nominal damages;" and (4) attorneys' fees and costs (Id. at 20–21.)

Plaintiff filed this case on August 3, 2018. (Complaint, Dkt. No. 1). On October 4, 2018, Plaintiff filed a Notice of Constitutional Question stating that he had served the California attorney general via certified mail notice that he is challenging the constitutionality of the Meyers-Milias-Brown Act, CAL. GOVT. CODE § 3502.5. (Notice, Dkt. No. 43.) On October 22, 2018, the City Defendants filed a motion to dismiss, Docket No. 44, and the Union Defendants answered the Complaint, Docket Nos. 45, 47. A scheduling conference was held on November 5, 2018, at which Plaintiff and the Union Defendants represented to the Court that a settlement had been reached between them, except for dispute over Plaintiff's claimed attorney's fees. (Dkt. No. 53-1 at ¶ 2). The City Defendants did not make such representations, and maintain they took no part in the settlement negotiations. Id. at ¶¶ 2, 4–5. The Court subsequently ordered "the case stayed for 60 days to explore further settlement discussions" and "to schedule a settlement conference if their own settlement discussions [were] not productive within 45 days." (Order, Dkt. No. 50). Plaintiff claimed a settlement was reached, and moved for attorney's fees. However, the Court ordered the parties submit a joint report indicating the terms of the settlement, so that a proper determination as to whether Plaintiff "prevailed" could be made. (Docket No. 57).

Plaintiff and the Union Defendants filed a joint report regarding the settlement, in which the "full terms" of the settlement are stated. (Joint Report, Dkt. No. 58). Specifically, the report states:

> Plaintiff and Union Defendants agreed that: (1) Plaintiff would be refunded $2,808.26 in fees deducted from his wages since February 2016, plus an additional $100 in interest; (2) the Union Defendants would cease enforcement of Article 2.8 of MOU #2, and any other agreement or understanding which requires Plaintiff to pay for the activities of the Trades Council and/or Local 45; and (3) the Union Defendants agree to expunge Article 2.8 of MOU #2.
>
> Relevant portions of MOU #2 (and MOU #13) were expunged by letter of agreement between the City and the Union Defendant by

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> agreement dated November 8, 2018. Payment was received by Plaintiff's counsel on January 17, 2019. The City Defendants did not participate in the settlement or in the negotiations leading to the settlement.

(Id. at 2).

II. LEGAL STANDARD

A. Mootness

Pursuant to Article III of the Constitution, the Court's jurisdiction over the case "depends on the existence of a 'case or controversy.'" GTE Cal., Inc. v. FCC, 39 F.3d 940, 945 (9th Cir. 1994). A "case or controversy" exists only if a plaintiff has standing to bring the claim. Nelson v. NASA, 530 F.3d 865, 873 (9th Cir. 2008), rev'd on other grounds, 131 S. Ct. 746 (2011). To have standing, "a plaintiff must show (1) it has suffered an 'injury in fact' that is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical; (2) the injury is fairly traceable to the challenged action of the defendant; and (3) it is likely, as opposed to merely speculative, that their injury will be redressed by a favorable decision." Friends of the Earth, Inc. v. Laidlaw Envtl. Servs., Inc., 528 U.S. 167, 180–81 (2000); see also Lujan v. Defenders of Wildlife, 504 U.S. 555, 560 (1992); Nelson, 530 F.3d at 873. A case becomes moot "when the issues presented are no longer 'live' or the parties lack a legally cognizable interest in the outcome." Already, LLC v. Nike, Inc., 133 S. Ct. 721, 726 (2013) (citation and internal quotation marks omitted).

B. Failure to State A Claim

Under Rule 12(b)(6), a defendant may move to dismiss for failure to state a claim upon which relief can be granted. A plaintiff must state "enough facts to state a claim to relief that is plausible on its face." Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007). A claim has "facial plausibility" if the plaintiff pleads facts that "allow[] the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009).

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In resolving a 12(b)(6) motion under Twombly, the Court must follow a two-pronged approach. First, the Court must accept all well-pleaded factual allegations as true, but "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." Iqbal, 556 U.S. at 678. Nor must the Court "'accept as true a legal conclusion couched as a factual allegation.'" Id. at 678-80 (quoting Twombly, 550 U.S. at 555). Second, assuming the veracity of well-pleaded factual allegations, the Court must "determine whether they plausibly give rise to an entitlement to relief." Id. at 679. This determination is context-specific, requiring the Court to draw on its experience and common sense, but there is no plausibility "where the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct." Id.

III. DISCUSSION

A. Mootness

Under the Declaratory Judgment Act, federal courts have discretion to "declare the rights and other legal relations of any interested party seeking such declaration whether or not further relief is or could be sought." 28 U.S.C. § 2201. A claim for relief under the Declaratory Judgment Act requires a dispute that is: (1) "definite and concrete, touching the legal relations of parties having adverse legal interests"; (2) "real and substantial"; and (3) "admit[ting] of specific relief through a decree of a conclusive character, as distinguished from an opinion advising what the law would be upon a hypothetical state of facts." MedImmune, Inc. v. Genentech, Inc., 549 U.S. 118, 127 (2007) (internal quotation marks and citation omitted). The Declaratory Judgment Act confers "unique and substantial discretion" upon district courts "in deciding whether to declare the rights of litigants." Wilton v. Seven Falls Co., 515 U.S. 277, 286 (1995). "The existence of another adequate remedy does not preclude a declaratory judgment that is otherwise appropriate." Fed. R. Civ. P. 57.

In Janus v. Am. Fed'n of State, Cty., & Mun. Employees, Council 31, 138 S. Ct. 2448 (2018), the Supreme Court held that Illinois' agency-fee scheme violated the free speech rights of nonmembers and that public-sector agency-shop arrangements violate

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the First Amendment. Id. at 2478. In doing so, the Court overruled Abood v. Detroit Bd. of Ed., 431 U.S. 209 (1977), which had authorized the agency-shop arrangements.

The City Defendants argue that the case should be dismissed because the Supreme Court's decision in Janus moots all claims and its holding is not retroactive. (Mot., Dkt. No. 44 at 14.) Specifically, the City Defendants assert that "all of the relief that Plaintiff seeks has already occurred" because "[i]t is now settled law that agency fees cannot be deducted from a nonmember's wages or collected unless the employee affirmatively consents to pay." (Id. at 16.) To the extent that any dues were improperly deducted after Janus was decided on June 27, 2018, the City Defendants state that Plaintiff can only seek relief against the Union Defendants because the union is the entity that receives requests to cancel deductions, and any error in the union deductions are the responsibility of the union, not the City. See Cal. Gov't Code § 1157.12(b) ("The public employer shall rely on information provided by the employee organization regarding whether deductions for an employee organization were properly canceled or changed, and the employee organization shall indemnify the public employer for any claims made by the employee for deductions made in reliance on that information.").

Plaintiff concedes that "his request for injunctive relief is rendered moot by the settlement between the [U]nion Defendants and Plaintiff," and indicates that he has been refunded with interest "all of the monies deducted from his wages since his [union] resignation." (Opp'n, Dkt. 62 at 4, 5 n. 2.) Nonetheless, Plaintiff disputes the City Defendants' contention that all requested relief has already occurred because no court has declared "that the forced-unionism provisions of the Meyers-Milias-Brown Act, Cal. Gov't. Code § 3502.5, are unconstitutional;" thus, Plaintiff contends that his request for declaratory relief is not moot, particularly since "no legislative action has been taken" to change that law. (Id. at 17–18.) Plaintiff suggests that if "the City Defendants are conceding the legal point [that these provisions are unconstitutional], the appropriate judicial response is not dismissal, but immediate entry of judgment, as sought by plaintiff." (Id. at 17.) Plaintiff also indicates that the City Defendants' voluntary cessation of seizing Plaintiff's wages could resume at any time such that the case is not moot. (Id. at 19.) See City News & Novelty, Inc. v. City of Waukesha, 531 U.S. 278, 284 (2001) ("[T]he general rule that voluntary cessation of a challenged practice rarely moots a federal case . . . . traces to the principle that a party should not be able to evade

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judicial review, or to defeat a judgment, by temporarily altering questionable behavior.") (citation omitted). Rather, Plaintiff points out that "the City does not even offer the fig leaf of repeal of the allegedly unconstitutional statute, over which it has no authority." (Opp'n, Dkt. No. 62 at 20) (emphasis added).

The Court finds that this case is not moot as it pertains to the declaratory relief sought. The Court agrees that the City Defendants have no control over legislation surrounding Cal. Gov't Code § 3502.5; thus, there is no live case or controversy related to the City Defendants regarding the constitutionality of the MMBA.[2] With respect to the declaratory judgment "that the First and Fourteenth Amendments prevent the Defendants from requiring nonmembers to pay for any of the Trades Council's and/or Local 45's activities," however, the City's acknowledgment that post-Janus deductions were illegal does not moot the case. In order to hold that the case is moot based on the Janus decision, the City Defendants urge the Court to determine the Defendants' seizure of the wages after the Janus decision was clearly unconstitutional so as to render the case beyond dispute. Such a consequence would suggest the strength of Plaintiff's case, not a grounds for dismissal. See Opp'n, Dkt. No. 62 at 17. Moreover, the allegation that the City Defendants continued to seize Plaintiff's wages after the Janus decision (and after Plaintiff filed suit against them) is sufficient to state a claim for an actual injury for which Plaintiff seeks redress. And although Cal. Gov't Code § 1157.12 provides that "the employee organization shall indemnify the public employer for any claims made by the employee for deductions made in reliance on that information," the Court finds that this provision merely indicates that the City would be indemnified for any mistake made by the Union Defendants, not that they are immune from suit for these deductions.[3] While the City Defendants may have since stopped seizing Plaintiff's wages in violation of Janus, their "'voluntary cessation of a challenged practice does not deprive a federal court

[2] At the hearing on this motion, counsel for Plaintiff pointed out that Plaintiff properly served notice on the state attorney general that a state statute was questioned, but the California attorney general has not appeared to date. See Fed. R. Civ. P. 5.1(a)(1)(B); 5.1(a)(2); Not., Dkt. 43.

[3] Counsel for the City Defendants asserted at the hearing that the Union was at fault in providing an inaccurate list of union members, which included Plaintiff's name. At this stage of the proceedings, the Court is limited to the contents of Plaintiff's Complaint, which does not allege that an inaccurate list led to the City's deductions of Plaintiff's wages.

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of its power to determine the legality of the practice.'" Friends of the Earth, 528 U.S. at 189 (quoting City of Mesquite v. Aladdin's Castle, Inc., 455 U.S. 283, 289 (1982). That other remedies exist and have been afforded "does not preclude a declaratory judgment that is otherwise appropriate." Fed. R. Civ. P. 57. Thus the Court **denies** the motion to dismiss on the basis that the case is now moot.[4]

B. Failure to State a Claim

1. § 1983 Claim Against the Controller

The City Defendants argue that the Court should dismiss the § 1983 official-capacity claims against the Controller because they are duplicative of the claims against the City. (Mot., Dkt. No. 44 at 17.) They cite Kentucky v. Graham, 473 U.S. 159 (1985) for the proposition that "[t]here is no longer a need to bring official-capacity actions against local government officials, for under Monell, . . . local government units can be sued directly for damages and injunctive or declaratory relief." Id. at 167 n. 14; see also Cleveland v. L.A. Cnty. Sheriffs Dep't, 2017 U.S. Dist. LEXIS 56182, *31 (C.D. Cal. Feb. 7, 2017) ("Plaintiff's Section 1983 claim against Frechette in his official capacity is duplicative of Plaintiff's claim against the LASD and should be dismissed without prejudice.").

Plaintiff acknowledges that the "weight of authority holds that the City Controller can be dismissed as redundant," but nonetheless argues that dismissal is not required. (Opp'n, Dkt. No. 62 at 24–25.) He contends that "the better practice is to allow a litigant his choice in naming public officials as defendants along with the municipalities [] also named in an action for declaratory and injunctive relief." (Id. at 25.) Plaintiff distinguishes the Controller in this case from other cases cited by the City Defendants

[4] The Court likewise disagrees with the City Defendant's contention that this case involves a political question like that in Warnken v. Schwarzenegger, 2009 U.S. Dist. LEXIS 114024. In Warnken, the plaintiff alleged he was injured because he could not access his state representative due to the size of assembly districts and requested that the federal court "insure that the lines of California's districts are redrawn to provide many more Assembly representatives," which would require unilaterally altering the state constitution. Id. at *19. Here, in contrast, Plaintiff requests that the Court grant declaratory judgment, and the Court has the power to do so.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

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because the Controller is an elected official, rather than a mere employee of the City. (Id.) Should the Court dismisses the Controller from the action, Plaintiff requests that the dismissal be without prejudice. See Cleveland, 2017 U.S. Dist. LEXIS 56182 at *31.

The Court finds that the claims against the Controller are duplicative of those against the City such that dismissal is appropriate in this case. Plaintiff does not explain why the Controller's status as an elected official is relevant to the claims at issue. (Id. at 25.) Instead, the Court follows the weight of authorities that deem dismissal of the official appropriate when the claims are duplicative. See Kentucky, 473 U.S. at 167. The dismissal is without prejudice.

2. § 1983 First Amendment Claim Against the City

"Pursuant to 42 U.S.C. § 1983, a local government may be liable for constitutional torts committed by its officials according to municipal policy, practice, or custom." Weiner v. San Diego Cnty., 210 F.3d 1025, 1028 (9th Cir. 2000) (citing Monell, 436 U.S. 658, 690–91 (1978)). The Ninth Circuit has delineated this standard into four requirements that a plaintiff must show to impose municipal liability under § 1983: "(1) that the plaintiff possessed a constitutional right of which she was deprived; (2) that the municipality had a policy; (3) that this policy amounts to deliberate indifference to the plaintiff's constitutional right; and, (4) that the policy is the moving force behind the constitutional violation." Plumeau v. Sch. Dist. No. 40 Cnty. of Yamhill, 130 F.3d 432, 438 (9th Cir. 1997) (alterations and internal quotation marks omitted); see also City of Canton v. Harris, 489 U.S. 378, 388–89 (1989). "Liability may be based on a policy, practice or custom of omission amounting to deliberate indifference." Gibson v. Cnty. of Washoe, Nev., 290 F.3d 1175 (9th Cir. 2002).

Existence of a custom or policy may be established through evidence of: (1) a formal policy or practice that constitutes the standard operating procedure of the governmental entity; (2) the individual who committed the constitutional tort was an official with final policy-making authority; or (3) an official with final policy-making authority ratified a subordinate's unconstitutional action and the basis for it. Trevino v. Gates, 99 F.3d 911, 918 (9th Cir. 1996).

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Deliberate indifference is "a stringent standard of fault, requiring proof that a municipal actor disregarded a known or obvious consequence of his action." Bryan Cty. v. Brown, 520 U.S. 397, 410 (1997). "The state actor must recognize an unreasonable risk and actually intend to expose the plaintiff to such risks without regard to the consequences to the plaintiff." Patel, 648 F.3d at 974 (internal quotations and citations omitted). A state actor needs to "know[] that something is going to happen but ignore[] the risk and expose[] [the plaintiff] to it." Grubbs, 92 F.3d at 900. The City Defendants contend that Plaintiff fails to state a claim because he does not allege facts showing that there was any policy or custom or that any policy or custom amounted to "deliberate indifference." (Mot., Dkt. No. 44 at 19.)

Citing Abood, Plaintiff argues that the City Defendants were deliberately indifferent to Plaintiff's First Amendment rights because such deliberate indifference "is inherent in the imposition of a forced-unionism scheme upon public employees." (Opp'n, Dkt. No. 62 at 8.) In addition, Plaintiff contends that he has set forth allegations indicating that the City had a policy or custom because "the City entered into an MOU with the union Defendants containing a forced-unionism clause;" thus, he states that the City's own contract is sufficient to show such a policy. (Opp'n, Dkt. No. 62 at 8; Complaint, Dkt. No. 1 ¶ 13.) Since the MOU is "the moving force behind the constitutional violation," Plaintiff indicates that his Complaint sufficiently states a claim against the City. (Id. at 8–9.)

The City Defendants respond that the facts alleged are insufficient to meet the "deliberate indifference" standard. They distinguish this case from that of Jordan v. City of Bucyrus, Ohio, 739 F. Supp. 1124 (N.D. Ohio 1990), in which the City received letters from the plaintiff's counsel advising it not to collect agency fees, collected the fees anyway, and had no Hudson procedures in place. Id. at 1126–27. Here, since Plaintiff did not send letters advising the City not to deduct fees and never alleged that he sough to use the Hudson procedures, the City Defendants argue that no deliberate indifference can be shown on their part.

The Court finds that the Complaint sufficiently alleges facts that state a claim for the First Amendment violation. While Jordan contains facts that amount to a constitutional violation, those facts do not constitute the *minimum* requirements for

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deliberate indifference. Here, Plaintiff has pled facts indicating that the Controller continued to seize some amount from his wages even after the Janus decision. Since the City Defendants were on notice that the MOU may have been affected by Janus, Plaintiff's allegations that his wages continued to be deducted are sufficient to show that the conclusion that the City had reason to know that they could be infringing on Plaintiff's constitutional rights and proceeded anyway is plausible. Whether Plaintiff can ultimately prove up on those allegations is irrelevant at this stage of the proceedings. Thus, the Court **denies** the motion to dismiss the first claim.

3. Failure to Provide Adequate Notice Procedure

The City Defendants next argue that Plaintiff's allegations against the City Defendants for violations of Hudson's requirements are insufficient to state a claim because the City is not specifically mentioned in any alleged facts related to this claim and the Controller is only mentioned in a conclusory manner insofar as he "collected" and "seized" fees. (Mot., Dkt. No. 44 at 20; Reply, Dkt. No. 63 at 8.) In addition, the City Defendants contend that no liability can attach to the City for violations of Hudson because any "internal union procedure is not regulated or enforced by the public employer." (Id.) See Cal Gov't Code § 1157.12(a),(b); Prescott v. Cty. of El Dorado, 298 F.3d 844, 846 (9th Cir. 2002) ("[I]n this circuit, the employer has no responsibility for ensuring the adequacy of the notice; that is the union's responsibility.").

Plaintiff responds that "[i]mmunity under § 1983 is governed by federal law; state law cannot provide immunity from suit for federal civil rights violations;" thus, Cal Gov't Code § 1157(b), which was enacted within hours of the Janus decision, does not bar his claim against the City. Wallis v. Spencer, 202 F.3d 1126, 1144 (9th Cir. 2000). In addition, Plaintiff disputes the precedential effect of Prescott, suggesting that if the Court applied Prescott's reasoning, it "would have to conclude that they have discovered a rule discerned by no one else in the nearly two decades since Prescott was decided." (Opp'n, Dkt. No. 62 at 12.) Finally, Plaintiff quotes Mitchell v. Los Angeles Unified Sch. Dist., 739 F. Supp. 511 (C.D. Cal. 1990), a pre-Prescott decision, asserting that public employers are also responsible for implementing notice procedures:

> Under Hudson, a public employer, as well as the public employees union, has a responsibility to see to it that adequate procedures are provided which minimize the impingement of the non-members' constitutional rights. Courts have consistently rejected arguments, urged by the school district, that the duty to implement the necessary notice and procedures falls entirely on the union,—that if the public employer merely passively complies, it is immune from section 1983 liability. Indeed, it is the public employer's involvement in the agreement authorizing the seizure of the agency fees that gives rise to a claim by plaintiffs for deprivation of federally secured constitutional rights. And the public employer is the one that deducts the fee from its employees' paychecks. In short, dispense with the public employer and there would be no cause of action.

Id. at 516.

The Court finds that the Complaint fails to state a claim against the City because the factual allegations with respect to notice relate only to the Union Defendants. As the City Defendants point out, the Complaint actually specifies that the City did provide a "Hudson notice" in 2016. (Reply, Dkt. No. 63 at 8, n.6.) Thus, it is unclear based on the Complaint what conduct the City engaged in to violate the requirements under Hudson. Accordingly, the Court **grants in part** the motion to dismiss without prejudice.

IV. CONCLUSION

For the foregoing reasons, the Court **grants in part** the motion to dismiss the Controller without prejudice and the second claim for a Hudson violation and **denies in part** the City Defendants' motion to dismiss. Plaintiff is granted thirty (30) days leave to amend his pleadings to address the deficiencies identified herein. The Court will certify the constitutional challenge to the California attorney general pursuant to Fed. R. Civ. P. 5.1(b) and 28 U.S.C. § 2403, allowing the state sixty (60) days to intervene.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No. SACV 18-1360-JVS (ADSx) Date June 5, 2019

Title **Derek A. Guppy v. City of Los Angeles, et al.**

IT IS SO ORDERED.

: **0**

Initials of Preparer **lmb**

No. 19-2391

IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

GREGORY J. HARTNETT; ELIZABETH M. GALASKA;
ROBERT G. BROUGH, JR.; JOHN M. CRESS,
Appellants,

v.

PENNSYLVANIA STATE EDUCATION ASSOCIATION; HOMER-CENTER EDUCATION ASSOCIATION; TWIN VALLEY EDUCATION ASSOCIATION; ELLWOOD AREA EDUCATION ASSOCIATION; HOMER-CENTER SCHOOL DISTRICT; TWIN VALLEY SCHOOL DISTRICT; ELLWOOD CITY AREA SCHOOL DISTRICT,
Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

JOINT APPENDIX
VOLUME I OF III (PAGES 1–20)

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UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA
Harrisburg Division

GREGORY J. HARTNETT, et al.,

Plaintiffs,

v.

PENNSYLVANIA STATE EDUCATION ASSOCIATION, et al.,

Defendants.

Case No. 1:17-cv-00100-YK

(Hon. Yvette Kane)

NOTICE OF APPEAL

--ELECTRONICALLY FILED--

Notice is hereby given that Plaintiffs, Gregory J. Hartnett, Elizabeth M. Galaska, Robert C. Brough, and John M. Cress, appeal to the United States Court of Appeals for the Third Circuit from this Court's Memorandum, ECF No. 91, and Order, ECF No. 92, granting the Union Defendants' motion to dismiss, ECF No. 64, and denying Plaintiffs' motion for summary judgment, ECF No. 63, entered on May 17, 2019.

Dated: June 13, 2019

Respectfully submitted,

THE FAIRNESS CENTER

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CERTIFICATE OF SERVICE

I, the undersigned, certify that on June 13, 2019, I electronically filed the foregoing notice of appeal with the Clerk of Court using the Court's CM/ECF system, which will send electronic notification of said filing to all counsel of record in this matter, who are ECF participants, and that constitutes service thereon pursuant to Local Rule 5.7.

Date: June 13, 2019

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

GREGORY J. HARTNETT, et al.,	**:**	
Plaintiffs	**:**	
	:	**No. 1:17-cv-100**
v.	**:**	
	:	**(Judge Kane)**
PENNSYLVANIA STATE EDUCATION ASSOCIATION, et al.,	**:**	
Defendants	**:**	

ORDER

AND NOW, on this 17th day of May 2019, in accordance with the accompanying Memorandum, **IT IS ORDERED THAT**:

1. Defendants' Motion to Dismiss for Lack of Jurisdiction (Doc. No. 64) is **GRANTED**;

2. Plaintiffs' claims are **DISMISSED WITHOUT PREJUDICE**;

3. Plaintiffs' Motion for Summary Judgment (Doc. No. 63) is **DENIED** as **MOOT**; and

4. The Clerk of Court is directed to **CLOSE** this case.

s/ Yvette Kane
Yvette Kane, District Judge
United States District Court
Middle District of Pennsylvania

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

GREGORY J. HARTNETT, et al.,	**:**	
Plaintiffs	**:**	
	:	**No. 1:17-cv-100**
v.	**:**	
	:	**(Judge Kane)**
PENNSYLVANIA STATE EDUCATION	**:**	
ASSOCIATION, et al.,	**:**	
Defendants	**:**	

MEMORANDUM

On January 18, 2017, Plaintiffs Gregory J. Hartnett, Elizabeth M. Galaska, Robert G. Brough, Jr., and John M. Cress, Pennsylvania public school teachers, (collectively, "Plaintiffs") initiated this action by filing a complaint (Doc. No. 1)[1] against their respective school district employers Homer-Center School District, Twin Valley School District, and Ellwood City School District (the "School District Defendants"), as well as the superintendents of those school districts, and the following collective bargaining entities: Homer-Center Education Association ("H-CEA"), Twin Valley Education Association ("TVEA"), Ellwood City Education Association ("ECEA"), and the Pennsylvania State Education Association ("PSEA") (collectively, the "Union Defendants"), alleging violations of their First and Fourteenth Amendment rights as a result of the compulsory collection of union fees (or so-called "fair share" fees), from nonmember public school teachers pursuant to the Pennsylvania statutory framework permitting the collection of those fees.[2] Plaintiffs' amended complaint seeks

[1] Plaintiffs subsequently filed an amended complaint (Doc. No. 23), which is the operative pleading in this matter.

[2] The following Pennsylvania statutes govern the relationship between public school teachers, public school districts, and collective bargaining units: 71 P.S. § 575, 43 P.S. §§ 1101.101 et seq., and 24 P.S. §§ 1-101-27-2702.

declaratory and injunctive relief, nominal damages, and an award of attorneys' fees. (Doc. No. 23 ¶ 80.) Currently pending before the Court are the parties' cross-motions: the Union Defendants'[3] Motion to Dismiss, or in the Alternative, for Summary Judgment (Doc. No. 64), and Plaintiffs' Motion for Summary Judgment (Doc. No. 63). For the reasons that follow, the Union Defendants' Motion to Dismiss will be granted, and Plaintiffs' Motion for Summary Judgment will be denied.

I. FACTUAL BACKGROUND AND PROCEDURAL HISTORY

As noted above, through this litigation, Plaintiffs challenge the constitutionality of Pennsylvania's statutory framework governing the compulsory collection of "fair share" union fees from nonmember public school teachers on its face and as applied, maintaining that such fees are a violation of their First Amendment rights. (Doc. No. 23.) The Union Defendants' initial defense to this litigation centered on the United States Supreme Court's decision in Abood v. Detroit Board of Education, 431 U.S. 209 (1977), which upheld the constitutionality of "fair share" statutory provisions under a public sector labor contract. In recent years, several lawsuits, including the instant case, were filed around the country for the purpose of obtaining Supreme Court review in an effort to overrule Abood and to declare "fair share" fees in the public sector unconstitutional. During the pendency of this litigation, the United States Supreme Court granted certiorari in Janus v. AFSCME Council 31, 138 S. Ct. 2448 (2018), which presented the question of whether Abood should be overruled and public sector "fair share" fee arrangements

[3] Plaintiffs voluntarily dismissed their claims against the individual superintendents on March 21, 2017 (Doc. No. 24), and the Court dismissed all claims against the School District Defendants with prejudice by Order dated June 26, 2017 (Doc. No. 51), leaving only the Union Defendants remaining as defendants in the case.

declared unconstitutional. Specifically, Janus involved an Illinois public employee's challenge to compulsory "fair share" fees charged to non-union members pursuant to Illinois law as violative of his First Amendment rights. Recognizing the significance of the Supreme Court's eventual ruling in Janus to this litigation – that it was "nearly certain to impact and control the disposition of this matter" – the parties filed a joint motion seeking a stay of these proceedings until the resolution of Janus. (Doc. No. 55.) The Court granted the motion, staying these proceedings until the Supreme Court's final disposition of Janus. (Doc. No. 56.)

On June 27, 2018, the Supreme Court issued its decision in Janus, overruling Abood by a vote of 5-4 and holding that "[s]tates and public-sector unions may no longer extract agency fees from nonconsenting employees." See Janus, 138 S. Ct. at 2459. Shortly thereafter, the Court held a status telephone conference with the parties regarding the impact of Janus on the disposition of this case. (Doc. No. 59.) At that time, the Union Defendants expressed their position that, because of their stated compliance with Janus by ceasing all collection of "fair share" fees from nonmembers (including all four Plaintiffs) and returning any such fees collected after the date of the Supreme Court's decision, this litigation has been rendered moot. Plaintiffs, on the other hand, maintained that they continue to seek declaratory and injunctive relief from this Court in the form of a finding that Pennsylvania's "fair share" statutory scheme is unconstitutional in light of Janus. Accordingly, the Court issued a scheduling Order setting dates for the cross-filing and briefing of the parties' respective dispositive motions regarding the appropriate resolution of this litigation. (Doc. No. 60.)

Thereafter, on September 14, 2018, Plaintiffs filed a Motion for Summary Judgment seeking a declaration from this Court that the relevant provisions of Pennsylvania law, as well as

the actual "fair share" fee provisions in the respective collective bargaining agreements ("CBAs") applicable to Plaintiffs, are an unconstitutional violation of Plaintiffs' First and Fourteenth Amendment rights and, therefore, null and void, as well as injunctive relief requiring the Union Defendants to remove the "fair share" fee provisions in the CBAs governing Plaintiffs' respective bargaining units, and prohibiting the inclusion of any such provisions in any subsequent CBAs.[4] (Doc. No. 63 at 4.) Plaintiffs also filed a Statement of Facts supporting their Motion for Summary Judgment (Doc. No. 65), and a brief in support of their motion (Doc. No. 66). The Union Defendants subsequently filed a brief in opposition to Plaintiffs' motion (Doc. No. 69), as well as an Answer to Statement of Facts (Doc. No. 68). Plaintiffs filed their brief in reply, rendering the motion ripe for disposition.[5]

At the same time, the Union Defendants filed their Motion to Dismiss for Lack of Jurisdiction, or in the alternative, for Summary Judgment. (Doc. No. 64.) In their motion, the Union Defendants argue that in light of the Janus decision and the measures taken by the Union Defendants to comply with that decision, Plaintiffs can no longer obtain meaningful relief from this Court, and Plaintiffs' claims are moot and subject to dismissal pursuant to Federal Rule of Civil Procedure 12(b)(1) for lack of subject matter jurisdiction. (Id. ¶ 6.) The Union Defendants filed a Statement of Material Facts in Support of their Motion (Doc. No. 64-1), as well as a brief in support (Doc. No. 67). Plaintiffs filed a brief in opposition to the Union Defendants' motion

[4] In their Motion for Summary Judgment, Plaintiffs disclaim their initial request for nominal damages because they acknowledge that the Union Defendants have "paid each plaintiff $100.00 in nominal damages." (Doc. No. 63 at 4.)

[5] Subsequent to the completion of briefing on Plaintiffs' motion, Plaintiffs have filed seven separate Notices of Supplemental Authority Relevant to Pending Dispositive Motions pursuant to Local Rule 7.36. (Doc. Nos. 79, 81, 85-89.)

(Doc. No. 71), as well as an Answer to Statement of Facts (Doc. No. 70). The Union Defendants subsequently filed their reply brief, rendering the motion ripe for disposition.[6]

II. RELEVANT LEGAL STANDARD

Federal Rule of Civil Procedure 12(b)(1) permits a party to move for dismissal for lack of subject matter jurisdiction. See Fed. R. Civ. P. 12(b)(1). Article III of the United States Constitution limits the jurisdiction of federal courts to "Cases" and "Controversies." See U.S. Const., art. III, § 2. "A case becomes moot – and therefore no longer a 'Case' or 'Controversy' for purposes of Article III – 'when the issues presented are no longer "live" or the parties lack a legally cognizable interest in the outcome.'" Already, LLC v. Nike, Inc., 568 U.S. 85, 91 (2013) (quoting Murphy v. Hunt, 455 U.S. 478, 481 (1982)). The parties must maintain a personal stake in the resolution of the dispute throughout the litigation. See Chafin v. Chafin, 568 U.S. 165, 172 (2013). "Therefore, 'if developments occurring during the course of adjudication eliminate a plaintiff's personal stake in the outcome of a suit, then a federal court must dismiss the case as moot.'" Gayle v. Warden Monmouth Cty. Corr. Inst., 838 F.3d 297, 303 (quoting Rosetti v. Shalala, 12 F.3d 1216, 1224 (3d Cir. 1993)). Stated differently, "[t]he central question of all mootness problems is whether changes in circumstances that prevailed at the beginning of the litigation have forestalled any occasion for meaningful relief." See Rendell v. Rumsfeld, 484 F.3d 236, 240 (3d Cir. 2007) (citation and quotation omitted).

"It is well settled that a defendant's voluntary cessation of a challenged practice does not deprive a federal court of its power to determine the legality of the practice." City of Mesquite

[6] The Union Defendants have also filed numerous Notices of Supplemental Authority pursuant to Local Rule 7.36 subsequent to the briefing of their motion. (Doc. Nos. 74-78, 80, 82-84, 90.)

v. Aladdin's Castle, Inc., 455 U.S. 283, 289 (1982). This is so because "if it did, the courts would be compelled to leave '[t]he defendant. . . free to return to his old ways.'" Id. at 289 & n.10 (citations omitted). The Supreme Court has announced a "stringent" standard for "determining whether a case has been mooted by the defendant's voluntary conduct." See Friends of the Earth, Inc. v. Laidlaw Envtl. Servs, Inc., 528 U.S. 167, 189 (2000). Specifically, the Supreme Court has stated that "[a] case might become moot if subsequent events made it absolutely clear that the allegedly wrongful behavior could not reasonably be expected to recur." Id. (internal quotation omitted).

Factual challenges to a court's subject matter jurisdiction under Rule 12(b)(1) on the grounds of mootness can be raised at any time in the litigation. See Mortensen v. First Fed. Sav. & Loan Ass'n, 549 F.2d 884, 891-92 (3d Cir 1977) (stating that the "12(b)(1) factual evaluation may occur at any stage of the proceedings"). In conducting this inquiry, a court may consider evidence outside the pleadings. See Davis v. Wells Fargo, 824 F.3d 333, 346 (3d Cir. 2016) (noting that a factual challenge permits a court "to weigh the evidence and satisfy itself as to the existence of its power to hear the case") (quoting Mortensen, 549 F.2d at 891). Typically the plaintiff bears the burden to persuade the court that it has subject matter jurisdiction. See Mortensen, 549 F.2d at 891 (stating that "the plaintiff will have the burden of persuasion that jurisdiction does in fact exist"); Gould, 220 F.3d at 178 (same). However, the party alleging that a claim has become moot due to a change in a defendant's conduct bears the burden to demonstrate mootness. See Friends of the Earth, 528 U.S. at 189 ("The 'heavy burden of persua[ding]' the court that the challenged conduct cannot reasonably be expected to start up again lies with the party asserting mootness.") (citation omitted).

III. DISCUSSION

A. Arguments of the Parties

As noted above, the Union Defendants maintain that the actions taken by them with regard to the Plaintiffs in light of the Supreme Court's decision in Janus have rendered Plaintiffs' requests for declaratory and injunctive relief moot. (Doc. No. 67 at 6, 12-20.)[7] The Union Defendants maintain that given the "broad, categorical nature" of the ruling in Janus, they recognized immediately that Pennsylvania's statutory scheme authorizing "fair share" fees had "become unenforceable; and they immediately took steps to stop collection of such fees." (Id. at 8.) In connection with their motion and Statement of Material Facts, the Union Defendants submitted several Declarations attesting to actions taken by them regarding Plaintiffs in the wake of the Supreme Court's decision in Janus. Those actions, as described in their Statement of Material Facts and the relevant Declarations, are as follows.

On the day of the Janus decision, Defendant PSEA[8] communicated with every school employer with which a PSEA union affiliate had a "fair share" fee clause in their CBA, notifying them of the decision and asking them to "immediately cease payroll deductions of fair share fees from feepayers in bargaining units represented by PSEA local associations." (Doc. No. 64-1 ¶ 8.) Further, PSEA established procedures to refund any "fair share" fees deducted from nonmembers, with interest, that were attributable to the period after June 27, 2018, the date of

[7] The Union Defendants correctly note that the justiciability of Plaintiffs' claims must be demonstrated "separately for each form of relief sought." See Friends of the Earth, 528 U.S. at 185.

[8] Defendant PSEA is a "statewide employee organization" under 71 P.S. § 575(a), and is affiliated with Defendants H-CEA, TVEA, and EAEA. (Doc. No. 64-1 ¶ 2.)

the decision in Janus. (Id. ¶ 9.)

In addition, on July 2, 2018, Defendant PSEA sent letters to all "fair share" feepayers explaining the import of the Janus decision and informing them that it had contacted employer school districts and asked them to immediately stop payroll deduction of "fair share" fees from nonmembers. (Id. ¶ 10.) Defendant PSEA sent such a letter to each of the Plaintiffs, and refunded any portion of "fair share" fees deducted from their payroll accounts prior to June 27, 2018, but attributable to the period after June 27. (Id. ¶ 11.) Defendant PSEA also delivered $100 cashier's checks to each Plaintiff to compensate them for their claims of nominal damages in connection with this litigation. (Id. ¶ 12.)

The Union Defendants have submitted Declarations from each of the superintendents in the three school districts employing the four Plaintiffs, declaring that Janus made Pennsylvania's public sector "fair share" fee arrangements unconstitutional and unenforceable and stating that each school district ceased the deduction of "fair share" fees as of June 27, 2018, and will not resume the deduction of such fees in the future. (Id. ¶¶ 13, 15-16.) In addition, the Union Defendants submitted a September 10, 2018 Memorandum of Understanding between the Homer-Center School District and Defendant H-CEA removing the "fair share" fee provision from their CBA. (Id. ¶ 14.)

The Union Defendants also submitted Declarations from the respective Presidents of Defendants TVEA, H-CEA, and EAEA, all representing that the "fair share" fee provisions in their CBAs, in effect until July 31, 2020, August 14, 2020, and June 30, 2020, respectively, are not valid or enforceable, and pursuant to instruction from Defendant PSEA, those Defendants will not seek to collect further "fair share" fees from nonmembers through the respective school

districts. (Doc. No. 64-1, ¶ 17, Exs. 7-9.)

The Union Defendants argue that in light of these facts, both Plaintiffs' claim for injunctive relief (directing the removal of and prohibition on "fair share" fee provisions in their CBAs) and declaratory relief (seeking a declaration that Pennsylvania's statutory provisions under which "fair share" union fees from nonmembers are authorized and deducted are unconstitutional and unenforceable) have been rendered moot. (Doc. No. 67 at 14-15.) In support of their position, the Union Defendants point to a post-Janus decision in Danielson v. Inslee, 345 F. Supp. 3d 1336 (W.D. Wash. Aug. 16, 2018). In Danielson, the court granted the State Defendants' motion to dismiss, concluding that the State Defendants' efforts to stop collection of "fair share fees (or "agency" fees) in the wake of the Supreme Court's decision in Janus rendered the Plaintiffs' claims for declaratory and injunctive relief against them moot. See id. at 1340. Defendants further note that they can collect "fair share" union fees from nonmembers only with the assistance of school district employers in deducting those fees from nonmember paychecks and remitting them to the relevant Union Defendants. (Id. at 17.) Defendants argue that given that: (1) such deductions are now unlawful under Janus; (2) governmental agencies are presumed to follow the law; and (3) the Union Defendants have submitted evidence demonstrating that Plaintiffs' employers have followed the law, ceasing deduction of "fair share" fees from nonmembers and attesting to their intent to fully comply with Janus, there is no reasonable expectation that "fair share" fees will be deducted from Plaintiffs' paychecks in the future. (Id.) Accordingly, in sum, the Union Defendants argue that "[i]t has become 'absolutely clear that the allegedly wrongful behavior could not reasonably be expected to recur,'" and therefore, there is no meaningful relief that can be provided by this Court,

mooting Plaintiffs' requests for declaratory and injunctive relief. (Id. at 17-18) (quoting Friends of the Earth, 528 U.S. at 189 (internal quotation omitted)).

In response to the Union Defendants' claim that Plaintiffs' requests for declaratory and injunctive relief are now moot, Plaintiffs assert several arguments. As an initial matter, Plaintiffs maintain that the National Education Association ("NEA"), of which Defendant PSEA is a subordinate affiliate, and Defendant PSEA have previously demonstrated a willingness to play "fast and loose with Supreme Court precedent." (Doc. No. 71 at 10.) Second, Plaintiffs argue that this case is not moot because no court has applied Janus to Pennsylvania law, analogizing the instant case (and the obligations of a district court in the aftermath of a relevant Supreme Court decision) to two other high-profile Supreme Court decisions – Citizens United v. Federal Election Commission, 558 U.S. 310 (2010) and Obergefell v. Hodges, 135 S. Ct. 2584 (2015). Plaintiffs argue that lower courts were required to apply those decisions to relevant state statutes, even over objections that the cases had been rendered moot. (Doc. No. 71 at 12-13.)

Specifically, with regard to the effect of Obergefell, Plaintiffs point to an Eighth Circuit Court of Appeals decision in Waters v. Ricketts, 798 F.3d 682 (8th Cir. 2015), in which the State of Nebraska maintained that a challenge to its statute banning same-sex marriage was moot because Obergefell addressed the constitutionality of Michigan's, Kentucky's, Ohio's, and Texas' bans on gay marriage in such a way that it was clear that Nebraska could not enforce its gay marriage ban. (Doc. No. 71 at 13-14.) The Eighth Circuit found that Nebraska's "assurances of compliance with Obergefell do not moot the case" under the standard articulated in Friends of the Earth, instead finding that those assurances from the state may impact the necessity of continued injunctive relief. See Waters, 798 F.3d at 685-86 (citation omitted).

Plaintiffs analogize the relief they seek from this Court – a declaration that 71 P.S. § 575(a)-(i) (Pennsylvania's Public Employee Fair Share Fee Law) and the "fair share" fee provisions in Plaintiffs' respective CBAs are invalid, and the issuance of injunctive relief expunging "fair share" fee provisions from the relevant CBAs – to that granted by this court after the Supreme Court decision in Citizens United in General Majority PAC v. Aichele, No. 1:14-cv-332, 2014 WL 3955079, at *1 (M.D. Pa. Aug. 13, 2014). (Doc. No. 71 at 16-17.) Plaintiffs maintain that after the Supreme Court held in Citizens United that a federal ban on corporate or union-funded independent political speech violated the First Amendment, a number of lower courts struck down similar state bans pursuant to that decision. (Id. at 12-13, 16-17.) Plaintiffs argue that in Aichele, despite the fact that the government defendant conceded the unconstitutionality of Pennsylvania's statute, the court still entered a permanent injunction against the enforcement of Pennsylvania's statute. (Id. at 17-18.)

Finally, Plaintiffs maintain that this case is not moot because the Union Defendants' "voluntary change" in policy fails to meet their burden to demonstrate that there is no reasonable expectation that the wrongful behavior will recur. (Id. at 18-21.) Plaintiffs note that the Third Circuit has described the burden to demonstrate mootness as a "formidable" one, and argue that it is not met by the Union Defendants' statement of intent not to resume illegal activity, pointing to what it describes as the potential for PSEA to "press [its] authority under state law like it has done before," and the fact that only one of the three local union affiliate Defendants has executed a Memorandum of Understanding removing the "fair share" fee provision from the relevant CBA, which Plaintiffs argue "raises questions as to why those two local defendants are resistant to the expungement of the forced fee provision." (Id. at 19-20.) In addition, Plaintiffs maintain

that to the extent that the policy articulated by the PSEA as to the cessation of any attempts to collect "fair share" union fees from nonmembers in the wake of Janus provides assurance against the recurrence of the illegal behavior, such assurance does not moot the need for a declaration as to the constitutionality of Pennsylvania law, but instead impacts the scope of potential injunctive relief, again citing Waters and Aichele regarding the aftermath of the Supreme Court's decisions in Obergefell and Citizens United. (Id. at 21-22.)

In their brief in reply, the Union Defendants maintain that the operative point as to mootness – overlooked by Plaintiffs in pressing for a ruling of Janus's impact on Pennsylvania law – is that "because of a significant change in circumstances prompted by Janus, Plaintiffs no longer face the kind of imminent threat of harm necessary to support standing for claims of injunctive and declaratory relief." (Doc. No. 72 at 6.) The Union Defendants maintain that the ruling of Janus – that "States and public sector unions may no longer extract agency fees from nonconsenting employees" – "leaves no room for uncertainty." (Id.) Accordingly, the Union Defendants argue that the undisputed facts regarding their actions in the wake of Janus attest to the fact that they recognize their responsibility to abide by its holding. (Id. at 6-7.) Along these lines, the Union Defendants point out that on October 17, 2018, Defendant EAEA executed a Memorandum of Understanding with the Ellwood Area School District recognizing that Janus rendered the fair share fee provision of their CBA unenforceable, confirming that the school district will no longer deduct "fair share" union fees from non-member paychecks, and removing the unenforceable provision from their CBA. (Doc. No. 72, Addendum at 16.) The Union Defendants also point to guidance issued by the Commonwealth of Pennsylvania's Attorney General and Department of Labor and Industry to all public sector employers confirming that

they must stop collecting "fair share" fees from non-union employees[9] as additional support for the fact that there is no reasonable chance that the deduction of "fair share" fees from the Plaintiffs' paychecks will recur. (Doc. No. 72 at 7-8.)

B. Plaintiffs' Claims for Declaratory and Injunctive Relief are Moot

Upon careful consideration of the arguments of the parties, the materials submitted in connection with the Union Defendants' motion, and the relevant authorities, the Court is persuaded that Plaintiffs' remaining claims for declaratory and injunctive relief are moot. The change in circumstances that has occurred here as to these Plaintiffs in the wake of the Janus decision, specifically consisting of: (1) the PSEA's immediate steps to cease collection of "fair share" union fees from all non-members of its local union affiliates (including the four Plaintiffs) and to refund any "fair share" fees collected after the date of the Janus decision; (2) the declarations of the superintendents of each school district employing Plaintiffs stating that those districts have ceased deduction of "fair share" fees and will not resume such deductions in the future; (3) the declarations from the respective Presidents of Defendants H-CEA, TVEA, and EAEA representing that the "fair share" fee provisions in their CBAs are not valid or enforceable, and that they will not seek to collect further "fair share" fees; and (4) the Memoranda of Understanding entered into between the Homer-Center School District and the H-CEA and Ellwood Area School District and the EAEA, formally removing the unenforceable

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[9] See Pa. Att'y Gen., Guidance on the Rights and Responsibilities of Public Sector Employees and Employers Following the U.S. Supreme Court's Janus Decision (Aug. 8, 2018), https://www.attorneygeneral.gov/wp-content/uploads/2018/08/2018-08-03-AG-Shapiro-Janus-Advisory-FAQ.pdf; Pa. Dep't Labor & Indus., Guidance Regarding the June 2018 Janus Supreme Court Decision (Sept. 6, 2018), https://www.dli.pa.gov/Businesses/Labor-Management-Relations/Pages/JANUS-Advisory.aspx.

provisions from their CBAs,[10] demonstrate that it has become "absolutely clear that the allegedly wrongful behavior could not reasonably be expected to recur." See Friends of the Earth, 528 U.S. at 189. In light of the changed circumstances, the Court finds that Plaintiffs face no realistic possibility that they will be subject to the unlawful collection of "fair share" fees, and, therefore, Plaintiffs' claims for declaratory and injunctive relief are moot.

In addition, the Court finds Plaintiffs' analogies to Obergefell and Citizens United to be inapposite. As to Obergefell, the Union Defendants distinguish the statutes at issue in the post-Obergefell cases as self-enforcing legislative mandates banning the recognition of same-sex marriage or the extension of marital privileges to same-sex couples, while pointing out that the Pennsylvania statute challenged by Plaintiffs here is not self-enforcing, but instead permits the deduction of "fair share" fees in the event that the union would "provide the public employer with the name of the nonmember who is obligated to pay a fair-share fee," as well as the amount of the fee. (Doc. No. 72 at 12) (citing 71 P.S. § 575(c)). Accordingly, the Union Defendants maintain that as they have confirmed that no such information is being provided or will be provided by the unions to the Plaintiffs' school district employers, the "fair share" fee statute can have no impact on Plaintiffs. (Id.) As to the post-Citizens United cases, the Union Defendants note that in virtually all of the cases, a live controversy existed because the government defendants did not concede that the challenged state laws were unconstitutional. (Id. at 12-13.)

[10] Although Defendant TVEA has not executed a Memorandum of Understanding with the Twin Valley School District explicitly removing the "fair share" fee provision from its CBA, as Defendants H-CEA and EAEA have done, the President of the TVEA has explicitly declared the "fair share" fee provision of its CBA invalid and unenforceable. (See Doc. No. 64-1, Ex. 6 ¶ 5.) Moreover, the Twin Valley School District superintendent has declared the authority permitting the deduction of "fair share" fees unenforceable. (See Doc. No. 64-1, Ex. 4 ¶¶ 2-5.)

The fact that the court in Aichele found that a live dispute existed over the scope of the remedy for a violation where the state government conceded the unconstitutionality of the statute does not change the Court's conclusion here as to the mootness of Plaintiffs' claims, especially where the question of mootness was not presented to the court in Aichele.

The Court addresses one final issue raised by Plaintiffs. In their supplemental filings submitted after the completion of briefing on the pending motions, Plaintiffs have identified several post-Janus CBAs entered into between certain Pennsylvania school districts and their local union affiliates containing "fair share" fee provisions, in an apparent effort to substantiate their claims that the Union Defendants here may resume unlawful deduction of "fair share" fees from the Plaintiffs in this case. (Doc. Nos. 79, 81, 85-89.) However, as surprising as those submissions may be, in light of the fact that none of them involves any of the three school district employers of Plaintiffs, or their respective local union affiliates who are defendants in this litigation, they are irrelevant to the issue as to whether these Plaintiffs' claims have been rendered moot. Absent some reason to doubt that the representations of the school district officials are genuine, the Court will not question the validity of those representations based on language in CBAs applicable to other school districts and other local union affiliates who are not parties to this litigation. See, e.g., Flanigan's Enter., Inc. v. City of Sandy Springs, Ga., 868 F.3d 1248, 1256 (11th Cir. 2017) (holding that "[b]ecause of the deference with which [a court] view[s] voluntary changes in government action, a plaintiff disputing a finding of mootness must present more than '[m]ere speculation that the [government body] may return to its previous ways'") (citation omitted), cert. denied, 138 S. Ct. 1326 (2018); Citizens for Responsibility & Ethics in Wash. v. SEC, 858 F. Supp. 2d 51, 63 (D.D.C. 2012) (stating that "speculations about

potential recurrence might be sufficient" to avoid a finding of mootness "were Defendants private litigants," but "such conjecture is insufficient" where the defendant is a governmental entity).

For all of the foregoing reasons, this Court joins the multiple district courts that have addressed similar arguments in the wake of Janus and have held that plaintiffs' prospective claims for declaratory and injunctive relief were rendered moot under similar circumstances. See Akers v. Md. State Educ. Ass'n, No. 1:18-cv-1797-RDB, 2019 WL 1745980, at *5 (D. Md. Apr. 18, 2019) (finding plaintiff claims for declaratory and injunctive relief moot in light of the actions of union defendants to stop collection of agency fees in the wake of Janus); Lee v. Ohio Educ. Ass'n, No. 1:18-cv-1420, 2019 WL 1323622, at *1 (N.D. Ohio Mar. 25, 2019) (same); Carey v. Inslee, No. 3:18-cv-05208, 2019 WL 1115259, at *1 (W.D. Wash. Mar. 11, 2019) (holding request for injunctive and declaratory relief moot under similar circumstances); Cook v. Brown, 364 F. Supp. 3d 1184, 1188-90 (D. Or. Feb. 28, 2019) (same); Yohn v. Cal. Teachers Ass'n, No. 8:17-cv-00202, 2018 WL 5264076 at *4 (C.D. Cal. Sept. 28, 2018) (same); Danielson v. Inslee, 345 F. Supp. 3d at 1339-40 (finding state defendant's demonstration of compliance with Janus sufficient to moot claims).

IV. CONCLUSION

Based on the foregoing, the Court will grant the Union Defendants' Motion to Dismiss for lack of subject matter jurisdiction and direct that this case be closed. Plaintiffs' Motion for Summary Judgment will be denied. An appropriate Order follows.

CERTIFICATIONS

The undersigned hereby certifies the following:

a. All attorneys whose names appear on this brief are a member of the bar of this Court.

b. The text of the electronic version of this brief is identical to the text in the paper copies of this brief sent to this Court and opposing counsel.

c. The virus protection program, Sophos Endpoint Advanced 10.8.3.441, has been run on the electronic, PDF file of this brief and related attachments and no virus was detected.

d. This brief, related attachments, and Joint Appendix Volume I, have been electronically filed and served this day with the Clerk of Court using the Court's CM/ECF system. Appellees were served on this day electronically through the Court's docketing system which constitutes service under Local Appellate Rule Misc. 113.4(a). One (1) paper copy of this brief, related attachments, and Joint Appendix Volume I were mailed to opposing counsel on this day via commercial carrier as follows:

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Seven (7) paper copies of this brief, related attachments, and Joint Appendix Volume I were mailed via commercial carrier on this day to this Court at 21400 U.S. Courthouse, 601 Market Street, Philadelphia, PA 19106-1790.

August 19, 2019

Respectfully submitted,

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