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# In the Commonwealth Court of Pennsylvania

158 C.D. 2019

JANE LADLEY and CHRISTOPHER MEIER,
Appellants,

v.

PENNSYLVANIA STATE EDUCATION ASSOCIATION,
Appellee.

## APPELLANTS' AMENDED REPLY BRIEF

Appeal from a Final Order of the Court of Common Pleas, Lancaster County
(Case No. CI-14-08552)

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## INTRODUCTION

In their initial brief, Appellants Jane Ladley ("Ladley") and Christopher Meier ("Meier") (collectively, "Teachers") urged this Court to reverse the trial court and address the applicability of *Janus v. AFSCME, Council 31*, 585 U.S. __, 138 S. Ct. 2448 (2018), to Pennsylvania law. In response, Appellee Pennsylvania State Education Association ("PSEA") insists that this case is moot because *Janus* has already "invalidate[d]" Pennsylvania law, specifically, title 71, section 575, of the Pennsylvania Statutes ("section 575"). Appellee's Br. 4. But *Janus* struck down Illinois law without any reference to section 575, and until such a ruling and permanent injunction are entered, Teachers will remain uncertain and insecure as to their rights. Accordingly, this Court should declare that section 575 is unconstitutional, and permanently enjoin PSEA.

## SUMMARY OF ARGUMENT

PSEA has provided this Court with little reason to affirm the trial court's order. In fact, PSEA asks this Court to reject the trial court's mootness analysis and adopt a lesser standard under which PSEA could ostensibly keep section 575 on the books, retain its fair share fee agreement with Mr. Meier's school district, and continue bargaining for fair share fee provisions across the Commonwealth—precisely the result this Court's voluntary cessation analysis seeks to avoid. But PSEA cannot have

it both ways; in order to satisfy its "heavy burden" of demonstrating mootness, PSEA must not only promise, but must also follow through on its promises of reform.

On the merits, PSEA continues to defend its implementation of section 575, as if it learned nothing from *Janus* or the pre-*Janus* decisions pointing out the illegality of PSEA's procedures. Such defiance only reiterates what Teachers have already said: effective relief against PSEA must come in the form of a declaratory judgment and permanent injunction protecting Teachers' rights in the future.

Because PSEA has not sustained its heavy burden of showing mootness, this Court should reverse the trial court's order below, declare section 575(b) through (i) unconstitutional, and permanently enjoin PSEA.

## ARGUMENT IN REPLY

### I. EVEN PSEA REJECTS THE TRIAL COURT'S MOOTNESS ANALYSIS

#### A. PSEA Wants to Avoid—Because It Cannot Sustain—Its "Heavy Burden" Under the "Voluntary Cessation" Standard

The trial court erroneously held that this case was moot, but it was entirely correct to employ the "voluntary cessation" standard. *See* Appellants' Am. Initial Br., App. A ("Opinion"), at 21. If only the trial court had been *faithful* to that standard—and, for example, kept the "heavy burden" of demonstrating mootness on PSEA instead of shifting it to Teachers[1]—it would have also reached the correct conclusion

[1] *See* Opinion at 22 ("Plaintiffs have not demonstrated that there is any reason to expect that PSEA would reinstate the collection of fair share fees.").

that this case is not moot. *Pennsylvania Interscholastic Athletic Ass'n, Inc. v. Greater Johnstown Sch. Dist.* ("*PIAA*"), 463 A.2d 1198, 1201 (Pa. Cmwlth. 1983).

But PSEA outright rejects the voluntary cessation standard. Instead, PSEA argues, "We emphasize that this is *not* a case in which the 'voluntary cessation' exception to the mootness doctrine has *any* application." Appellee's Br. 25 (emphases added) (citation omitted). PSEA would rather insist that *Janus* itself, "[w]ith one broad, unequivocal, nation-wide stroke," automatically "invalidat[ed]" Pennsylvania law, obviating the need for court involvement. Appellee's Br. 4. Yet, as Teachers have already pointed out, Appellants' Am. Initial Br. 20 n.16, this view of Supreme Court jurisdiction is profoundly flawed; the Supreme Court, like any other court, is only empowered to address the parties before them and while it can and does set national precedent, it cannot "invalidate" other state laws not implicated by those parties. *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)). PSEA has not even attempted to address this Court's voluntary cessation considerations. *See Highway Auto. Serv. v. Commonwealth*, 439 A.2d 238, 240 (Pa. Cmwlth. 1982) ("In determining whether the cessation of such activity compels a finding of mootness, we consider (1) the good faith of the defendant's announced intention to discontinue the challenged activity, (2) the effectiveness of the discontinuance, and (3) the character of the past violation.").

Apparently, PSEA does not want to bear the "heavy burden" of demonstrating "that there is no reasonable expectation that the past conduct will be repeated." *PIAA*, 463 A.2d at 1201. And for good reason; as Teachers have already argued at length, Appellants' Am. Initial Br. 18–28, PSEA has completely undermined its own argument that it cannot return to its former practices as soon as the courts turn their back. *See Salvatore v. Dallastown Area Sch. Dist.,* No. 995 C.D. 2014, 2015 WL 5162153, at *6 (Pa. Cmwlth. Feb. 20, 2015) ("[V]oluntary cessation of allegedly unlawful conduct does not moot a case because such a situation would allow the party acting wrongly to revert, upon dismissal of the proceedings, to the offensive pattern of conduct.").

And PSEA continues to undermine its stated commitment to compliance with *Janus*. For instance, it now admits that it has no intent to excise the fair share fee provision within Mr. Meier's CBA. Appellees' Br. 19. Instead, PSEA argues that there is no need for removing Mr. Meier's fair share fee provision because a separate "separability" clause makes the fair share fee provision invalid. Appellee's Br. 19–20. But the argument is entirely circular; the separability clause, like many other such clauses, deems a provision invalid only if "contrary to law" and valid only "to the extent permitted by law." Appellants' Am. Initial Br., at Ex. A 37. It remains that neither the legislature nor any court has addressed the validity of section 575 or this CBA under *Janus*.

But no case cited by PSEA stands for the proposition that the United States Supreme Court automatically invalidates state laws neither implicated by the parties nor mentioned in the decision. The closest PSEA comes is its attempted analogy to *In re Gross*, 382 A.2d 116, 121–22 (Pa. 1978), in which a mental health patient's declaratory judgment claim was mooted after the General Assembly enacted a new, detailed statute governing mental health facilities. Appellee's Br. 21. But the analogy only proves Teachers' point. *Gross*—and the cases it purported to follow—involved statutory changes clearly and immediately regulating parties' behavior, not mere momentary interpretations of how a Supreme Court decision might impact another state's law. *See In re Gross*, 382 A.2d at 121–22. There is no court decision *or* statutory enactment that would stop PSEA from reversing its policies again after this case is over.[2]

Ultimately, the voluntary cessation standard is the correct standard. In fact, PSEA relies on numerous cases that purport to *apply* some version of the voluntary cessation standard. Appellee's Br. 27–31. And faithfully applied—that is, putting the burden squarely on PSEA—the voluntary cessation standard demonstrates that this

[2] Even if *Janus* could be analogized to the statutory change at issue in *In re Gross*, such a change would not make it "impossible to grant relief" requested by Teachers, *i.e.*, a specific declaration as to the constitutionality of section 575 under the state and federal constitution and a permanent injunction. *Cf. In re Gross*, 382 A.2d at 120 (quoting *Conti v. Dep't of Labor & Industry*, 175 A.2d 56, 57 (Pa. 1961)).

case is not moot. PSEA has utterly failed to follow through on its promises to comply with *Janus*.

### B. PSEA Fails to Demonstrate Mootness Even Under Its Own Standards

PSEA, having discarded the trial court's voluntary cessation standard and declared this case moot by implication, next attacks the strawman of various mootness exceptions. But PSEA is *still* wrong; even if this case is technically moot—and it is not—one or more exceptions give this Court reason to address the underlying legal issues.

#### 1. Violations of *Janus* are capable of repetition yet evade review.

First, PSEA argues that this case is not "capable of repetition yet evading review." Appellee's Br. 22–25. In support, PSEA offers more promises that it will not seek fair share fees and even feigns difficulty "fathom[ing] a circumstance that would result in a repeat fair share collection in Pennsylvania post-*Janus*." *Id.* at 22–23. Still, it asks this Court to presume that PSEA could not violate *Janus* without the help of school districts, and it says official guidance from the Pennsylvania Department of Labor and Industry (DL&I) will stop PSEA *if they do* seek fair share fees.[3] *Id.* at 23–25.

[3] PSEA casually mentions that, "[i]f any such fees should be reinstituted (which will not happen)[,] they would have to be in place and in force for a substantial time to provide any benefit to a union," Appellee's Br. 22, yet it also admits that "redress should it occur would be near instantaneous," *id.* at 24. Likely, if PSEA were "caught" violating *Janus*, PSEA would quickly reform its conduct again in an effort to evade review.

It is not that hard to imagine a situation in which PSEA would ignore Supreme Court precedent because it has already done so, in years past and in *this* case. As detailed in Teachers' initial brief, PSEA came up with a novel theory to avoid compliance with *Chicago Teachers Union, Local No. 1 v. Hudson*, 475 U.S. 292 (1986), until the Third Circuit addressed the issue in *Otto v. Pennsylvania State Education Ass'n–NEA*, 330 F.3d 125 (3d Cir. 2003). Appellants' Am. Initial Br. 8–9. And earlier in this case, PSEA claimed this case was moot because of new procedures it unilaterally implemented against Teachers. (R. 17a–18a). The new procedures were nothing more than an attempt to force Teachers out of court and into arbitration, in violation of *Patsy v. Board of Regents*, 457 U.S. 496 (1982), as well as the Third Circuit's decision in *Hohe v. Casey*, 956 F.2d 399 (3d Cir. 1992). (R. 103a–133a). Yet even today, despite federal courts' admonition that the practices violated *Patsy* and *Hohe*, PSEA continues to defend those practices to which it subjected Teachers. Appellee's Br. 34–36; *see Williams v. Pennsylvania State Educ. Ass'n*, No. 1:16-cv-02529-JEJ, 2017 WL 1476192, at *5 (M.D. Pa. Apr. 25, 2017) ("Clearly, [PSEA] could not enforce the arbitration provision, as it is effectively unenforceable."); Order 1–2, *Misja v. Pennsylvania State Educ. Ass'n*, No. 1:15-cv-1199-JEJ (M.D. Pa. Aug. 8, 2016), ECF No. 30 ("PSEA's introduction of such procedures appears . . . to be an attempt to overwrite the pending lawsuit.").

With that as background, it is *easy* to foresee PSEA ignoring *Janus*, imposing fair share fee obligations on unsuspecting nonmembers and, if sued, either paying $1 in

nominal damages after years of litigation or dropping the attempt to avoid a ruling. If it does, Teachers should have protections against such an attempt in the form of a declaratory judgment and permanent injunction.

PSEA nevertheless asks this Court to assume that, even if it decides to seek fair share fees, public employers or DL&I will stop them from violating Teachers' rights. Appellee's Br. 23–24. But school district employers lack strength or interest enough to stop PSEA from getting fair share fee provisions, and DL&I's "guidance" did nothing to change that equation. DL&I merely advised public employers that they "should meet with any unions . . . and discuss the impact of the *Janus* decision on their respective collective bargaining agreements." (R. 1390a).

Finally, even if school districts refused to assist PSEA in seeking fair share fees, such assistance would only be necessary insofar as PSEA demands automatic payroll deduction. Contrary to PSEA's assertions, Appellee's Br. 23, PSEA *can* unilaterally attempt to collect money from public employees. Certainly, National Education Association ("NEA") affiliates in other states have done so in the past; dockets are rife with these "collections cases,"[4] most recently in a newly right-to-work Michigan. *See Mich. Educ. Ass'n v. Digneit*, No. 18-0857-GC (Mich. 16th Dist. Ct. 2018), https://micourt.courts.michigan.gov/CaseSearch/Case/D16/Detail?searchText=michigan+e

[4] *See, e.g.*, *San Jose Teachers' Ass'n v. Super. Ct.*, 700 P.2d 1252 (Cal. 1985); *Flosenzier v. John Glenn Educ. Ass'n*, 656 N.E.2d 864 (Ind. Ct. App. 1995); *Cheeseman v. Jay Sch. Corp. Classroom Teachers Ass'n, Inc.*, 527 N.E.2d 715 (Ind. Ct. App. 1988).

ducation+association&caseId=18-0857&courtType=D&courtNumber=160&locationNumber=0&courtSystem=1&partyTypeNumber=A01&caseType=GC&petitionNumber=; *Mich. Educ. Ass'n v. Fernhout*, No. 18-0751-GC (Mich. 57th Dist. Ct. 2018), https://micourt.courts.michigan.gov/CaseSearch/Case/D57/Detail?searchText=michigan+education+association&caseId=180751GC&courtType=D&courtNumber=570&locationNumber=0&courtSystem=1&partyTypeNumber=A01&caseType=GC&petitionNumber=.

2. *Janus*' application in Pennsylvania is a question important to the public interest.

PSEA argues that this case does not present a question important to the public interest because *Janus* already "conclusively settled" the important, "over-arching question." Appellee's Br. 26. Yet if *Janus* itself would have qualified as an exception to mootness, as PSEA appears to admit, so too should this case, which involves similar issues under the federal and state constitutions. Courts have found cases involving constitutional rights to raise issues important for purposes of this mootness exception. *See also Pap's A.M. v. Erie*, 812 A.2d 591, 599–601 (Pa. 2002) (refusing to dismiss free expression challenge for mootness even though the establishment ceased operating because the dispute involved an issue of "great public importance" and law could impact future litigants); *Commonwealth v. Nava*, 966 A.2d 630, 633 (Pa. Super. 2009) ("Luna's case presents a case of great public importance. The current political and public controversy concerning immigration policies in the United States,

particularly the enforcement of existing laws, has landed on our state capitol and courthouse steps."); *In re Duran*, 769 A.2d 497, 502 (Pa. Super. Ct. 2001) ("The issues in this appeal, rights to privacy and bodily integrity, are matters of public importance."); *In re Estate of Dorone*, 502 A.2d 1271, 1275 (Pa. Super. 1985) ("The rights alleged to have been violated include the First Amendment right to freedom of religion, a matter of public importance.").

3. Teachers will suffer some detriment without a decision on the merits.

Next, PSEA argues that no one will suffer any "damage" if this case is dismissed. Appellee's Br. 26–27. But PSEA conflates monetary damage with "detriment," which forms the basis of the exception. *See, e.g.*, *J.J. M. v. Pennsylvania State Police*, 183 A.3d 1109, 1112 (Pa. Cmwlth. 2018). And Teachers would suffer some detriment—the sort the Declaratory Judgments Act was designed to alleviate[5]—if they do not receive certainty and security in the form of a ruling on the merits and a permanent injunction. Additionally, should PSEA or any future union representing Teachers decide to return to fair share fees, Teachers would be forced to reinstitute this same case—now five years old—to get the very same relief they seek today.

## II. CASES FROM OTHER JURISDICTIONS CANNOT SAVE PSEA FROM THE FACTS IN THIS CASE

[5] *See* 42 Pa.C.S. § 7541(a) ("Its purpose is to settle and to afford relief from uncertainty and insecurity with respect to rights, status, and other legal relations, and is to be liberally construed and administered.").

Deep into its brief, PSEA describes several nonbinding cases—most of which were decided under Ninth Circuit caselaw—in which a governmental or union's post-*Janus* reforms were deemed sufficient to moot the particular case or controversy. Yet these cases cannot support PSEA's assertion that this particular matter is moot, for two main reasons: (1) none of PSEA's cited cases appeared to involve past or present union violation of Supreme Court precedent; and (2) none of PSEA's cited cases address Pennsylvania's rule that the potential recovery of attorneys' fees is an interest sufficient to establish an ongoing case or controversy. Accordingly, the facts in this case, which must be viewed "in the light most favorable" to Teachers, *Minn. Fire & Cas. Co. v. Greenfield*, 855 A.2d 854, 860–61 (Pa. 2004), distinguishes this case from those cited by PSEA.

### A. None of PSEA's Cited Cases Involved Past or Present Union Violation of Supreme Court Precedent

PSEA's heavy burden to demonstrate mootness is undermined by PSEA's own violation of Supreme Court precedent, before and after *Janus*. The underlying facts in cases cited by PSEA did not include such facts.

Teachers presented uncontroverted examples to the trial court of PSEA and NEA violating Supreme Court precedent in the past. (R. 1361a–1364a). Yet PSEA and NEA have been largely rewarded for their conduct. In one case, nonmembers had to litigate against PSEA and NEA for *seven years* in order to force PSEA to provide protections clearly required by the Supreme Court in *Hudson*. (R. 1363a–

1364a). And at the end of the day, despite years of noncompliance, PSEA was likely liable for just $1 in nominal damages. *See Hohe*, 956 F.2d at 415.

Again, PSEA has also proven highly resistant to Supreme Court precedent in *this* case—resistance it continues today. *See* Appellee's Br. 34–36. There can be no serious argument that PSEA's written procedures requiring arbitration in violation of *Patsy* was legal, even before *Janus*. *See Williams*, 2017 WL 1476192, at *5. Yet PSEA instituted those procedures in a previous effort to moot this case, persisted in defending them over the criticism of federal courts, and now advocates for them on the merits before this Court. Appellee's Br. 34–36. Worse, PSEA refuses to amend Mr. Meier's CBA containing a fair share fee clausein violation of *Janus*. *See* Appellants' Am. Initial Br. 2, Ex. A.

None of the cases from various jurisdictions addressing post-*Janus* claims of mootness involved such resistance to Supreme Court precedent. Had they, the courts would have had to question union promises and discard any presumptions of compliance. For example, in the Ninth Circuit—from which most of PSEA's cases originate, Appellee's Br. 27–30—the courts are guided by a five-factored analysis that takes into account whether, among other factors, "since the policy's implementation[,] the agency's officials have not engaged in conduct similar to that challenged by the plaintiff." *Rosebrock v. Mathis*, 745 F.3d 963, 972 (9th Cir. 2014). Likewise, under Second Circuit precedent, defendants claiming mootness are required to show that their reform efforts "have completely and irrevocably eradicated the effects of the

alleged violation." *Campbell v. Greisberger*, 80 F.3d 703, 706 (2d Cir. 1996). Even PSEA's refusal to excise Mr. Meier's fair share fee clause, standing alone, demonstrates a failure to "completely and irrevocably eradicate" the effects of PSEA's violation. *Id.*

In sum, even assuming that cases cited by PSEA were correctly decided,[6] the facts in this case firmly distinguish it. Whether under this Court's or any other court's voluntary cessation analysis, PSEA cannot insist that it will abandon its implementation of section 575 while, at the same time, refusing to do the actual abandoning. This Court should take this case on its facts, construed against PSEA, and reverse the trial court.

### B. None of PSEA's Cited Cases Address Pennsylvania's Rule that the Potential Recovery of Attorneys' Fees is an Interest Sufficient to Establish an Ongoing Case or Controversy

Equally important, neither PSEA's cited cases nor PSEA's analysis of Pennsylvania law give this Court permission to abandon Pennsylvania's rule that potential recovery of attorneys' fees is an interest sufficient to establish an ongoing case or controversy. *See Giant Eagle Markets Co. v. UFCW, Local Union No. 23*, 652

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[6] In light of cases decided on the merits after other Supreme Court decisions, including *Citizens United v. Federal Elections Commission*, 558 U.S. 310 (2010), and *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015), Teachers continue to question the reasoning behind these courts' failure to address the constitutionality of agency fee statutes, at least in cases that were stayed pending the outcome of what would become controlling Supreme Court precedent. *See, e.g.*, *General Majority PAC v. Aichele*, No. 1:14-CV-332, 2014 WL 3955079 (M.D. Pa. Aug. 13, 2014); *Waters v. Ricketts*, 798 F.3d 682 (8th Cir. 2015).

A.2d 1286 (Pa. 1995). In Pennsylvania, litigants have a continued stake in the outcome of a decision when reversal of a court's decision below could translate to an award of attorneys' fees. *Id.* at 1293 ("Here, although the strike has been settled, the question of attorney fees still remains because under [state law] appellee is clearly entitled to such recovery if appellant's request for an injunction should have been denied.").

PSEA objects that *Giant Eagle* is distinguishable because, in *Giant Eagle*, attorneys' fees were only statutorily available if the lower court had erred in enjoining the picketing union. Appellee's Br. 36. Yet, as PSEA must admit, that is precisely the situation here. If the trial court erred in granting PSEA's motion for summary judgment and granted Teachers' motion, attorneys' fees would be presumptively available to Teachers as the prevailing party in a civil rights action. *See Lefimine v. Wideman*, 568 U.S. 1, 11 (2012) (clarifying that, under 42 U.S.C. § 1988, a "prevailing party . . . should ordinarily recover an attorney's fee unless special circumstances would render such an award unjust").

Instead of admitting the obvious, PSEA gets stuck on Teachers' supposed failure to file a motion for attorneys' fees after the trial court entered its order below. Appellees' Br. 36. The reason Teachers did not file such a motion is the same reason it would be successful if the trial court were reversed: only a prevailing party on the merits can recover attorneys fees in a civil rights action. *See Lefimine*, 568 U.S. at 11. Yet as *Giant Eagle* demonstrates, Teachers should be permitted to appeal the trial

court's conclusion in order to establish entitlement to attorneys' fees. PSEA's arguments to the contrary are wholly unsupported and inconsistent with *Giant Eagle*.

## III. ON THE MERITS, PSEA ACTUALLY DEFENDS SECTION 575 AND ITS TREATMENT OF TEACHERS UNDER SECTION 575

Finally, PSEA actually defends section 575 as well as its policy implementing the statute, both of which allowed for viewpoint-based discrimination, due process violations, and—a PSEA addition—involuntary arbitration in violation of *Patsy*, 457 U.S. at 516 ("[E]xhaustion of state administrative remedies should not be required as a prerequisite to bringing an action pursuant to § 1983."). Appellee's Br. 34–36. Especially in light of *Janus*—which overturned the seminal cases on which PSEA relied below—the statute must fall.

But before briefly addressing the merits, Teachers should correct PSEA's characterization of their case as a "one claim case" and of Teachers as "seek[ing] a remedy they never sought below." Appellee's Br. 35. In fact, Teachers' operative complaint contains 13 counts, and PSEA consented to its filing after PSEA effectively reset this case by unilaterally instituting its written policy governing religious objectors. (R. 134a–499a). PSEA filed an answer and new matter to all 13 counts (R. 501a–555a), and the parties were awaiting a ruling on their cross-motions for summary judgment (R. 630a–848a, 897a–948a) when they jointly requested a stay pending the outcome of *Janus* (R. 1125a–1128a). Teachers' second amended complaint sought a ruling that PSEA's implementation of section 575 abridged their

rights to due process, free speech, association, and expression under the state and federal constitutions and violated section 575 and 42 U.S.C. § 1983. (R. 160a–161a).

Pennsylvania's treatment of nonmember religious objectors under section 575 should be deemed unconstitutional pursuant to *Janus*. Teachers and other religious objectors are forced, under section 575(h), to "pay the equivalent of the fair share fee to a nonreligious charity agreed upon by the nonmember and the exclusive representative." That obligation, like the obligation to pay fair share fees in the first place, results from a union's ability to force payment from nonmembers generally and cannot stand after *Janus*. Addressing section 575(h) necessarily entails addressing section 575(b) and other portions of section 575 imposing fair share fee obligations.

But even before *Janus*, federal courts rejected PSEA's absurd defense of section 575. In *Misja*, the Middle District of Pennsylvania denied PSEA's motion to dismiss on all counts and remarked that, "[w]ithout an opportunity for resolution, § 575 is primed to run headlong into a confrontation with the Due Process Clause of the Fourteenth Amendment." (R. 607a). Mem. & Order 30-31, *Misja v. Pennsylvania State Educ. Ass'n*, No. 1:15-cv-1199-JEJ (M.D. Pa. Mar. 28, 2016). And in *Williams*, 2017 WL 1476192, at *5, the Middle District remarked that PSEA's additional arbitration requirement is "effectively unenforceable" as contrary to Supreme Court and Third Circuit caselaw.

## CONCLUSION

In sum, PSEA failed to carry its heavy burden of demonstrating mootness below, and the trial court erred by misapplying the voluntary cessation standard to the facts. Accordingly, Teachers respectfully request that this Court reverse the trial court, declare that section 575(b)–(i) is unconstitutional under *Janus*, and remand with instructions to enjoin PSEA from seizing or impounding Teachers' funds in the future and award Teachers reasonable attorneys' fees, costs, and expenses in this action pursuant to 42 U.S.C. § 1988.

Respectfully submitted,

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Dated: August 8, 2019

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## CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that this reply brief complies with the word-count limits of Pennsylvania Rule of Appellate Procedure 2135(a)(1). This brief contains 4,098 words, according to the word count feature of the word processing program used to prepare the brief.

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## CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing has on this date been served on the following:

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