

No. 20-1824

IN THE UNITED STATE COURT OF APPEALS
FOR THE THIRD CIRCUIT

HOLLIE ADAMS, JODY WEABER, KAREN UNGER, and CHRIS FELKER

Appellants

v.

TEAMSTERS UNION LOCAL 429, LEBANON COUNTY, ATTORNEY GENERAL
JOSH SHAPIRO, in his official capacity, and JAMES M. DARBY, ALBERT
MEZZAROBA, and ROBERT H. SHOOP, JR., *in their official capacities as members of
Pennsylvania Labor Relations Board.*

Appellees

On Appeal from the Judgement of The United States District Court
for the Middle District of Pennsylvania
No.: 1:19-CV-0336
Entered March 31, 2020

BRIEF OF COUNTY OF LEBANON, APPELLEE

PEGGY M. MORCOM
pmorcom@morcomlaw.com
Morcom Law, LLC
226 W Chocolate Ave
Hershey, PA 17033
Telephone: (717) 298-1907
Facsimile: (717) 298-3232

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JURISDICTIONAL STATEMENT

This is a civil rights action brought pursuant to 42 U.S.C. § 1983 against a labor union (Teamsters Union Local 429), a public Employer (County of Lebanon); and officials of the Commonwealth of Pennsylvania in their official capacities as members of the Pennsylvania Labor Relations Board (James M. Darby, Albert Mezzaroba, and Robert H. Shoop, Jr.). The District Court had subject matter jurisdiction as to the County of Lebanon pursuant to 28 U.S.C. §§ 1331 and 1343.

This appeal flows from two final orders entered on March 31, 2020. The orders adopted two Reports and Recommendations issued by a Magistrate Judge and granted the Defendants' motions for Summary Judgment (*See App. 006-008*). One notice appeal was filed on April 15, 2019 (*See App. 003-005*). This Court has appellate jurisdiction under 28 U.S.C. § 1291.

STATEMENT OF ISSUES

In Plaintiffs' Complaint, County of Lebanon was only named in Count I of the Complaint. Accordingly, this brief only concerns the following issues:

- I. Whether Plaintiffs voluntarily joined Defendant Union, Teamsters Local 429, and provided affirmative consent to permit Defendant, Lebanon County to deduct union dues to be remitted the Union when they signed a union membership card and dues deduction authorization prior to the Court's *Janus* decision?

Answer of the District Court: Yes.

Suggested Answer: Yes.

- II. Whether Plaintiffs' Complaint is moot because Defendant County of Lebanon ceased collection of union dues from Plaintiffs, and Defendant Union refunded all union dues withheld after the *Janus* decision and notice by Plaintiffs that they no longer sought to be members of the Union?

Answer of the District Court: Yes.

Suggested Answer: Yes.

STATEMENT OF THE CASE

On June 27, 2018, the United States Supreme Court decided *Janus v. Am. Fed. of State, City, and Municipal Employees, Council 31*, 138 S. Ct. 2448 (2018), which overruled *Abood v. Detroit Board of Education*, 431 U.S. 209 (1977). The *Janus* Court held that the “agency fee” scheme for public sector unions in Illinois violated the free speech rights of non-member public employees by compelling them to subsidize their unions’ private speech. In Pennsylvania, “agency fee” is known as “fair share fee”, which is percentage amount of the actual union dues paid by members. Plaintiffs-Appellants seek to broaden the ruling in *Janus*.

Plaintiffs-Appellants, former union members, brought claims against their employer, union, and three Commonwealth officials of the Pennsylvania Labor Relations Board. Plaintiffs seek monetary and non-monetary damages from their employer and the union for alleged First Amendment violations (Count I) and challenges to the exclusive representation provision of the Pennsylvania Labor Relations Act (Count II).

Factual Background

All parties sought summary judgment at the lower court, and they agreed that the operative facts were not in dispute, for which the court relied in making its decision (See App. 006-014 – orders and memoranda). Plaintiffs-Appellants

voluntarily joined the union and provided affirmative consent to permit Appellee County to deduct union dues from their paychecks and remit the same to Appellee Union. More specifically, Plaintiff-Appellant Hollie Adams executed her dues application and membership form on May 6, 2003; Plaintiff-Appellant Jody Weaber executed her dues application and membership form on July 31, 2007; Plaintiff-Appellant Karen Unger executed her dues application and membership form on November 7, 2007; and Plaintiff-Appellant Christopher Felker executed his dues application and membership form on January 26, 2010.

The language of the Membership Application is clear as to Plaintiffs-Appellants voluntary and knowing action, which is also undisputed by Plaintiffs-Appellants. The same is true for the dues authorization, and again undisputed by Plaintiffs-Appellants.

After entry of the *Janus* decision, Plaintiffs-Appellants resigned their membership as follows:

Hollie Adams

On or about July 10, 2018, Adams sent a letter to the Union requesting to resign her membership, which the Union received on July 13, 2018. On or about August 13, 2018, the Union responded to the July 10, 2018 letter, denying the request based on the terms of the dues authorization card. On or about August 30,

2018, Adams sent a second letter to the Union requesting to resign her membership, which the Union received on September 4, 2018. On or about September 7, 2018, the Union sent a letter to Adams reiterating the terms of her dues authorization and notifying her that dues deductions would cease March 2019. On or about March 5, 2019, the Union notified County to cease dues deductions for Adams. The payroll check issued on February 28, 2019 by the County was the last payroll check in which union dues payable to the Union was withheld from Adams by the County. The last dues deductions received by the Union from the County occurred on or about March 5, 2019. From the time of requested resignation until the dues ceased, the Union received \$416.00 in dues deductions from the County for Adams.

Jody Weaber

On or about July 16, 2018, Weaber sent a letter to the Union requesting to resign her union membership, which the Union received on July 23, 2018. On or about August 30, 2018, Weaber sent a second letter to the Union requesting to resign her membership, which the Union received on September 4, 2018. On or about September 7, 2018, the Union sent a letter to Weaber explaining the terms of her dues authorization card and notifying her that union dues deductions will cease June 2019. On or about March 5, 2019, the Union notified the County to cease dues deductions for Weaber. The payroll check issued on February 28, 2019, by

the County to Weaber was the last payroll check in which union dues payable to the Union was withheld from Weaber by County. The last dues deductions received by the Union from the County for Weaber occurred on or about March 5, 2018. From the time of requested resignation until the dues ceased, the Union received \$392 in dues deductions from the County for Weaber.

Karen Unger

On or about July 10, 2018, Unger sent a letter to the Union requesting to resign her membership, which the Union never received until the County forwarded a copy of the letter at the end of August 2018. On or about August 31, 2018, the Union requested the County cease dues deductions for Unger. The payroll check issued on September 13, 2018 by County to Unger was the last payroll check in which union dues payable to the Union was withheld from Unger by the County. The last dues deductions received by the Union from the County for Unger occurred on or about October 1, 2018. On or about May 7, 2019, the Union sent a letter to Unger confirming the Union accepted her resignation and that dues deductions had ceased. From the time of requested resignation until the dues ceased, the Union received \$88.00 in dues deductions from the County for Unger.

Christopher Felker

On or about September 28, 2018, Felker sent a letter to the Union requesting to resign his union membership, which the Union received on October 1, 2018. On or about October 5, 2018, the Union sent a letter to Felker informing him that the Union accepted his resignation of his membership and dues deductions would cease by November 2018. The payroll check issued on October 5, 2018, by the County to Felker was the last payroll check in which union dues payable to the Union was withheld from Felker by the County. The last dues deductions received by the Union from the County for Felker occurred on or about October 29, 2018. From the time of requested resignation until the dues ceased, the Union received \$96.00 in dues deductions from the County for Felker.

The Union refunded Plaintiffs-Appellants all dues deductions received by the Union from the time the request to resign membership until dues deductions ceased, plus six percent statutory interest.

Procedural History

On February 7, 2019, Plaintiffs-Appellants filed a two-count Complaint alleging constitutional violations. (*App. 028-079 – Complaint*). Shortly thereafter, all parties filed dispositive motions, based upon an agreed to State of Facts (*App. 080-107 – Summary Judgment*). In consideration of the motions and responses

presented, Magistrate Judge Carlson issued two reports and corresponding recommendations (*App. 108-127, 128-155*), which were duly adopted by Judge Rambo (*App. 006-014*). After judgment was entered in favor of all Defendants-Appellees, the Plaintiffs-Appellants filed a time Notice of Appeal (*App. 003-004*).

Plaintiffs-Appellants filed an unopposed motion to stay the briefing schedule pending the outcome of *Oliver v. Service Employees Int'l Union, Local 668, et al.*, No. 19-3876 (3d Cir.). Within the motion, Plaintiffs-Appellants asserted the legal issues defined in *Oliver*, were virtually the same as those in the instant case. Plaintiffs-Appellants anticipated that, in deciding this more recently filed appeal, this Court would “likely be bound by the outcome of *Oliver*.” The stay was granted on June 3, 2020. *Oliver* was decided by this Court on October 7, 2020.

STATEMENT OF RELATED CASES

The instant case has not previously been before this Court. There are no pending cases to which it is directly related. The legal issues presented here overlap with those addressed in *Oliver v. Service Employees Int'l Union, Local 668, et al.*, No. 19-3876 (3d Cir. 2020).

SUMMARY OF ARGUMENT

Plaintiffs-Appellants affirmatively consented to the payment of union dues. The dues withheld from Plaintiffs-Appellants' paychecks were authorized by said individuals. Such action by the County to withhold and remit payments to the Union was wholly approved by the Plaintiffs-Appellants, and was therefore, constitutional. Moreover, the Supreme Court's decision in *Janus* specifically addressed "agency fees" paid by non-member public employees, thereby compelling them to subsidize their unions' private speech. Plaintiffs-Appellants' appeal seeks to broaden the ruling in *Janus* to all union members, which was rejected by the lower court.

Plaintiffs-Appellants' request for damages for dues paid prior to their resignation from the Union prior to the decision in *Janus* is ill-fated. In *Diamond v. Pa. State Educ. Ass'n*, 972 F.3d 262, 268 (3d Cir. 2020), the District Court dismissed the case and held that § 1983 liability exists because of the reliance of a state statute and federal case law in collection of fees. Moreover, "[c]ourts consistently held that judicial decisions invalidating a statute or overruling a prior decision did not generate retroactive civil liability with regard to financial transactions or agreements conducted, without duress or fraud, in reliance on the invalidated statute or overruled decision." *Id.* at 274. *See also, LaSpina v. SEIU Pennsylvania State Council*, 2021 WL 137742,

___ F.3d ___ (3d Cir. 2021) (No standing to pursue a refund of pre-*Janus* membership dues).

Since the *Janus* decision, a series of cases with similar facts have been decided by this Court, none of which favor Plaintiff-Appellant's position. Similar to the plaintiff-appellant in *Oliver v. SEIU Local 668*, 2020 U.S.App. LEXIS 31805 *9 (3d Cir. 2020), Plaintiffs-Appellants herein are no longer Union members, they are no longer required to support the Union by paying agency fees, nor are they required to associate with the Union. Accordingly, the County does not violate the free speech rights or free association rights of Plaintiffs-Appellants, when choosing who it decides to bargain. *Id.* (See also, *Hartnett v. Pa. State Ed. Ass'n*, 963 F.3d 301 (3d Cir. 2020). (The case is moot, as there is no live controversy or a real dispute of facts).

STANDARD OF REVIEW

This Court's standard of review of the factual finds for clear error and its legal conclusions de novo. *Freedom from Religion Fund, Inc. v. New Kensington Arnold Sch. Dist.*, 832 F.3d 469, 475 n. 4 (3d Cir. 2016).

ARGUMENT

- 1. Whether Plaintiffs voluntarily joined Defendant Union, Teamsters Local 429, and provided affirmative consent to permit Defendant, Lebanon County to deduct union dues to be remitted the Union when they signed a union membership card and dues deduction authorization prior to the Court's *Janus* decision?**

Plaintiffs voluntarily joined Defendant Union and provided affirmative consent to permit Defendant County to deduct union dues from their paychecks. Plaintiffs accepted "Defendants' Joint Statement of Facts as a complete and accurate rendition of the relevant facts." Plaintiffs chose to become Union members, in lieu of non-union membership that included payment of a fair share fee.

Plaintiffs produced no evidence to support that their decision to become a Union member was involuntary. When a bargaining unit employee of the County decided to become a Union member, the Union provided the employee with the membership application which included the dues authorization form. Bargaining unit employees who chose to become Union members complete and sign the union membership application and then sign the dues authorization form. It is a two-step process. Accordingly, bargaining unit employees only sign a dues authorization form if they signed the

membership application. Prior to June 27, 2018, if a bargaining unit employee at the County decided not to become a union member, the employee paid a fair share fee rather than union dues.

The membership application reads, in pertinent part,

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

I understand that under the current law, I may elect "nonmember" status, and can satisfy any contractual obligation necessary to retain my employment by paying an amount equal to the uniform dues and initiation fee required of members of the Union. I also understand that if I elect not to become a member or remain a member, I may object to paying the pro-rata portion of regular Union dues or fees that are not germane to collective bargaining, contract administration and grievance

adjustment, and I can request the Local Union to provide me with information concerning its most recent allocation of expenditures devoted to activities that are both germane and non-germane to its performance as the collective bargaining representative sufficient to enable me to decide whether or not to become an objector. I understand that nonmembers who choose to object to paying the pro-rata portion of regular Union dues or fees that are not germane to collective bargaining will be entitled to a reduction in fees based on the aforementioned allocation of expenditures, and will have the right to challenge the correctness of the allocation. The procedures for filing such challenges will be provided by my Local Union, upon request.

I have read and understand the options available to me and submit this application to be admitted as a member of the Local Union.

The dues authorization forms signed by Plaintiffs read in pertinent part,

I, _____, hereby authorize my employer to deduct from my wages each and every month an amount equal to the monthly dues, initiation fees and uniform assessments of Local Union ____ and direct such amounts so deducted to be turned over each month to the Secretary-Treasurer of such Local Union for and on my behalf.

This authorization is voluntary and is not conditioned on my present or future membership in the Union.

This authorization and assignment shall be irrevocable for the term of the applicable contract between the union and the employer or for one year, whichever is the lesser, and shall

automatically renew itself for successive yearly or applicable contract periods thereafter, whichever is lesser, unless I give written notice to the company and the union at least sixty [60] days, but not more than seventy-five [75]days before any periodic renewal date of this authorization and assignment of my desire to revoke same.

In the instant case, Plaintiff Adams signed her membership application on or about May 6, 2003. She executed her dues authorization form on May 6, 2003. Plaintiff Weaber signed her membership application on or about July 31, 2007. She executed her dues authorization form on July 31, 2007. On or about November 7, 2017, approximately two (2) years after Plaintiff Unger was hired by the County, during which time she was a non-member who paid fair share fees, Plaintiff Unger signed the membership application and dues authorization form. On or about January 26, 2010, Plaintiff Felker signed the Union's membership application and a dues authorization form.

The language of the Membership Application is clear as to Plaintiffs voluntary and knowing action. There are multiple references to the choice of member or non-member status. It reflects Plaintiffs' attestation to the following:

- "I voluntarily submit this Application for Membership in Local Union . . . so that I may fully participate in the activities of the Union";
- "I understand that by becoming and remaining a member of the Union, I will be entitled to ...";
- "I understand that only as a member of the Union ...";
- "I understand that the Union's strength and ability to represent my interests depends upon my exercising my right, as guaranteed by federal law, to join the Union and engage in collective activities with my fellow workers";
- "I understand that under the current law, I may elect "nonmember" status ...";
- "I also understand that if I elect not to become a member or remain a member, I may object to paying the pro-rata portion of regular Union dues or fees that are not germane to collective bargaining, contract administration and grievance adjustment, and I can request the Local Union to provide me with information concerning its most recent allocation of expenditures devoted to activities that are both germane and non-germane to its performance as the collective bargaining representative sufficient to enable me to decide whether or not to become an objector";
- "I understand that nonmembers who choose to object to paying the pro-rata portion of regular Union dues or fees that are not germane to collective bargaining will be entitled to a reduction in fees based on the aforementioned allocation of expenditures, and will have the right to challenge the correctness of the allocation"; and
- "I have read and understand the options available to me and submit this application to be admitted as a member of the Local Union."

Similarly, the dues authorization is equally as clear. It not only

authorizes the deduction, but it indicates the authorization is voluntary and not conditioned on present or future action. Finally, it provided a provision to effectuate revocation.

Plaintiffs' actions reflect that they knowingly decided to join the Union, despite the option not to join. Plaintiff Unger chose not to be a member of Union for the first two (2) years of her employment, and later decided to join the Union. The Collective Bargaining Agreements, the membership applications, the dues authorization, and the Public Employee Relations Action clearly provided notice to Plaintiffs of their right to join the Union or avoid membership.

Plaintiffs argue a loss of fundamental rights and suggest that they were unable to choose because it was either pay fair share, now deemed unconstitutional by *Janus*, or join the Union. This argument fails. The Supreme Court in *Janus* explained, "[b]y agreeing to pay, nonmembers are waiving their First Amendment rights" *Janus v. Am. Fed'n of State, Cty., and Mun. Emps., Council 31*, 138 S. Ct. 2448, 2486 (2018)(emphasis added). The Supreme Court's decision does not require a specific statement of rights.

It was, however, only related to how fair share fees were deducted automatically from non-members without their consent, and imposed a consent requirement to obtain a fee from non-members. *Id.* The Supreme Court's decision in *Janus* did not alter the landscape of labor relations systems, but it noted that "they cannot force nonmembers to subsidize public sector unions." *Id.* at n. 27 (emphasis added). Plaintiffs voluntarily elected to join the Union, and their claim before this Court fails.

Since *Janus*, this Court examined this issue, but it did not further Plaintiffs' argument. In *Oliver v. SEIU Local 668*, *2, 2020 U.S. App. LEXIS 31805 (3d Cir. 2020), the Court found that plaintiff "chose to join the Union when she was not compelled to do so, her membership was voluntary; thus she was not entitled to a refund of membership due." There was no violation of plaintiff's free speech and free association rights because she was under no obligation to associate with the union. *Id.* The membership application language and dues authorization form are similar to those in *Oliver*, where the court reasoned, "[I]t is difficult to imagine language that would be more clear and compelling as evidence of consent to join the Union and also pay union dues."

Id. at *6. Similar to the Plaintiffs, *Oliver* “never disputed the union membership dues that were deducted from her paycheck”, although “now regret her prior decision to join the Union, but that does not render her knowing and voluntary choice to join nonconsensual.” *Id.*

Therefore, it is clear that Defendants did not violate Plaintiffs’ constitutional rights, as Plaintiffs intended to be members of the Union, understood the requirements of union membership, received notice of their rights to be non-members (of which Plaintiff Unger chose for two years of her employment to be classified as a non-member), and never objected to the deductions of membership dues. The “affirmative consent” test set forth in *Janus* was satisfied.

Plaintiffs also argue that *Janus* applies retrospectively to the time they signed their individual membership cards. The courts have consistently held “that judicial decisions invalidating a statute or overruling a prior decision did not generate retroactive civil liability with regard to financial transactions or agreements conducted, without duress or fraud, in reliance on the invalidated statute it overruled. *Oliver* at *7, 8 (citing *Diamond v. Pa. State Educ. Ass’n*,

972 F.3d 262, 274 (3d Cir. 2020) See also *Wyatt v. Cole*, 504 U.S. 158, 168, 112

S. Ct. 1827 (1992). There is no retroactive civil liability. Accordingly, the

District Court's decision on this issue must be affirmed.

2. Whether Plaintiffs' Complaint is moot because Defendant County of Lebanon ceased collection of union dues from Plaintiffs, and Defendant Union refunded all union dues withheld after the *Janus* decision and notice by Plaintiffs that they no longer sought to be members of the Union?

The Court lacks subject matter jurisdiction over Plaintiffs' claims for relief because Plaintiffs lack standing. The burden is on the Plaintiffs to establish the following elements for standing: (1) that he "has suffered an 'injury in fact' that is (a) concrete and particularized and (b) actual and imminent, not conjectural or hypothetical"; (2) "the injury is fairly traceable to the challenged action of Defendants"; and (3) "it is likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision." See *Freedom from Religion Foundation, Inc. v. New Kensington Arnold School Dist.*, 832 F.3d at 476 (quoting *Friends of the Earth v. Laidlaw Env'tl. Servs. (TOC)*, 528 U.S. at 167, 180-81(2000).

The burden is on the Defendants to establish that there is no longer a

live controversy. *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc.*, 528 U.S. 167, 189 (2000) (quoting *United States v. Concentrated Phosphate Exp. Ass'n*, 393 U.S. 199, 203 (1968)).

Plaintiffs are no longer members of the Union and dues is no longer be collected by the County on behalf of the Union. While Plaintiffs argue the possibility that they may be reinstated into the Union, this argument is speculative. *See Lujan*, 504 U.S. at 561 ("[I]t must be 'likely,' as opposed to merely 'speculative,' that the injury will be 'redressed by a favorable decision.'" (quoting *Simon v. E. Ky. Welfare Rights Org.*, 426 U.S. 26, 38, 43 (1976))). Further, there is no reasonable likelihood that the Union will seek to collect dues from Plaintiffs, who were Union members, without their consent. In turn, the County would not collect Union dues without signed authorizations by the Plaintiffs. Plaintiffs will never be subjected to Union membership again, unless they provide written consent to authorize dues deductions to rejoin the Union, as they have in the past. Plaintiffs' request for prospective relief is based on an "unknown event at some unknown time." There is absolutely no evidence or support for Plaintiffs arguments. This

scenario is considered to be “voluntary cessation,” which “will moot a case only if it is ‘absolutely clear that the allegedly wrongful behavior could not reasonably be expected to recur.’” *Harnett v. Pa. State Education Ass’n*, 963 F.3d 301 (3d Cir. 2020) (quoting *Fields v. Speaker of the Pa. House of Representatives*, 936 F.3d 142, 161 (3d Cir. 2019)). Defendants have shown that there is no reasonable likelihood that such future conduct would occur. Accordingly, there is no live case or controversy as to Plaintiffs’ claims through which they seek prospective declaratory and injunctive relief. See *Lamberty v. Conn. State Police Union*, No. 3:15-cv-378, 2018 WL 5115559, at *9 (Oct. 9, 2018) (citing *Lujan*, 504 U.S. at 561); See also, *Molina v. Pa. Soc. Servs. Union*, C.A. No. 19-0019, 2019 WL3240170, ___ F. Supp.3d ___ (M.D. Pa. July 18, 2019) (Kane, J). Therefore, Plaintiffs’ claims should be dismissed.

Further, Plaintiffs failed to meet its burden to explain why the case is not moot. See *Seneca Res. Corp. v. Twp. of Highland*, 863 F.3d 245, 254 (3d Cir. 2017) (citing *Richardson v. Bledsoe*, 829 F.3d 273, 283 n. 4 (3d Cir. 2016)). Defendants have met their burden establishing that Plaintiffs’ dues has been

refunded, and Plaintiffs' "interest in the outcome no longer continues to exist." *See Freedom from Religion Foundation*, 832 F.3d at 476 (quoting *Cook v Colgate Univ.*, 992 F.2d17, 19 (2d Cir. 1993)). Short of Plaintiffs' assertions that they would be injured in the future if the complained of conduct, union dues collection, occurred, there is nothing to support Plaintiffs' argument. Plaintiffs "cannot reasonably be expected to suffer another [such] violation at the hands of this union[,]" and, therefore, Plaintiffs' claims are moot. *See id.*, at 785 (discussing whether labor violation at issue could not "reasonably be expected to happen again." (citing *Friends of the Earth*, 528 U.S. at 189)). Therefore, the decision of the District Court must be affirmed.

CONCLUSION

For the reasons stated above, this Court should affirm the District Court's orders granting Defendants' motion for summary judgment and denying the Plaintiffs' motions for summary judgment.

Dated: 3/2/2021

Respectfully submitted,

/s/ Peggy M. Morcom
Peggy M. Morcom
pmorcom@morcomlaw.com
Morcom Law, LLC
226 W Chocolate Ave
Hershey, PA 17033
Phone: (717) 298-1907
Facsimile: (717) 298-3232
Attorney for Defendants-Appellees
County of Lebanon

CERTIFICATE OF COUNSEL

I, Peggy M. Morcom, Esquire, hereby certifies as follows:

1. I am a member of the bar of this Court.
2. The text of the electronic version of this brief is identical to the text of the paper copies.
3. A virus detection program was run on the file and no virus was detected.
4. This brief contains 4,479 words within the meaning of Fed.R.App.P. 32 (a)(7)(B). In making this certificate, I have relied on the word count of the word-processing system used to prepare the brief.

/s/ Peggy M. Morcom
Peggy M. Morcom, Esquire
Counsel for Defendant-Appellant
County of Lebanon

CERTIFICATE OF SERVICE

I hereby certify that on March 2, 2021, I electronically filed the forgoing Appellant-County of Lebanon's Brief with the Clerk of the Court for the United States Court of Appeals for the Third Circuit by using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

/s/ Peggy M. Morcom

Peggy M. Morcom, Esquire
Counsel for Defendant-Appellee
County of Lebanon