



2. Union dues checkoff authorizations signed by government employees in Pennsylvania before the Supreme Court's decision in *Janus* cannot constitute affirmative consent by those employees to waive their First Amendment right to not pay union dues or fees. Union members who signed such agreements could not have freely waived their right to not join or pay a union because the Supreme Court had not yet recognized that right.

3. Because Plaintiffs have not provided affirmative consent to waive their First Amendment right to not join or pay a union, Defendants have violated Plaintiffs' First Amendment rights by maintaining Plaintiffs' union membership and by withholding union dues from their paycheck after the date of the *Janus* decision on June 27, 2018.

4. Further, Pennsylvania law requires that a union serve as an exclusive bargaining agent for all employees in a bargaining unit, including those employees who are not members of the union. 43 P.S. § 1101.606.

5. The First Amendment protects "[t]he right to eschew association for expressive purposes," *Janus*, 138 S. Ct. at 2463, and "[f]reedom of association . . . plainly presupposes a freedom not to associate." *Roberts v. United States Jaycees*, 468 U. S. 609, 623 (1984).

7. Plaintiffs do not wish to associate with Defendant Teamsters Local 429 ("Teamsters"), including having it serve as their exclusive bargaining

representative. Yet, Defendants, under color of state law, are forcing Plaintiffs to associate with Teamsters against their will, “a significant impingement on associational freedoms that would not be tolerated in other contexts.” *Janus*, 138 S. Ct. at 2478.

8. Therefore, Plaintiffs bring this suit under 42 U.S.C. § 1983 and 28 U.S.C. § 2201(a) seeking declaratory and injunctive relief, as well as damages in the amount of the dues previously deducted from their paychecks.

### **PARTIES**

9. Plaintiffs are employees of Lebanon County. Plaintiff Adams resides in Tower City, Pennsylvania. Plaintiff Weaver resides in Stevens, Pennsylvania. Plaintiff Unger resides in Pine Grove, Pennsylvania. Plaintiff Felker resides in Lebanon, Pennsylvania.

10. Defendant Teamsters is a labor union headquartered in Wyomissing, Pennsylvania, and includes among its members municipal government employees across central Pennsylvania. Teamsters is an “Employe organization” and “Representative” within the meaning of the Pennsylvania Public Employee Relations Act (“PERA”), 43 P.S. § 1101.301(3) and (4), respectively.

11. Defendant Lebanon County is a Pennsylvania county. Lebanon County is a “Public employer” within the meaning of PERA, 43 P.S. § 1101.301(1).

12. Defendant Attorney General Josh Shapiro is sued in his official capacity as the representative of Commonwealth of Pennsylvania charged with the enforcement of Commonwealth laws, including PERA, which permits the limitation of the rights of government employees to resign from the union and stop union dues from being withheld from their paychecks, 43 P.S. § 1101.301(18); 1101.401; 1101.705; and which requires Teamsters to be the “exclusive representative” of Plaintiffs, whether they are union members or not. 43 P.S. § 1101.606. His office is located in Harrisburg, Pennsylvania.

13. Defendants James M. Darby, Albert Mezzaroba, and Robert H. Shoop Jr., are members of the Pennsylvania Labor Relations Board (“PLRB”), which is charged, under PERA, with certifying employee representatives for collective bargaining purposes, 43 P.S. § 1101.602, determining the appropriateness of the bargaining unit, 43 P.S. § 1101.604, and limited to certifying only one employee representative per bargaining unit, 43 P.S. § 1101.606. PLRB has certified Teamsters as the exclusive bargaining representative for the employee unit which includes Plaintiffs.

### **JURISDICTION AND VENUE**

14. This case raises claims under the First and Fourteenth Amendments of the United State Constitution and 42 U.S.C. § 1983. The Court has subject-matter jurisdiction under 28 U.S.C. § 1331 and 28 U.S.C. § 1343.

15. Venue is appropriate under 28 U.S.C. § 1391(b) because a substantial portion of the events giving rise to the claims occurred in the Middle District of Pennsylvania.

## FACTS

### **Defendants are acting under color of state law.**

16. Acting in concert under color of state law, Defendant Lebanon County and Defendant Teamsters entered into a collective bargaining agreement (“Agreement”), effective on January 1, 2016 through December 31, 2019. **Exhibit A.**

17. The Agreement contains a “Union Security” article, which limits when union members may resign their union membership and stop union dues from being withheld from their paycheck. In relevant part, that article provides:

Section 1. Each employer who, on the effective date of this Agreement, is a member of the Union and each employee who becomes a member after that date shall, as a condition of employment, maintain his/her membership in the Union. An employee may, however, resign from the Union within fifteen (15) days prior to the expiration of this Agreement without penalty by serving written notice to Teamsters Local Union No. 429, 1055 Spring Street, Wyomissing, PA 19610, and to the Commissioners Office, Lebanon County Court House, Room 207, 400 South 8<sup>th</sup> Street, Lebanon, PA 17042.

Article 3, p. 2, Exhibit A.

18. The Agreement’s maintenance of membership requirement follows PERA’s definition of “maintenance of membership,” which states:

(18) “Maintenance of membership” means that all employes who have joined an employe organization or who join the employe organization in the future must remain members for the duration of a collective bargaining agreement so providing with the proviso that any such employe or employes may resign from such employe organization during a period of fifteen days prior to the expiration of any such agreement.

43 P.S. § 1101.301(18).

19. PERA permits the limitation of the rights of government employees to resign from the union and stop union dues from being withheld from their paychecks.

It shall be lawful for public employes to organize, form, join or assist in employe organizations or to engage in lawful concerted activities for the purpose of collective bargaining or other mutual aid and protection or to bargain collectively through representatives of their own free choice and such employes shall also have the right to refrain from any or all such activities, except as may be required pursuant to a maintenance of membership provision in a collective bargaining agreement.

43 P.S. § 1101.401.

20. The terms of both the Agreement and PERA limit a union member’s right to resign and stop union dues from being withheld from his or her paycheck to only the 15-day window immediately preceding the expiration of the Agreement.

21. The Agreement also provides that with respect to union dues that:

Section 1. Union Dues. The County agrees to deduct the Union membership initiation fees, assessment and once each month, either

dues from the pay of those employees who individually request in writing that such deduction be made or fair share. The amount to be deducted shall be certified to the County by the Union, and the aggregate deductions of all employees shall be remitted together with an itemized statement to the Union by the 10<sup>th</sup> of the succeeding month, after such deductions are made. This authorization shall be irrevocable during the term of this Agreement.

Article 4, p. 2, Exhibit A.

22. PERA provides that:

Membership dues deductions and maintenance of membership are proper subjects of bargaining with the proviso that as to the latter, the payment of dues and assessments while members, may be the only requisite employment condition.

43 P.S. § 1101.705.

**Plaintiffs seek to resign from and stop paying dues to the union.**

23. Plaintiff Hollie Adams has been an administrative case manager with the Lebanon County Mental Health/Intellectual Disabilities/Early Intervention Program (“Lebanon County MH/ID/EI Program”) since April 2003. Ms. Adams joined the union at the time because she would have been required to pay money to the union even as a non-member, in the form of “fair share” fees.

24. Plaintiff Jody Weaber also is an administrative case manager with Lebanon County MH/ID/EI Program, which she joined in June 2007. Ms. Weaber joined the union at the time because she would have been required to pay money to the union even as a non-member, in the form of “fair share” fees.

25. Plaintiff Karen Unger has been an administrative case manager with the Lebanon County MH/ID/EI Program since October 2015. Ms. Unger joined the union at the time because she would have been required to pay money to the union even as a non-member, in the form of “fair share” fees.

26. Plaintiff Chris Felker has been a resource coordinator with the Lebanon County MH/ID/EI Program since December 2009. Mr. Felker joined the union at the time because he would have been required to pay money to the union even as a non-member, in the form of “fair share” fees.

27. At the time Plaintiffs began their employment with Lebanon County and joined Defendant Teamsters, had they been given the option to pay no money to the union as a non-member, they would not have joined the union.

28. After the Supreme Court issued its decision in *Janus* on June 27, 2018, Plaintiffs learned that they had the right both to be a non-member of the union and to pay no money to the union. In July 2018, Plaintiffs Adams, Weaber, and Unger, and in September 2018, Plaintiff Felker sent letters to the union requesting to resign and asking that dues stop being withheld from their paychecks, but the union insisted that they had to continue as dues-paying members until they

requested to resign during the period designated in the dues checkoff authorizations they signed.<sup>1</sup>

29. In October 2018, counsel sent letters on behalf of Plaintiffs to Lebanon County asking for an end to dues withholding, but Lebanon County continued to withhold union dues from their paychecks.

30. In October 2018, which was during the resignation window prescribed in the dues checkoff authorization she signed, Ms. Unger sent a letter resigning her membership from the union. Teamsters allowed Ms. Unger to resign her membership and Lebanon County stopped withholding dues from her paycheck as of November 2018.

31. In September 2018, which was during the resignation window prescribed in the dues checkoff authorization he signed, Mr. Felker sent a letter resigning his membership from the union. Teamsters allowed Mr. Felker to resign his membership and Lebanon County stopped withholding dues from his paycheck as of November 2018.

32. The resignation windows for Ms. Adams and Ms. Weaber pursuant to their dues checkoff authorizations they signed arise in March 2019 and June 2019 respectively.

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<sup>1</sup> Although PERA and the Agreement provides that a member may only resign his or her membership during a window 15 days prior to the expiration of the Agreement, the dues checkoff authorizations Plaintiffs signed indicate that Plaintiffs may resign their membership at least sixty but not more than seventy-five days before any periodic renewal of the authorization.

**Teamsters is Plaintiffs' exclusive bargaining representative.**

33. Under Pennsylvania law, a union selected by public employees in a unit appropriate for collective bargaining purposes is the exclusive representative of all the employees in such unit to bargain on wages, hours, terms and conditions of employment. 43 P.S. § 1101.606.

34. Once a union is designated the exclusive representative of all employees in a bargaining unit, it negotiates wages, hours, terms and conditions of employment for all employees, even employees who are not members of the union or who do not agree with the positions the union takes on the subjects.

35. Defendant Teamsters is the exclusive representative of Plaintiffs and their coworkers in the bargaining unit with respect to wages, hours, terms and conditions of employment, pursuant to 43 P.S. § 1101.606. Article 1, p. 1, Exhibit A.

**COUNT I**

**Defendants Lebanon County and Teamsters violated Plaintiffs' rights to free speech and freedom of association protected by the First Amendment of the United States Constitution.**

36. The allegations contained in all preceding paragraphs are incorporated herein by reference.

37. Requiring a government employee to pay money to a union violates that employee's First Amendment rights to free speech and freedom of association unless the employee "affirmatively consents" to waive his or her rights. *Janus v.*

*AFSCME*, 138 S. Ct. 2448, 2486 (2018). Such a waiver must be “freely given and shown by ‘clear and compelling’ evidence.” *Id.*

38. After the Supreme Court’s decision in *Janus* on June 27, 2018, the Plaintiffs did not provide affirmative consent to remain members of Defendant Teamsters or to having union dues withheld from their paychecks by Defendant Lebanon County.

39. Defendant Lebanon County is a state actor who is deducting dues from Ms. Adams and Ms. Weaber’s paychecks under color of state law, and was similarly deducting dues from Ms. Unger and Mr. Felker’s paychecks from the date of *Janus* until they resigned their membership during the period designated in the dues checkoff authorizations they signed.

40. Acting pursuant to the Agreement and PERA, Defendant Teamsters is acting in concert with Defendant Lebanon County to collect union dues from Plaintiffs’ paycheck without their consent.

41. The actions of Defendants Teamsters and Lebanon County constitute a violation of Plaintiffs’ First Amendment rights to free speech and freedom of association to not join or financially support a union without their affirmative consent.

42. From when they joined the union until June 27, 2018 (the date the *Janus* decision was issued), because they were not given the option of paying

nothing to the union as a non-member of the union, Plaintiffs could not have provided affirmative consent to Defendants to have dues deducted from their paychecks.

43. Plaintiffs' consent to dues collection was not "freely given" because it was given based on an unconstitutional choice of either paying the union as a member or paying the union agency fees as a non-member. *Janus* made clear that this false dichotomy is unconstitutional. *Janus*, 138 S. Ct. at 2486.

44. If Plaintiffs had a choice between paying union dues as a member of the union or paying nothing to the union as a non-member, they would have chosen to pay nothing as a non-member. Therefore, Plaintiffs' consent was compelled, and not freely given.

45. Ms. Adams and Ms. Weaber are entitled to an injunction under 42 U.S.C. § 1983 ordering Defendant Teamsters immediately to resign their union membership.

46. Ms. Adams and Ms. Weaber are entitled to an injunction under 42 U.S.C. § 1983 ordering Defendant Lebanon County to immediately to stop deducting union dues from their paychecks.

47. All Plaintiffs are entitled to a declaration under 42 U.S.C. § 1983 and 28 U.S.C. § 2201(a) that limiting their ability to revoke the authorization to

withhold union dues from their paychecks to a window of time is unconstitutional because they did not provide affirmative consent.

48. All Plaintiffs are entitled to a declaration under 42 U.S.C. § 1983 and 28 U.S.C. § 2201(a) that Plaintiffs' signing of the dues checkoff authorizations cannot provide a basis for their affirmative consent to waive their First Amendment rights upheld in *Janus* because such authorization was based on an unconstitutional choice between paying the union as a member or paying the union as a non-member.

49. All Plaintiffs are entitled to a declaration under 42 U.S.C. § 1983 and 28 U.S.C. § 2201(a) that the practice by Defendant Lebanon County of withholding union dues from Plaintiffs' paycheck was unconstitutional because Plaintiffs did not provide affirmative consent for Lebanon County to do so.

50. All Plaintiffs are entitled under 42 U.S.C. § 1983 to damages in the amount of all dues deducted and remitted to Defendant Teamsters after the date of the Supreme Court's decision in *Janus*, June 27, 2018, because they did not provide affirmative consent for such dues to be deducted.

51. All Plaintiffs are entitled under 42 U.S.C. § 1983 to damages in the amount of all dues deducted and remitted to Defendant Teamsters before June 27, 2018 because they could not have provided affirmative consent to those dues being deducted since they were given an unconstitutional choice between paying union

dues to the union as a member or paying agency fees to the union as a non-member, and had they been given the constitutionally-required option of paying nothing to the union as a non-member, they would have chosen that option.

## COUNT II

### **Commonwealth law forcing Plaintiffs to associate with Defendant Teamsters without their affirmative consent violates their First Amendment rights to free speech and freedom of association.**

52. The allegations contained in all preceding paragraphs are incorporated herein by reference.

53. “Compelling individuals to mouth support for views they find objectionable violates that cardinal constitutional command, and in most contexts, any such effort would be universally condemned.” *Janus*, 138 S. Ct. at 2463.

54. For this reason, the Supreme Court has repeatedly affirmed that “[f]orcing free and independent individuals to endorse ideas they find objectionable is always demeaning . . . [A] law commanding ‘involuntary affirmation’ of objected-to beliefs would require ‘even more immediate and urgent grounds’ than a law demanding silence.” *Janus*, 138 S. Ct. at 2464 (2018) (quoting *West Virginia Bd. of Ed. v. Barnette*, 319 U.S. 624, 633 (1943)).

55. Therefore, courts should scrutinize compelled associations strictly, because “mandatory associations are permissible only when they serve a compelling state interest that cannot be achieved through means significantly less restrictive of associational freedoms.” *Knox v. SEIU*, 567 U.S. 298, 310 (2012).

56. In the context of public sector unions, the Supreme Court has recognized that “[d]esignating a union as the employees’ exclusive representative substantially restricts the rights of individual employees. Among other things, this designation means that individual employees may not be represented by any agent other than the designated union; nor may individual employees negotiate directly with their employer.” *Janus*, 138 S.Ct. at 2460.

57. Under PERA, the Commonwealth of Pennsylvania, allows only one union representative to collectively bargain with a government employer for each employee bargaining unit. 43 P.S. § 1101.606.

58. Lebanon County has recognized Defendant Teamsters as Plaintiffs’ exclusive representative for collective bargaining purposes. 43 P.S. § 1101.602; Article 1, p. 1, Exhibit A.

59. PLRB has certified Teamsters as the exclusive representative for collective bargaining purposes for the bargaining unit which includes Plaintiffs. *See* 43 P.S. § 1101.602.

60. Under color of state law, Defendant Teamsters has acted as Plaintiffs’ exclusive representative in negotiating the terms and conditions of their employment.

61. Under color of state law, Defendant Lebanon County has negotiated the terms and conditions of Plaintiffs’ employment with Defendant Teamsters.

62. This designation compels Plaintiffs to associate with the union and through its representation of them compels them to petition the government with a certain viewpoint, despite that viewpoint being in opposition to Plaintiffs' own goals and priorities.

63. The exclusive representation provision of 43 P.S. § 1101.606 is, therefore, an unconstitutional abridgement of Plaintiffs' right under the First Amendment not to be compelled to associate with speakers and organizations without their consent.

64. Under 42 U.S.C. § 1983, Plaintiffs are entitled to have 43 P.S. § 1101.606 declared unconstitutional for violating their First Amendment rights to free speech and freedom of association.

65. Plaintiffs are entitled to an injunction preventing Defendant General Shapiro from enforcing it, and preventing Defendants James M. Darby, Albert Mezzaroba, and Robert H. Shoop Jr., in their capacity as members of PLRB, from certifying a union as the exclusive representative in a bargaining unit.

### **PRAYER FOR RELIEF**

Plaintiffs Hollie Adams, Jody Weaber, Karen Unger, and Chris Felker respectfully request that this Court:

- a. Declare that limiting the ability of Plaintiffs to revoke the authorization to withhold union dues from their paychecks to a

window of time is unconstitutional because they did not provide affirmative consent;

- b. Declare that Plaintiffs' signing of the dues checkoff authorizations cannot provide a basis for their affirmative consent to waive their First Amendment rights upheld in *Janus* because such authorization was based on an unconstitutional choice between paying the union as a member or paying the union as a non-member;
- c. Declare that the practice by Defendant Lebanon County of withholding union dues from Plaintiffs' paycheck was unconstitutional because Plaintiffs did not provide affirmative consent for Lebanon County to do so;
- d. Enter an injunction ordering Teamsters to immediately allow Plaintiffs to resign their union membership;
- e. Enjoin Defendant Lebanon County from continuing to deduct, and enjoin Defendant Teamsters from accepting, dues from Ms. Adams' and Ms. Weaber's paychecks, unless they first provide freely given affirmative consent to such deductions;
- f. Declare the exclusive representation provided for in 43 P.S. § 1101.606 to be unconstitutional;

- g. Enjoin Defendant Josh Shapiro from enforcing the provisions of 43 P.S. § 1101.606;
- h. Enjoin Defendants James M. Darby, Albert Mezzaroba, and Robert H. Shoop Jr., in their capacity as members of PLRB from certifying a union as the exclusive representative in a bargaining unit;
- i. Award damages against Defendant Teamsters for all union dues collected from all four Plaintiffs after the date of the Supreme Court's decision in *Janus*, June 27, 2018;
- j. Award damages against Defendant Teamsters for all union dues collected from all four Plaintiffs before June 27, 2018;
- k. Award Plaintiffs their costs and attorneys' fees under 42 U.S.C. § 1988; and
- l. Award any further relief to which Plaintiffs may be entitled.

Dated: February 27, 2019

Respectfully Submitted,

By: /s/ Charles O. Beckley

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