

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM)

I. (a) PLAINTIFFS
 Schaszberger, David; Schmittle, Brad; Clouse, Kyle; Conner, Colby; Hulse, Jeanette; Landiak, Gary; Malene, Andrew

(b) County of Residence of First Listed Plaintiff Lancaster
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)
 Please see attached.

DEFENDANTS
 American Federation of State, County, and Municipal Employees, Council 13

County of Residence of First Listed Defendant Dauphin
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION *(Place an "X" in One Box Only)*

1 U.S. Government Plaintiff

3 Federal Question *(U.S. Government Not a Party)*

2 U.S. Government Defendant

4 Diversity *(Indicate Citizenship of Parties in Item III)*

III. CITIZENSHIP OF PRINCIPAL PARTIES *(Place an "X" in One Box for Plaintiff and One Box for Defendant)*

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT *(Place an "X" in One Box Only)*

Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability LABOR <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN *(Place an "X" in One Box Only)*

1 Original Proceeding

2 Removed from State Court

3 Remanded from Appellate Court

4 Reinstated or Reopened

5 Transferred from Another District *(specify)*

6 Multidistrict Litigation - Transfer

8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing *(Do not cite jurisdictional statutes unless diversity):*
 First and Fourteenth Amendments to the United States Constitution and 42 U.S.C. 1983

Brief description of cause:
 Deprivation of First Amendment rights by requiring payment of fair share fees by nonmembers of union

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$ _____

CHECK YES only if demanded in complaint:
 JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY *(See instructions):* JUDGE Malachy E. Mannion DOCKET NUMBER 1:19-1367

DATE _____ SIGNATURE OF ATTORNEY OF RECORD _____

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

ATTACHMENT TO CIVIL COVER SHEET

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return of wrongfully-seized money under 42 U.S.C. § 1983.

PARTIES

2. Plaintiff David Schaszberger was a statistical analyst employed by the Pennsylvania Department of Labor and Industry, and he resides in Lancaster County, Pennsylvania.

3. Plaintiff Bradford Schmittle is a statistician employed by the Pennsylvania State Police, and he resides in Dauphin County, Pennsylvania.

4. Plaintiff Kyle Clouse is a forester employed by the Pennsylvania Game Commission, and he resides in Centre County, Pennsylvania.

5. Plaintiff Colby Conner is a parole agent employed by the Pennsylvania Board of Probation and Parole, and he resides in Armstrong County, Pennsylvania.

6. Plaintiff Jeanette Hulse was a legal assistant employed by the Pennsylvania Department of Environmental Protection, and she resides in Adams County, Pennsylvania.

7. Plaintiff Gary Landiak is a food inspector employed by the Pennsylvania Department of Agriculture, and he resides in Lebanon County, Pennsylvania.

8. Plaintiff Andrew Malene is a civil engineer employed by the Pennsylvania Department of Environmental Protection, and he resides in

Cumberland County, Pennsylvania.

9. Defendant, American Federation of State, County, and Municipal Employees, Council 13, is a labor union whose headquarters is located at 4031 Executive Park Drive, Harrisburg, PA 17111.

JURISDICTION AND VENUE

10. This case raises claims under the First and Fourteenth Amendments of the United States 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.

11. Venue is appropriate under 28 U.S.C. § 1391(b) because AFSCME has its headquarters in the Middle District of Pennsylvania.

FACTUAL ALLEGATIONS

12. Pennsylvania's Public Employee Fair Share Fee Law for Commonwealth employees provides, "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." 71 Pa. Stat. Ann. § 575.

13. AFSCME is the exclusive representative for numerous bargaining units throughout the Commonwealth of Pennsylvania, including Plaintiffs' bargaining units.

14. Pursuant to 71 Pa. Stat. Ann. § 575, AFSCME negotiated a master

agreement with the Commonwealth of Pennsylvania for the collection of service fees from nonmember Commonwealth employees such as Plaintiffs. Article 4, Section 2 of the Master Agreement effective from July 1, 2016 through June 30, 2019 provided:

The Employer further agrees to deduct a fair share fee biweekly from all employees in the bargaining unit who are not members of the Union. Authorization from non-members to deduct fair share fees shall not be required. The amounts to be deducted shall be certified to the Employer by the Union, and the aggregate deductions of all employees shall be remitted together with an itemized statement to the Union by the last day of the succeeding month, after such deductions are made.

15. Pursuant to this agreement, prior to June 27, 2018, all Commonwealth employees in the bargaining units represented by AFSCME who were not union members, including Plaintiffs, were forced to pay “fair-share” fees to AFSCME as a condition of their employment.

16. Prior to June 27, 2018, government employers covered by the collective bargaining agreement deducted “fair share” fees from Plaintiffs’ and other nonmembers’ wages without their consent and, upon information and belief, transferred those funds to AFSCME, which collected those funds.

AFSCME should have known that its seizure of “fair share” fees from non-consenting employees likely violated the First Amendment.

CLASS ACTION ALLEGATIONS

17. This case is brought as a class action under Federal Rule of Civil

Procedure 23(b)(3) by Plaintiffs for them and for all others similarly situated. The class consists of all current and former Commonwealth employees from whom AFSCME collected “fair share” fees pursuant to its collective bargaining agreement with the Commonwealth of Pennsylvania within the applicable statute of limitations.

18. The number of persons in the class is so numerous that joinder is impractical. AFSCME’s website affirms that it represents “over 67,000 Pennsylvania Employees.” *See* AFSCME Council 13, <https://www.afscme13.org/>. From July 1, 2016 to June 30, 2017, AFSCME collected agency fees from 14,991 agency fee payers. *See* Form Lm-2 Labor Organization Annual Report, <https://olms.dol-esa.gov/query/orgReport.do?rptId=656517&rptForm=LM2Form>. For the reporting period ending June 30, 2018, after the *Janus* decision, AFSCME Reported 578 agency fee payers. *See* Form Lm-2 Labor Organization Annual Report, <https://olms.dol-esa.gov/query/orgReport.do?rptId=684209&rptForm=LM2Form>. Therefore, upon information and belief, the difference of 14,413 represents an approximate number of the public-sector workers who were agency fee payers prior to June 27, 2018.

19. There are questions of law and fact common to all class members, including Plaintiffs. The constitutional violations perpetrated by AFSCME against all nonmembers were taken according to the same statutes and collective

bargaining agreement. The legal question of whether AFSCME owes damages to class members from whom it unconstitutionally seized “fair share” fees is common to all class members.

20. Plaintiffs’ claims are typical of class members’ claims because all concern whether AFSCME owes damages to class members from whom it unconstitutionally seized “fair share” fees.

21. Plaintiffs will adequately represent the class and have no conflicts with other class members.

22. The class can be maintained under Federal Rule of Civil Procedure 23(b)(3) because the important and controlling question of law or fact, whether agency fee deductions violated class members’ First Amendment rights, is common to the members of the class and predominates over any questions affecting only individual members. A class action is superior to other available methods for the fair and efficient adjudication of the controversy because the individual class members are deprived of the same rights by AFSCME’s actions, and they differ only in the amount of money deducted. These amounts are known to AFSCME and easily calculated from its business records. The limited amount of money involved in each individual class member’s claim would make it burdensome for each respective class member to maintain a separate action.

CAUSE OF ACTION: FIRST AMENDMENT VIOLATION

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

24. AFSCME acted under color of state law and in concert with the Commonwealth of Pennsylvania when it compelled Plaintiffs and class members to pay “fair share” fees, caused the government to deduct “fair share” fees from Plaintiffs and class members, and collected “fair share” fees seized from Plaintiffs and class members.

25. AFSCME violated Plaintiffs’ and class members’ First Amendment rights to free speech and association, as secured against state infringement by the Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983, by requiring the payment of “fair share” fees as a condition of employment and by collecting such fees.

PRAYER FOR RELIEF

Plaintiffs respectfully request that this Court:

- a. Certify the class;
- b. Enter a judgment, pursuant to 28 U.S.C. § 2201(a), declaring that AFSCME violated Plaintiffs’ and class members’ constitutional rights by compelling them to pay “fair share” fees as a condition of their employment and by collecting “fair share” fees from them without consent;

c. Award Plaintiffs and class members actual damages or restitution in the full amount of “fair share” fees and assessments seized from their wages, plus interest, for violations of their First Amendment Rights;

d. Award Plaintiffs their costs and attorneys’ fees under 42 U.S.C. § 1988;
and

e. Award any further relief to which Plaintiffs and class members may be entitled.

Dated: November 7, 2019

Respectfully Submitted,

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