

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

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

ORDER

THE BACKGROUND OF THIS ORDER IS AS FOLLOWS:

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

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

On February 28, 2017, two motions to dismiss were filed by the School District Defendants and their respective superintendents. (Doc. Nos. 19, 20.) On March 21, 2017, Plaintiffs filed a First Amended Complaint against the School District Defendants and Union Defendants.² On the same date, Plaintiffs filed a Notice of Voluntary Dismissal of Plaintiffs' claims against the individual superintendents. (Doc. No. 24.) Two of the school district defendants, Ellwood City and Homer-Center, filed a joint motion to dismiss Plaintiffs' First Amended Complaint on April 4, 2017. (Doc. No. 28.) On that same date, the remaining school district defendant, Twin Valley, filed its motion to dismiss Plaintiffs' First Amended Complaint (Doc. No. 26), and the Union Defendants filed an answer to the First Amended Complaint (Doc. No. 29). The pending motions to dismiss have been fully briefed and are ripe for disposition.

Plaintiffs' First Amended Complaint seeks to challenge the constitutionality of Pennsylvania's statutory framework governing the compulsory collection of "fair share fees" from nonmember public school teachers on its face and as applied. Both pending motions to dismiss the First Amended Complaint argue that the claims against the school districts must be dismissed pursuant to the United States Supreme Court's decision in Abood v. Detroit Board of Education, 431 U.S. 209 (1977), which upheld the constitutionality of "fair share" statutory provisions under a public sector labor contract. In 2016, in Friedrichs v. California Teachers Association, 136 S. Ct. 1083 (2016), a divided Supreme Court (4-4) affirmed the United States Court of Appeals for the Ninth Circuit's dismissal of a similar constitutional challenge to compulsory "fair share fees" under Abood. In response to the pending motions to dismiss,

² Plaintiffs' filing of a First Amended Complaint rendered the pending motions to dismiss (Doc. Nos. 19, 20), moot.

Plaintiffs “concede that the Supreme Court’s affirmance [in Friedrichs] of the lower court’s decision means that Abood controls in this case at this stage and that this Court, at this time, has no choice but to follow Abood.” (Doc. No. 31 at 11.) However, Plaintiffs maintain that the arguments supporting a reversal of Abood by the Supreme Court are strong, and that they ultimately seek such a reversal in this case. Regardless, given Plaintiffs’ concession and the controlling precedent of Abood, the School District Defendants’ motions to dismiss will be granted.

AND SO, on this 23rd day of June 2017, in accordance with the foregoing, **IT IS**

ORDERED THAT:

1. The School District Defendants’ motions to dismiss Plaintiffs’ original complaint (Doc. Nos. 19, 20), are **DENIED as MOOT**;
2. The School District Defendants’ motions to dismiss Plaintiff’s First Amended Complaint (Doc. Nos. 26, 28), are **GRANTED**, and all claims asserted against those defendants are dismissed with prejudice;
3. The Clerk of Court is directed to **TERMINATE** Ellwood City School District, Homer-Center School District, and Twin Valley School District, as defendants in this case.

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