

**IN THE COURT OF COMMON PLEAS OF  
LANCASTER COUNTY, PENNSYLVANIA**

JANE LADLEY and CHRISTOPHER  
MEIER,

Plaintiffs,

v.

PENNSYLVANIA STATE EDUCATION  
ASSOCIATION,

Defendant.

No. CI-14-08552

Judge Leonard G. Brown, III

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**ANSWER TO DEFENDANT PENNSYLVANIA STATE EDUCATION ASSOCIATION'S  
MOTION FOR SUMMARY JUDGMENT BASED ON MOOTNESS**

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AND NOW COMES Plaintiffs Jane Ladley ("Ms. Ladley") and Christopher Meier ("Mr. Meier") (collectively, "Plaintiffs"), by and through undersigned counsel, and answers Defendant Pennsylvania State Education Association's ("PSEA's") Motion for Summary Judgment Based on Mootness pursuant to Pennsylvania Rule of Civil Procedure 1035.3 and Lancaster County Rule of Civil Procedure 1035.2(a) the following:

1. ADMITTED.
2. ADMITTED.
3. ADMITTED.
4. ADMITTED.

5. DENIED as stated. For the reasons stated in Plaintiffs' contemporaneously filed Brief in Opposition to Defendant PSEA's Motion for Summary Judgment ("Plaintiffs' Brief"), Plaintiffs' challenge continues to present a justiciable case.

6. DENIED as a conclusion of law and for the reasons stated in Plaintiffs' Brief. By way of further answer, the United States Supreme Court's opinion in Janus v. AFSCME, Council 31, 138 S. Ct. 2448 (2018), speaks for itself.

7. DENIED as a conclusion of law and for the reasons stated in Plaintiffs' Brief. By way of further answer, although Janus controls in this matter, Janus does not moot this case because Janus involved Illinois litigants and Illinois law.<sup>1</sup> See Waters v. Ricketts, 798 F.3d 682, 685 (8th Cir. 2015) (holding Nebraska state law unconstitutional where "[t]he [Supreme] Court invalidated laws in Michigan, Kentucky, Ohio, and Tennessee—not Nebraska"); see also Rosenbrahn v. Dugaard, 799 F.3d 918, 922 (8th Cir. 2015) ("not South Dakota"); Jernigan v. Crane, 796 F.3d 976, 979 (8th Cir. 2015) ("not Arkansas"). The Supreme Court could not and did not strike down Pennsylvania law when it decided Janus because no one raised a justiciable challenge to Pennsylvania's fair share fee statutes. See Martin v. Wilks, 490 U.S. 755, 762 (1989) ("A judgment or decree

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<sup>1</sup> Ill. Comp. Stat. ch. 5 §§ 315/1–315/28.

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 (superseded on other grounds by statute); Doran v. Salem Inn, Inc., 422 U.S. 922, 931 (1975) (“[N]either declaratory nor injunctive relief can directly interfere with enforcement of contested statutes or ordinances except with respect to the particular plaintiffs . . .”). The Supreme Court did not even happen to discuss how Pennsylvania laws authorizing fair share fees might relate to the Illinois statute at issue in Janus. Janus necessarily left Pennsylvania law intact.

8. ADMITTED.

9. ADMITTED in part; DENIED in part. ADMITTED that the PSEA claims it will end collection of fair share fees. However, DENIED as a conclusion of law and for the reasons stated in Plaintiffs’ Brief that PSEA has carried its “heavy burden” of “prov[ing] that there is no reasonable expectation that the past conduct will be repeated.” Pennsylvania Interscholastic Athletic Ass’n, Inc. v. Greater Johnstown Sch. Dist., 463 A.2d 1198, 1201 (Pa. Cmwlth. 1983). Federal courts, to which Pennsylvania courts frequently look for guidance on deciding questions of mootness,<sup>2</sup> further describe this burden as “formidable.” Friends of the Earth, Inc.

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<sup>2</sup> Pap’s A.M. v. City of Erie, 812 A.2d 591, 600 n.4 (Pa. 2002) (“This Court has frequently looked to cases from the U.S. Supreme Court for guidance in deciding questions of mootness.”).

v. Laidlaw Env. Servs. (TOC), Inc., 528 U.S. 167, 170 (2000); DeJohn v. Temple Univ., 537 F.3d 301, 309 (3d Cir. 2008).

10. ADMITTED in part; DENIED in part. ADMITTED that the PSEA claims it will end collection of fair share fees. However, DENIED as a conclusion of law and for the reasons stated in Plaintiffs' Brief that PSEA has carried its "heavy burden" of "prov[ing] that there is no reasonable expectation that the past conduct will be repeated." Pennsylvania Interscholastic Athletic Ass'n, Inc., 463 A.2d at 1201. Federal courts, to which Pennsylvania courts frequently look for guidance on deciding questions of mootness, further describe this burden as "formidable." Friends of the Earth, Inc., 528 U.S. at 170; DeJohn, at 309.

11. ADMITTED in part; DENIED in part. ADMITTED that the PSEA claims it will end collection of fair share fees. However, DENIED as a conclusion of law and for the reasons stated in Plaintiffs' Brief that PSEA has carried its "heavy burden" of "prov[ing] that there is no reasonable expectation that the past conduct will be repeated." Pennsylvania Interscholastic Athletic Ass'n, Inc., 463 A.2d at 1201. Federal courts, to which Pennsylvania courts frequently look for guidance on deciding questions of mootness, further describe this burden as "formidable." Friends of the Earth, Inc., 528 U.S. at 170; DeJohn, at 309.

12. ADMITTED in part; DENIED in part. ADMITTED that the PSEA claims it will end collection of fair share fees. However, DENIED as a conclusion of law and for the reasons stated in Plaintiffs' Brief that PSEA has carried its "heavy burden" of "prov[ing] that there is no reasonable expectation that the past conduct will be repeated." Pennsylvania Interscholastic Athletic Ass'n, Inc., 463 A.2d at 1201. Federal courts, to which Pennsylvania courts frequently look for guidance on deciding questions of mootness, further describe this burden as "formidable." Friends of the Earth, Inc., 528 U.S. at 170; DeJohn, at 309.

13. DENIED as a conclusion of law and for the reasons stated in Plaintiffs' Brief.

14. DENIED as a conclusion of law and for the reasons stated in Plaintiffs' Brief.

15. DENIED as a conclusion of law and for the reasons stated in Plaintiffs' Brief.

16. DENIED as a conclusion of law and for the reasons stated in Plaintiffs' Brief. By way of further answer, Plaintiffs ask this Court to declare that section 575(b)–(i) is unconstitutional under Janus and to enjoin the PSEA from seizing or impounding Plaintiffs' funds in the future.

17. DENIED as a conclusion of law and for the reasons stated in Plaintiffs' Brief.

18. DENIED as a conclusion of law and for the reasons stated in Plaintiffs' Brief.

**WHEREFORE**, Plaintiffs request that this Court deny the PSEA's Motion for Summary Judgment Based on Mootness, grant Plaintiffs' Motion for Summary Judgment, declare that section 575(b)–(i) is unconstitutional under Janus v. AFSCME, Council 31, enjoin the PSEA from seizing or impounding Plaintiffs' funds in the future, and award Plaintiffs' attorneys' fees, costs, and expenses in this action pursuant to 42 U.S.C. § 1988.

Respectfully submitted,

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Dated: September 18, 2018

**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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