NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 21-2172

DAVID SCHASZBERGER; BRADFORD SCHMITTLE; KYLE CLOUSE; COLBY CONNER; JEANETTE HULSE; GARY LANDIAK,
Appellants

v.

AMERICAN FEDERATION OF STATE COUNTY AND MUNICIPAL EMPLOYEES COUNCIL 13

On Appeal from the United States District Court
for the Middle District of Pennsylvania
(D.C. Civil No. 3-19-cv-01922)
District Judge: Honorable Malachy E. Mannion

Submitted Pursuant to Third Circuit L.A.R. 34.1
on February 10, 2022

Before: GREENAWAY, JR., SCIRICA,
and RENDELL, *Circuit Judges.*

(Filed: July 20, 2022)

OPINION*

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* This disposition is not an opinion of the full Court and pursuant to I.O.P. 5.7 does not constitute binding precedent.

SCIRICA, *Circuit Judge*

This case arises out of the Supreme Court's decision in *Janus v. American Federation of State, County, and Municipal Employees Council 31*, 138 S. Ct. 2448 (2018), in which the Court held that the collection of agency shop fees from nonconsenting employees by the state or public-sector unions was a violation of the First Amendment. American Federation of State, County and Municipal Employees Council 13 ("AFSCME"), a Pennsylvania public-sector union, was a union that had previously been collecting these "fair-share" fees, pursuant to then-binding Supreme Court precedent and Pennsylvania state law. Appellants, non-AFSCME members who worked in units represented by AFSCME, were subject to these fees. After the Supreme Court found these fees to be unconstitutional, Appellants filed this putative class action to recover the fair-share fees AFSCME collected from them prior to the *Janus* decision. The District Court granted AFSCME's motion to dismiss, finding AFSCME was shielded from liability by virtue of its good faith reliance on then-controlling Supreme Court precedent and state law. Because we find AFSCME was entitled to a good faith defense, we will affirm.

I.

Labor laws in the United States authorize employers and labor organizations to bargain for an "agency shop." *Diamond v. Pa. State Educ. Ass'n*, 972 F.3d 262, 265 (3d Cir. 2020). An agency shop arrangement

permits a union to exclusively represent an entity's employees on the condition that the union represent all of the entity's employees, even those who do not join the union. *Id.* at 265–66. Because agency shop arrangements can create an incentive for employees to decline to join their union and avoid paying dues

> while still accruing the benefits of union representation. . . . Congress often allowed unions and employers who opt for an agency shop arrangement to require all employees either to join the union and pay dues or, if an employee does not join the union, to nonetheless contribute to the costs of representation, bargaining, and administration of bargaining agreements.

Id. at 266.

These mandated contributions are known as "fair-share" fees. For decades, the Supreme Court consistently upheld the constitutionality of fair-share fees. *Abood v. Detroit Bd. of Educ.*, 431 U.S. 209, 224–26 (1977).

Like many states, Pennsylvania enacted a law providing that "[i]f 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. AFSCME is a government employee union that served as the exclusive representative for several bargaining units throughout Pennsylvania, including Appellants' units. In 2016, pursuant to 71 Pa.

Stat. Ann. § 575, AFSCME negotiated a Master Agreement with Pennsylvania for the collection of service fees from nonmember employees, which 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.

App. 09–10.

But in 2018, the Supreme Court reversed its views with respect to fair-share fees and overruled *Abood* in *Janus*. The Court held "the First Amendment does not permit the government to compel a person to pay for another party's speech just because the government thinks that the speech furthers the interests of the person who does not want to pay." 138 S. Ct. at 2467. This decision rendered statutes like 71 Pa. Stat. Ann. § 575 unconstitutional, meaning states and public-sector unions could no longer extract agency fees from nonconsenting employees. After the Court issued this decision, AFSCME promptly ceased its collection of fair-share fees.

During the relevant time, Appellants were state employees whose jobs fell within a classification covered by AFSCME but who were not dues-paying

members of the union. Prior to *Janus*, AFSCME collected fair-share fees from Appellants. As noted, Appellants filed a suit on November 7, 2019, under 42 U.S.C. § 1983 on behalf of themselves and a putative class of similarly situated employees, contending they should be able to recover the fair-share fees AFSCME collected from them prior to *Janus*.

The trial judge granted AFSCME's motion to dismiss. In dismissing Appellants' claims, the trial judge held "unions sued for a refund of pre-*Janus* fair-share fees can assert the good-faith defense." App. 22. Accordingly, the trial judge found that because AFSCME relied in good faith on both a Pennsylvania state statute and unambiguous Supreme Court precedent in extracting these fees, the good faith defense shielded it from liability for Appellants' claims under § 1983. Appellants appealed.

II.

The District Court had jurisdiction under 28 U.S.C. §§ 1331 and 1343. We have appellate jurisdiction under 28 U.S.C. § 1291. We review a District Court's grant of a motion to dismiss de novo. *Phillips v. Cnty. of Allegheny*, 515 F.3d 224, 230 (3d Cir. 2008). In considering a motion to dismiss, we "accept all factual allegations as true, construe the complaint in the light most favorable to the plaintiff, and determine whether, under any reasonable reading of the complaint, the plaintiff may be entitled to relief." *Id.* at 233 (quoting *Pinker v. Roche Holdings Ltd.*, 292 F.3d 361, 374 n.7 (3d Cir. 2002)).

III.

This is not the first time such a case has come before us. In *Diamond v. Pennsylvania State Education Association*, 972 F.3d 262 (3d Cir. 2020), the plaintiff made allegations substantially similar to the ones brought by Appellants. A divided panel of our colleagues found for the *Diamond* union and affirmed the trial judge's grant of the motion to dismiss. *Id.* at 265. Judge Rendell concluded the *Diamond* union was entitled to a good faith defense, because "private defendants should not be held liable under § 1983 absent a showing of malice and evidence that they either knew or should have known of the statute's constitutional infirmity." *Id.* at 270 (quoting *Jordan v. Fox, Rothschild, O'Brien & Frankel*, 20 F.3d 1250, 1276 (3d Cir. 1994)). Judge Fisher concurred in the judgment, but disagreed with Judge Rendell's reasoning. *Id.* at 274 (Fisher, J. concurring). Instead, Judge Fisher found the *Diamond* union was entitled to a specific defense available at common law that exempted the union from liability absent a showing of fraud or duress. *Id.* at 284–85. Judge Phipps dissented, finding "a good faith affirmative defense" did not exist for this type of § 1983 claim because the defense was not firmly rooted at common law. *Id.* at 285 (Phipps, J., dissenting).

We are bound by decisions of this Court, and accordingly, must decide if an opinion in *Diamond* controls here. *See Montgomery Cnty. v. MicroVote Corp.*, 175 F.3d 296, 300 (3d Cir. 1999). The Third Circuit has "no specific rules for how to identify the holdings and legal standards" for split opinions in which no majority

agrees on both the holding and the reasoning. *Holloway v. Att'y Gen.*, 948 F.3d 164, 170 (3d Cir. 2020). But the Supreme Court has provided instructions on how to identify the controlling standards in their own split decisions, which guide our opinion.[1]

In *Marks v. United States*, the Supreme Court instructed that when there is a divided court, and no single rationale receives a majority vote, "the holding of the Court may be viewed as that position taken by those Members who concurred in the judgments on the narrowest grounds." 430 U.S. 188, 193 (1977) (quoting *Gregg v. Georgia*, 428 U.S. 153, 169 n.15 (1976)). We have interpreted the *Marks* rule to mean that "[w]hen sorting out a fractured decision of the Court, the goal is 'to find a single legal standard' that 'produce[s] results with which a majority of the [Court] in the case articulating the standard would agree.'" *Binderup v. Att'y Gen.*, 836 F.3d 336, 356 (3d Cir. 2016) (en banc) (quoting *United States v. Donovan*, 661 F.3d 174, 182 (3d Cir. 2011)).

As noted, Judge Rendell and Judge Fisher applied different legal standards to find for the *Diamond* union. Because Judge Fisher's vote was necessary for the judgment, Judge Rendell's opinion is "*not* a majority opinion except to the extent that it accords with [Judge Fisher's] views." *B.H. ex rel. Hawk v. Easton Area Sch. Dist.*, 725 F.3d 293, 310 (3d Cir. 2013) (quoting *McKoy*

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[1] We have previously looked to *Marks v. United States*, 430 U.S. 188 (1977) and its progeny for guidance on how to read split opinions. *See Holloway*, 948 F.3d at 170.

v. North Carolina, 494 U.S. 433, 462 n.3 (1990) (Scalia, J., dissenting)). But Judge Fisher found for the *Diamond* union on an entirely separate ground, so his rationale does not provide the "least common denominator necessary to maintain a majority opinion" between Judge Rendell and Judge Fisher. *B.H.*, 725 F.3d at 311; *see also id.* at 310 ("[The] linchpin justice's opinion 'cannot add to what the majority opinion holds' by 'binding the other [ ] justices to what they have not said' because his views would not be the narrowest grounds." (quoting *McKoy*, 494 U.S. at 462 n.3 (Scalia, J., dissenting))); *King v. Palmer*, 950 F.2d 771 (D.C. Cir. 1991) (en banc) ("[T]he narrowest opinion must represent a common denominator of the Court's reasoning; it must embody a position implicitly approved by at least five Justices who support the judgment."); *Abbas v. Foreign Policy Grp., LLC*, 783 F.3d 1328, 1336–37 (D.C. Cir. 2015) (Kavanaugh, J.) (finding no opinion could be "the *Marks* middle ground or narrowest opinion" where the Justices who concurred in the judgment adopted different legal formulations).

The only common denominator in the *Diamond* majority is the ultimate outcome of the case, and thus we are not bound by the reasoning of either opinion. *See Anker Energy Corp. v. Consolidation Coal Co.*, 177 F.3d 161, 170 (3d Cir. 1999) ("[I]n cases where approaches differ, no particular standard is binding on an inferior court because none has received the support of a majority. . . ."); *United States v. Guillen*, 995 F.3d 1095, 1115 (10th Cir. 2021) ("[Where] there is no discernable implicit consensus or common denominator

among the Justices who support the Court's judgment . . . we do not apply *Marks*.").[2]

Appellants urge us to read Judge Fisher's and Judge Phipps's opinions regarding the lack of a good faith defense as controlling precedent. We have previously "looked to the votes of dissenting Justices if they, combined with votes from plurality or concurring opinions, establish a majority view on the relevant issue." *United States v. Donovan*, 661 F.3d 174, 182 (3d Cir. 2011) (collecting cases). But even in these cases, the cobbled-together collective is only persuasive, rather than binding, authority. *United States v. Richardson*, 658 F.3d 333, 340 (3d Cir. 2011). Accordingly, while the three opinions in *Diamond* should be considered for their persuasive value, we believe none constitutes binding authority here.

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[2] In *United States v. Duvall*, 740 F.3d 604 (D.C. Cir. 2013), then-Judge Kavanaugh discussed the rare circumstance where there is "no `narrowest' opinion that would identify how a majority of the Supreme Court would resolve all future cases" because no opinion has "adopted a legal standard that would produce results with which a majority of the Court in that case necessarily would agree." *Id.* at 611 (Kavanaugh, J., concurring). *Diamond* is one such circumstance. To the extent Justice Kavanaugh would encourage us to "decide the case . . . in a way consistent with how the [Court]'s opinions in the relevant precedent would resolve the current case," by "run[ning] the facts and circumstances . . . through the tests articulated in the Justices' various opinions in the binding case and adopt[ing] the result that a majority of the [Court] would have reached," *id.*, we would reach the same result. We note this portion of our opinion is an alternative holding.

IV.

Because *Diamond* does not control our decision here, we turn to the question of whether Appellee is entitled to a good faith defense. We hold a good faith defense exists, where, as here, Appellee relied on then-controlling Supreme Court precedent and state law.

42 U.S.C. § 1983 provides a cause of action for persons who have been deprived of "any rights, privileges, or immunities secured by the Constitution" under color of state law. A private party may be liable under § 1983 if it "deprived the plaintiff of a constitutional right by exercising 'a right or privilege having its source in state authority' and where the private-party defendant may be 'appropriately characterized as a state actor.'" *Diamond*, 972 F.3d at 269–70 (quoting *Lugar v. Edmondson Oil Co.*, 457 U.S. 922, 939 (1982)).

While "[o]n its face § 1983 admits no immunities," the Supreme Court has "consistently recognized that substantive doctrines of privilege and immunity may limit the relief available." *Tower v. Glover*, 467 U.S. 914, 920 (1984). Most notably, government officials are entitled to immunity from § 1983 liability where the "tradition of immunity was so firmly rooted in the common law and was supported by such strong policy reasons that Congress would have specifically so provided had it wished to abolish the doctrine." *Owen v. City of Independence*, 445 U.S. 622, 637 (1980) (internal quotation omitted). In *Wyatt v. Cole*, the Court refused to extend § 1983 immunity to private parties, finding the rationales supporting qualified immunity for government

officials did not apply to private parties. 504 U.S. 158, 168 (1992). But the Court differentiated defenses to suit from immunity from suit. *Id.* at 166. Because "principles of equality and fairness may suggest" that "private citizens who rely unsuspectingly on state laws they . . . may have no reason to believe are invalid should have some protection from liability," the Court "[did] not foreclose the possibility" that private parties "could be entitled to an affirmative defense based on good faith and/or probable cause." *Id.* at 169. Instead, the Court left open the question of a good faith defense "for another day." *Id.*

We addressed this question in *Jordan v. Fox, Rothschild, O'Brien & Frankel*, 20 F.3d 1250 (3d Cir. 1994). In *Jordan*, we held that private parties sued for monetary damages under § 1983 are entitled to a subjective good faith defense if the court finds no malice and no evidence the party knew or should have known "of the statute's constitutional infirmity." 20 F.3d at 1276 (internal quotation omitted). In *Diamond*, Judge Rendell read *Jordan* to establish that this good faith defense is open to private-party defendants as a categorical rule. 972 F.3d at 271.[3] We agree a good faith defense exists in this case for private party defendants who

[3] Other circuits have read *Jordan* in this same manner. *See*, *e.g.*, *Janus v. Am. Fed'n of State, Cnty. & Mun. Emps., Council 31*, 942 F.3d 352, 362 (7th Cir. 2019) (*Janus II*) ("[*Jordan*] held that, while a private party acting under color of state law does not enjoy qualified immunity from suit, it is entitled to raise a good-faith defense to liability under section 1983.").

reasonably rely on both Supreme Court precedent and state law.

The availability of a good faith defense is consistent with *Wyatt*, equitable considerations, and the views of several of our sister circuits. In *Wyatt*, the Court explained

> [i]f parties seeking immunity were shielded from tort liability when Congress enacted the Civil Rights Act of 1871—§ 1 of which is codified at 42 U.S.C. § 1983—we infer from legislative silence that Congress did not intend to abrogate such immunities when it imposed liability for actions taken under color of state law.

504 U.S. at 164.

Accordingly, when determining whether Congress intended to confer immunity, the Court instructed us to look to the "most closely analogous torts" to see whether there was an immunity at common law. *Id.* Appellants encourage us to find this directive applies to determining "the elements or defenses to constitutional claims under § 1983" with respect to private party defendants. Appellants' Br. 31. But *Wyatt* only decided the proper inquiry to determine what immunities might be available to government officials. And we are not persuaded to apply the Court's historical immunity analysis to the separate question of a good faith defense, which the Court explicitly left open in *Wyatt*. *See Diamond*, 972 F.3d at 272. As Justice Kennedy acknowledged in *Wyatt*, the distinction between

immunity and a defense is "important" and "fundamental." *Wyatt*, 504 U.S. at 173–74 (Kennedy, J., concurring). And the rationales, limitations, and legal bases for the doctrines are not interchangeable. *Danielson v. Inslee*, 945 F.3d 1096, 1100–01 (9th Cir. 2019). Accordingly, *Wyatt* does not appear to require us to apply the "most closely analogous tort" methodology to a good faith defense.[4]

Moreover, qualified immunity itself is no longer bound by a common law tort analogy. The Supreme Court has emphasized that it has "never suggested that the precise contours of official immunity can and should be slavishly derived from the often arcane rules of the common law." *Anderson v. Creighton*, 483 U.S. 635, 645 (1987). And as the Ninth Circuit observed in *Danielson*, the good faith defense is rooted in legitimate concerns about equality and fairness, "values that are inconsistent with rigid adherence to the oft-arbitrary elements of common law torts as they stood

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[4] Even if we accepted Appellants' argument and looked to the most closely analogous tort, we would still find for Appellee. Like many of our sister circuits, we believe that abuse of process is the most analogous common law tort to a *Janus* First Amendment claim. *See Akers v. Md. State Educ. Ass'n*, 990 F.3d 375, 382 (4th Cir. 2021); *Ogle v. Ohio Civ. Serv. Emps. Ass'n, AFSCME Loc. 11*, 951 F.3d 797 (6th Cir. 2020); *Doughty v. State Emps. Ass'n of N.H., SEIU Loc. 1984*, 981 F.3d 128, 134 (1st Cir. 2020); *Janus II*, 942 F.3d at 365; *Danielson*, 945 F.3d at 1102. At common law, one accused of abuse of process was entitled to a good faith defense. *See Shaw v. Fulton*, 266 Mass. 189, 191 (1929); *Reay v. Butler*, 69 Cal. 572, 585 (Cal. 1886). Accordingly, even if we conducted a common-law tort inquiry, we would find Appellee is entitled to a good faith defense.

in 1871." 945 F.3d at 1101. Indeed, modern causes of action litigated in § 1983 cases often bear little resemblance to any 19th Century tort. We agree with the Ninth Circuit in finding it would be "neither 'equal' nor 'fair' for a private party's entitlement to a good faith defense to turn not on the innocence of its actions but rather on the elements of an 1871 tort that the party is not charged with committing." *Id.* at 1101–02.

Accordingly, we join a growing list of our sister circuits in recognizing a good faith defense for § 1983 private defendants who relied on then-controlling Supreme Court precedent and then-existing state law. *See Lee v. Ohio Educ. Ass'n*, 951 F.3d 386, 390–91 (6th Cir. 2020) ("Since *Wyatt*, a consensus has emerged among the lower courts that while a private party acting under color of state law does not enjoy qualified immunity from suit, it is entitled to raise a good-faith defense to liability under section 1983. It is not surprising then that the Seventh Circuit, the Ninth Circuit, and each of the District Courts to have considered the precise issue before us have all concluded that the good-faith defense precludes claims brought under § 1983 for a return of fair-share fees collected under the *Abood* regime." (cleaned up)); *Wholean v. CSEA SEIU Loc. 2001*, 955 F.3d 332, 335–36 (2d Cir. 2020); *Danielson*, 945 F.3d at 1101–02; *Janus v. Am. Fed'n of State, Cnty. & Mun. Emps., Council 31*, 942 F.3d 352, 365 (7th Cir. 2019) (*Janus II*). We agree. Because

AFSCME relied in good faith on both *Janus* and 71 Pa. Stat. Ann. § 575, it is entitled to a good faith defense.[5]

V.

We recognize a good faith defense here for § 1983 private defendants who reasonably relied on then-controlling Supreme Court precedent and then-existing state law. Under this standard, Appellee is entitled to a good faith defense. Accordingly, we will affirm the judgment of the District Court.

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[5] Appellants contend that even if a good faith defense exists, it is only a mechanism to defeat the elements of malice or probable cause in those constitutional claims in which malice or probable cause are elements. They argue that since a *Janus* First Amendment claim does not contain these elements, there can be no good faith defense. We are not persuaded by this argument. An affirmative defense "need not relate to or rebut specific elements of an underlying claim." *Wholean*, 955 F.3d at 336 (internal quotation omitted).

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Submitted Pursuant to Third Circuit L.A.R. 34.1
on February 10, 2022

Before: GREENAWAY, JR., SCIRICA,
and RENDELL, *Circuit Judges*.

JUDGMENT

This cause came to be considered on the record from the United States District Court for the Middle District of Pennsylvania and was submitted pursuant

to Third Circuit L.A.R. 34.1(a) on February 10, 2022. On consideration whereof, it is now hereby

ORDERED and **ADJUDGED** by this Court that the order of the District Court entered May 20, 2021, be, and the same is hereby **AFFIRMED**. Costs taxed against Appellants. All the above in accordance with the opinion of this Court.

ATTEST

s/ Patricia S. Dodszuweit
Clerk

DATED: July 20, 2022

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

David SCHASZBERGER, *et al.*,	:	
Plaintiffs	:	**CIVIL ACTION NO. 3:19-1922**
v.	:	
AMERICAN FEDERATION OF STATE, COUNTY & MUNICIPAL EMPLOYEES, COUNCIL 13,	:	**(JUDGE MANNION)**
Defendant	:	

MEMORANDUM

(Filed May 20, 2021)

Presently before the court is the motion to dismiss the first amended complaint ("FAC"), (Doc. 16), of plaintiffs David Schaszberger, Bradford Schmittle, Kyle Clouse, Colby Conner, Jeanette Hulse, Gary Landiak, and Andrew Malene filed by defendant American Federation of State, County and Municipal Employees Union, Council 13 ("AFSCME"), (Doc. 18). Defendant AFSCME's motion seeks dismissal of the plaintiffs' claims against it for retrospective monetary relief under 42 U.S.C. § 1983 for failure to state a claim upon which relief may be granted pursuant to Fed.R.Civ.P. 12(b)(6), and it seeks dismissal of plaintiffs' request for declaratory judgment under Rule 12(b)(1). Specifically, AFSCME contends that plaintiffs' First Amendment claims against it, in this putative class action, for

retrospective monetary relief under § 1983 should be dismissed since it relied in good faith on the formerly valid Pennsylvania law and longstanding United States Supreme Court precedent that allowed it to collect fair-share fees from public-sector employees who were not members of the union. AFSCME contends that plaintiffs' request for declarative judgment should be dismissed for lack of standing and mootness. Once again, *see* Wenzig v. SEIU Local 668, 426 F. Supp. 3d 88 (M.D. Pa. 2019), *aff'd*, Diamond v. Pennsylvania State Education Ass'n, 972 F.3d 262 (3d Cir. 2020), petition for *cert.* pending. This court concurs with the now well-settled caselaw that has dismissed claims identical to those raised by plaintiffs in their FAC, including the Third Circuit and five other Circuit Courts as well as numerous other district courts. For the reasons that follow, AFSCME's motion to dismiss will be **GRANTED** and, all of plaintiffs' claims against AFSCME will be **DISMISSED WITH PREJUDICE**.

I. BACKGROUND

The plaintiffs are non-members of AFSCME seeking to recover fair-share fees paid to the union when such fees were authorized by Pennsylvania state law, 71 P.S. § 575, and had been held constitutional by the United States Supreme Court in Abood v. Detroit Board of Education, 431 U.S. 209 (1977). Plaintiffs bring this civil rights action pursuant to 42 U.S.C. § 1983, and seek compensatory and declaratory relief against the Union in connection with its collection of

fair-share fees from them prior to the U.S. Supreme Court's ruling in Janus.[1]

Pennsylvania permits certain of its own employees to organize and bargain collectively with the Commonwealth, through a representative organization of their choosing, over the terms and conditions of their employment. 43 P.S. §§ 1101.101, *et. seq*. AFSCME is a labor organization certified as the exclusive representative of certain classifications of state employees and for several bargaining units in the state. Plaintiffs were employed by the state in jobs that were within a classification covered by AFSCME and their bargaining units were represented by AFSCME. Since the FAC states the particular employment of each plaintiff as well as the state agency for which they worked, they are not repeated herein. (Doc. 16 at 2-3). AFSCME had a legal duty to represent equally the interests of all employees in the bargaining units, in collective bargaining and grievance administration, whether they were dues-paying members of the union or not. Plaintiffs were not members of AFSCME, but they allege that the union was legally allowed to collect fair share

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[1] The facts alleged in plaintiffs' FAC must be accepted as true in considering defendant AFSCME's motion to dismiss. *See* Dieffenbach v. Dept. of Revenue, 490 Fed.Appx. 433, 435 (3d Cir. 2012); Evancho v. Fisher, 423 F.3d 347, 350 (3d Cir. 2005).

Also, since the legal standard to state a claim under § 1983 is referenced in the briefs and is well known, the court will not repeat it herein. *See* Kneipp v. Tedder, 95 F.3d 1199, 1204 (3d Cir. 1996) (To state an actionable claim under § 1983, a plaintiff must prove that someone deprived her of a constitutional right while acting under the color of state law.).

fees from them under Pennsylvania's Public Employee Fair Share Fee Law, 71 P.S. § 575, since it represented them in collective bargaining.[2]

Under state law, AFSCME negotiated with the state a Master Agreement ("MA") for the collection of fair-share fees from nonmembers state employees, including plaintiffs.

In particular, Article 4, Section 2 of the MA, which was 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.

Thus, under the MA, prior to June 27, 2018, all Commonwealth employees in the collective bargaining units who were represented by AFSCME and who were not union members, such as plaintiffs, were forced to

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[2] Since plaintiffs were public employees employed by Pennsylvania, they were subject to its "agency-shop statute", the fair share fee law, namely, 71 Pa.Stat.Ann. § 575. *See also* Diamond v. Pennsylvania State Education Association, 399 F.Supp.3d 361, 371 (W.D. Pa. 2019), *aff'd*, Diamond v. Pennsylvania State Education Ass'n, 972 F.3d 262 (3d Cir. 2020).

pay "fair-share fees" to AFSCME as a condition of their public employment. Plaintiffs state that at no time was any one of them a member of AFSCME. Plaintiffs further allege that before June 27, 2018, government employers covered by the MA, such as they were, involuntarily had fair-share fees deducted from their paychecks despite the fact that they "never affirmatively authorized these fees to be taken from their [wages]." Rather, they allege that "their employer automatically garnished [their] wages directly from [their] paychecks and transmitted them to AFSCME." Plaintiffs further allege that before June 27, 2018, government employers covered by the CBA "deducted fair share fees from Plaintiffs' and other nonmembers' wages without their consent and, . . . , transferred those funds to AFSCME, which collected those funds." (Doc. 16 at paras. 16-18).

As such, plaintiffs aver that "AFSCME should have known that its seizure of fair share fees from nonconsenting employees likely violated the First Amendment." (Id. at para. 18).

Plaintiffs also seek to bring this case as a class action under Fed.R.Civ.P. 23(b)(3) for themselves and for all others similarly situated. They define the proposed class as "all current and former Commonwealth employees from whom AFSCME collected fair share fees pursuant to its collective bargaining agreement with the Commonwealth of Pennsylvania." (Id. at para. 19).

Plaintiffs raise claims in their FAC under the First Amendment. Specifically, plaintiffs allege that

"AFSCME [acting under color of state law in concert with Pennsylvania] violated [their] 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." (Id. at 7).

As relief, plaintiffs request declaratory 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." Additionally, plaintiffs seek monetary damages "in the full amount of fair share fees and assessments seized from their wages", as well as costs and attorneys' fees under 42 U.S.C. § 1988. (Id. at 8).

Plaintiffs are proceeding on their FAC filed on December 18, 2020. (Doc. 16). On January 19, 2021, AFSCME filed its motion to dismiss plaintiffs' FAC, (Doc. 18), and filed its brief in support, (Doc. 24), on February 2, 2021. On February 16, 2021, plaintiffs filed their brief in opposition. (Doc. 26). AFSCME filed its reply brief on March 2, 2021. (Doc. 28).

The court has jurisdiction over this case pursuant to 28 U.S.C. § 1331 and 28 U.S.C. § 1343(a) because plaintiffs aver violations of their rights under the U.S. Constitution. Venue is appropriate in this court since AFSCME is located in this district and the alleged

constitutional violations occurred in this district. *See* 28 U.S.C. § 1391.

II. DISCUSSION

Plaintiffs instituted this case after the Supreme Court decided Janus.[3] Plaintiffs are state employees who, before Janus, were required to pay fair-share fees to AFSCME for collective bargaining representation. Specifically, the MA contained a fair-share fee provision which required plaintiffs to pay fair share fees to AFSCME. However, after the Janus decision, AFSCME stopped receiving fair-share fees from non-members, including plaintiffs. In this action, plaintiffs seek AFSCME to repay themselves, as well as a putative class of all non-union state employees, all the fair-share fees that the union received prior to Janus.

As a backdrop, prior to Janus, unions representing government employees could use "agency shop" clauses in collective bargaining agreements "which required every employee represented by a union, even those who declined to become union members for political or religious reasons, to pay union dues." Diamond, 399 F.Supp.3d at 370-71. In Abood v. Detroit Board of Education, 431 U.S. 209, 97 S.Ct. 1782 (1977), the Supreme Court "held that the charges were constitutional to the extent they were used to finance the union's collective-bargaining, contract-administration,

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[3] Janus v. American Federation of State, County, and Municipal Employees, Council 31, ___ U.S. ___, 138 S. Ct. 2448 (2018).

and grievance activities." *Id.* at 370. "[T]he Court [in Abood] also concluded that the agency-shop clause and fees were unconstitutional insofar as the clause compelled non-member teachers to pay fees to the union that supported the union's political activities." *Id.*

> In accordance with Abood, Pennsylvania enacted its own agency-shop statute for public employees in 1988, 71 Pa. Stat. § 575. According to Section 575, if mandated by the provisions of a collective-bargaining agreement, non-members of public-employee unions must pay fair-share fees to the unions. *Id.* § 575(b). These fees consist of the regular union-membership dues less "the cost for the previous fiscal year of [the unions'] activities or undertakings which were not reasonably employed to implement or effectuate the duties of the employee organization as exclusive representative." *Id.* § 575(a).

Id. at 371.

Thus, prior to Janus, Pennsylvania law expressly allowed a labor union which was the representative of a bargaining unit of public employees to collect fair-share fees from the employees who were members of the bargaining unit but who did not join the union, as a condition of their employment. *See* 71 P.S.A. § 575; 43 P.S.A. § 1102.3. Further, based on Abood, "the general propriety of the fair-share fees permitted under Section 575 withstood constitutional scrutiny for many years." Diamond, 399 F.Supp.3d at 370. *Id.* (string citations omitted).

In Janus, the Supreme Court overruled Abood, and held that "a state law requiring non-union-member public employees to pay fees to the union to compensate the union for costs incurred in the collective-bargaining process" was unconstitutional. *Id.* at 372. Thus, the Court in Janus, 138 S. Ct. at 2486, held that "States and public-sector unions may no longer extract agency fees from nonconsenting employees." *Id.* Further, the Court held that "[n]either an agency fee nor any other payment to the union may be deducted from a non[-]member's wages, nor may any other attempt be made to collect such a payment, unless the employee affirmatively consents to pay." *Id. See also* Babb v. California Teachers Association, 378 F.Supp.3d 857, 867 (C.D. Ca. 2019) (In Janus, the Supreme Court "overruled Abood [] and its progeny, holding that no form of payment to a union, including agency fees, can be deducted or attempted to be collected from an employee without the employee's affirmative consent.") (citing Janus, 138 S.Ct. at 2486).

Additionally, the Supreme Court in Janus, 138 S.Ct. at 2459, 2486, held that it was a violation of the First Amendment for public sector unions to require non-members to pay fair-share fees as a condition of public employment. Following Janus, Pennsylvania's statute allowing the collection of "fair-share" fees from non-members by unions is no longer enforceable. *See* Hartnett v. Pennsylvania State Education Association, 390 F.Supp.3d 592, 600 (M.D. Pa. 2019), *aff'd*, 963 F.3d 301 (3d Cir. 2020). In Diamond, 399 F.Supp.3d at 385, the court held that the issue of "whether Union

Defendants could constitutionally collect fair-share fees from Plaintiffs pursuant to Section 575" "was mooted by the intervening Janus decision, which held that fair-share fees are unconstitutional."

Plaintiffs essentially argue that they suffered injury from the pre-Janus agency-shop arrangements because they were forced to pay AFSCME fair-share fees as a condition of their employment with the state even though they declined union membership. They basically contend that their constitutional right to withhold money from the union was violated and that this inflicted an injury upon them that can be redressed under § 1983 by an award of money damages for the violation of their First Amendment rights to free speech and association by forcing them to pay AFSCME fair-share fees as a condition of their employment.

Plaintiffs assert that the good faith defense should not apply to their claim for damages under § 1983 since they contend it is contrary to the statute. Plaintiffs argue that the Third Circuit's decision in Diamond supports their position, but the court does not find plaintiffs' contention persuasive.

AFSCME contends that it is entitled to assert a good faith defense to plaintiffs' § 1983 claim seeking retrospective monetary relief for their payments of the fair-share fees based on "Pennsylvania statute and then-controlling and directly on-point United States Supreme Court precedent that expressly authorized fair-share fees." There is no dispute that before Janus the collection of fair-share fees by AFSCME was

permitted by Pennsylvania law as well as by the Supreme Court which repeatedly held that fair-share fees were constitutional and that public employees who were non-union members could be compelled to pay such fees that financed the union's collective bargaining activities. Abood, 431 U.S. at 225, 97 S.Ct. 1782. Thus, requiring non-union member public employees to pay fair-share fees as a condition of their public employment was undoubtedly deemed constitutional in Abood, 431 U.S. at 232, 97 S.Ct. 1782. As such, AFSCME contends that since it acted "in good-faith reliance on presumptively valid state laws [in collecting pre-Janus fair-share fees], [it] ha[s] a complete defense to § 1983 liability" and cannot be held retrospectively liable to plaintiffs in this case.

AFSCME points out that since Janus, "six courts of appeals—including the Third Circuit in Diamond—and more than 30 federal district courts [including this court] have decided the exact issue presented here: whether public employees who were required to pay fair share fees prior to the Janus decision are entitled under 42 U.S.C. § 1983 to the repayment of those fees, which they paid at a time when fair share fee requirements were authorized by state law and Supreme Court precedent. Without exception, all of these courts have held that the good-faith defense available to private parties under § 1983 precludes such attempts to hold unions liable for following the law as it existed at the time of their actions." (Doc. 24 at 11-12) (string citations omitted).

As such, AFSCME states that "[t]hese [numerous] decisions are, . . . , firmly grounded in the law and fully applicable here." (Id.). It states that these cases have all rejected the same § 1983 claim plaintiffs raise in the instant case based on the good-faith defense.[4] Despite plaintiffs' arguments in their brief in opposition as to why the good faith defense should not bar their suit for damages under § 1983, the court again finds, as it did in Wenzig, the many cases to which AFSCME cites are persuasive and concurs with their conclusion that the good faith defense shields the union from liability with respect to plaintiffs' post-Janus claims for damages under § 1983.

Further, Diamond does not support the plaintiffs' arguments regarding the good-faith defense and their contention that AFSCME cannot rely on this defense with respect to their claims for pre-Janus fair-share fees. In Oliver v. SEIU Local 668, 830 Fed.Appx. 76, 80 (3d Cir. 2020) (non-precedential), the Third Circuit explained that in Diamond, 972 F.3d at 271, "Judge Rendell's opinion for the Court concluded that 'the good faith defense is available to a private-party defendant in a § 1983 case if, after considering the defendant's 'subjective state of mind,' the court finds no 'malice' and no 'evidence that [the defendant] either knew or should have known of the statute's constitutional infirmity.' " (citations omitted). The Court then stated that

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[4] Since AFSCME correctly cites to the cases in its brief, (Doc. 24 at 11-12), which have held that the good-faith defense precluded recovery in § 1983 actions similar to the instant case, the court does not re-cite all of the applicable cases.

"Judge Rendell further concluded that 'principles of equality and fairness' foreclose § 1983 liability when the union adhered to the governing law of the state." *Id.* (citations omitted). The Court also indicated that in his concurring opinion, "Judge Fisher likewise concluded that the union had no retroactive civil liability." *Id.* (citation omitted).

As summarized by AFSCME, (Doc. 28 at 4), "[t]he *Oliver* court then held that *Diamond* foreclosed the plaintiffs' claim for pre-*Janus* monies remitted to the defendant union in that case", and thus, "the law of the Third Circuit as expressed in *Diamond* is that non-members cannot recover back fees remitted to unions before *Janus*." *See* Oliver, 830 Fed.Appx. at 80.

Plaintiffs contend that their fair-share payments would have been deemed involuntary under the common law based on Judge Fisher's concurring opinion in Diamond. Plaintiffs then cite to paragraph 16 of their FAC, (Doc. 16), which they filed after Diamond, and contend that they did not make their payment of fair share fees voluntarily because they "never affirmatively authorized that these fees could be taken from their paychecks." They then claim that, under Judge Fisher's reading of the common law, the good faith defense is not available to AFSCME and that their unauthorized fees paid to the union are recoverable. Plaintiffs attempt to distinguish Diamond from their case by stating that they "allege that the money was taken from them involuntarily" is not convincing. As AFSCME explains, (Doc. 28 at 5), and as this court is well-aware regarding the complaint in Wenzig, "the

Diamond and *Wenzig* plaintiffs also alleged that they had not authorized the deduction of any fair-share fees before those fees were deducted from their paychecks, and Judge Fisher [in Diamond] concluded that those plaintiffs 'have *not* pleaded any facts, suggesting that their payments were either sufficiently involuntary or exacted on a fraudulent basis, to permit a reasonable person to infer that the unions might be liable.' " (quoting Diamond, 972 F.3d at 285) (emphasis added by AFSCME). As Judge Fisher noted in Diamond, 972 F.3d at 285 n. 7, "the plaintiffs [including our plaintiffs] have [not] pleaded anything approaching the kind of involuntariness or duress articulated in the cases I discuss [in his opinion]." *Id.* at 285 n.7.

Insofar as the plaintiffs rely upon Judge Phipps' dissenting opinion, (Doc. 26, at 7-9), as well as their interpretation of Judge Fisher's concurring opinion, and urge the court to "repudiate the purported grounds for carving a 'good faith' defense into Section 1983", the court is obliged to follow the precedential majority opinion in Diamond. As the court noted in Brown v. AFSCME, Council No. 5, 519 F.Supp.3d 512, 514 (D.Minn. 2021), explained:

> Neither the Supreme Court nor the Eighth Circuit has squarely addressed whether § 1983 affords private actors a good faith defense to liability, nor whether such a defense applies to a public-sector employee's claim for reimbursement of fair-share fees paid prior to *Janus*. But in analyzing the Unions' proffered defense, the Court is not without persuasive

> authority: every court to consider the issue has held that public-sector unions may assert a good faith defense to § 1983 claims for reimbursement of pre-*Janus* fair-share fees. *E.g*., Janus v. Am. Fed'n of State, Cty. & Mun. Emps., Council 31; AFL-CIO, 942 F.3d 352, 364 (7th Cir. 2019) ("Janus Remand"); Danielson v. Inslee, 945 F.3d 1096, 1098 (9th Cir. 2019), *cert*. *denied*, No. 19-1130, ___ U.S. ___, ___ S.Ct. ___, ___ L.Ed.2d ___, 2021 WL 231555 (U.S. Jan. 25, 2021); Lee v. Ohio Educ. Ass'n, 951 F.3d 386, 389 (6th Cir. 2020), *cert. denied*, No. 20-422, ___ U.S. ___, ___ S.Ct. ___, ___ L.Ed.2d ___, 2021 WL 231559 (U.S. Jan. 25, 2021); Wholean v. CSEA SEIU Local 2001, 955 F.3d 332, 334 (2d Cir. 2020); Diamond v. Pennsylvania State Educ. Ass'n, 972 F.3d 262, 271 (3d Cir. 2020); Doughty v. State Emps.' Ass'n of New Hampshire, SEIU Local 1984, CTW, CLC, 981 F.3d 128, 133 (1st Cir. 2020).

The court in Brown, *id.* at n. 1, also addressed the different opinions in Diamond and noted:

> Plaintiffs argue that the Third Circuit's decision in *Diamond* departed from the opinions of the other circuits. There, Judge Rendell, writing for the court, recognized the good faith defense and held that it barred the plaintiffs' *Janus* claim against their union. *Id.* at 271. Judge Fisher, concurring in the judgment, disagreed with Judge Rendell's reasoning, but similarly concluded that the Union had a defense to the plaintiffs' claims. *Id.* at 274 ("There was available in 1871, in both law and equity, a well-established defense to liability

> substantially similar to the liability the unions face here. Courts 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."). Only Judge Phipps, in dissent, squarely rejected a defense based on the union's good faith reliance on the state statute and *Abood*. *Id.* at 285. Thus, both Judge Rendell and Judge Fisher recognized that the union's reliance on the state statute and *Abood* established an affirmative defense to the plaintiffs' *Janus* claim, though they reached that conclusion by different reasoning.

The court in Brown, *id.* at 514 n.1, then concluded that the good faith defense, although "narrow", applied and held:

> The Unions collected fair-share fees from Plaintiffs as authorized by the Minnesota [law "PELRA"]. The Unions' reliance on PELRA was supported by *Abood* and forty years of precedent thereafter. Plaintiffs do not allege that the Unions acted with malice, with the knowledge that PELRA was unconstitutional, or that the Unions otherwise acted in bad faith. Accordingly, the Court finds that the Unions' good faith defense is established on the face of the Complaints, and dismissal under Federal Rule of Civil Procedure 12(b)(6) is therefore proper. [citation and footnote omitted].

Thus, it is now clear in this Circuit following Diamond that unions sued for a refund of pre-Janus fair-share fees can assert the good-faith defense. *See* Oliver, 830 Fed.Appx. at 80 (holding that Diamond foreclosed refund claim against union for pre-Janus monies); Diamond, 972 F.3d at 271 ("It is fair—and crucial to the principle of rule of law more generally—that private parties like the Unions should be able to rely on statutory and judicial authorization of their actions without hesitation or fear of future monetary liability.") (citations omitted).

AFSCME contends that "[t]he good-faith defense precludes Plaintiffs' demand for damages based on the Union's receipt of fair share fee payments prior to the *Janus* decision of June 27, 2018" and that "[t]here is no dispute that these fees were assessed and collected under state law specifically authorizing them." (Doc. 24 at 17) (citing 71 P.S. § 575). Indeed, as this court held in Wenzig, and based on the numerous cases cited therein, the court again finds that a union such as AFSCME can raise the good-faith defense with respect to plaintiffs' First Amendment claims under § 1983 for the repayment of the fair-share fees that they paid the union. *See also* Janus v. AFSCME, 942 F.3d 352, (7th Cir. 2019) ("Janus III"). As such, since AFSCME "relied substantially and in good faith on both a [PA] state statute *and* unambiguous Supreme Court precedent [Abood] validating that statute", *id.* at 367 (emphasis original), AFSCME can assert the good faith defense to plaintiffs' First Amendment claims seeking to hold it liable under § 1983. *See* Hoekman v.

Education Minnesota, ___ F.Supp.3d ___, 2021 WL 533683 (D. Minn. Feb. 12, 2021) ("this Court [in Brown, *supra*] held that private actors who act in good faith reliance on a state statute and Supreme Court case law holding that statute constitutional have an affirmative defense to § 1983 liability." Like every court to consider the issue, the Court finds that the good faith defense bars [plaintiffs'] § 1983 claims for a refund of fair-share fees paid prior to *Janus*.") (sting citations omitted).

To the extent that the plaintiffs contend AFSCME's good-faith defense conflicts with the Supreme Court's cases on the retroactive application of its decisions, as the Third Circuit did in Diamond, 972 F.3d at 268 n. 1, even if this court assumed, *arguendo*, that Janus applied retroactively it nonetheless would find that the good faith defense still precludes the relief our plaintiffs seek. *See* Brown, 2021 WL 533690, *4 (holding that "the good faith defense to a *Janus* claim for reimbursement of fair-share fees is not an ad hoc 'remedy' designed to vindicate the Unions' reliance interests and undermine *Janus*'s retroactivity." The court in Brown, *id.* at *4 n. 4, also noted that "[it] assumes, without deciding, that *Janus* is retroactively applicable—as did many of the other courts to address *Janus* claims like Plaintiffs.'" (citing Wholean v. CSEA SEIU Local 2001, 955 F.3d 332, 336 (2d Cir. 2020)) ("[W]e note that nothing in *Janus* suggests that the Supreme Court intended its ruling to be retroactive. . . . Even if the retroactivity of *Janus* is presumed, . . . [a] good-faith defense would still preclude the relief Appellants seek.").

AFSCME was acting in accordance with Abood and state law, prior to Janus, at the time it allegedly was violating the plaintiffs' First Amendment rights. Thus, as AFSCME points out, (Doc. 28 at 12), "both Judge Rendell and Judge Fisher cited [Reynoldsville Casket v. Hyde, 514 U.S. 749 (1995)], and determined that the unions' defense constituted a previously existing, independent legal basis for denying the relief sought by the plaintiffs." (citing Diamond, 972 F.3d at 268 n. 1 (opinion of Rendell, J.), 972 F.3d at 284 (concurring opinion of Fisher, J.)).

Thus, the court will grant AFSCME's motion and dismiss with prejudice plaintiffs' First Amendment claims in their FAC seeking to hold the union retrospectively liable under § 1983. Based on the foregoing, the court finds futility in allowing plaintiffs leave to file a second amended complaint. *See* Janus, III, *supra*; Diamond, *supra*; Wenzig, *supra*; Babb, 378 F.Supp. 3d at 872 ("[E]very district court to consider whether unions that collected agency fees prior to Janus have a good-faith defense to § 1983 liability [has] answered in the affirmative.") (citations omitted).

Finally, AFSCME argues that plaintiffs' request for Declaratory Judgment should be dismissed under Rule 12(b)(1) for lack of standing. It states that "Plaintiffs do not allege any ongoing constitutional violation; rather, the deduction of fair share fees by the Commonwealth and the transmission of those fees to the Union ceased more than a year before Plaintiffs filed their original Complaint." As such, it contends that "Plaintiffs do not have standing to seek a judgment declaring

that the Union's prior conduct was unconstitutional." (Doc. 24 at 18-19).

In Wenzig, 426 F. Supp. 3d at 100, this court held that "Declaratory judgment is not meant to adjudicate alleged past unlawful activity." In Diamond, 399 F.Supp. 3d at 385, 389, the court also held that plaintiffs' claims for declarative and injunctive relief with respect to fair-share fees were moot based on the Janus decision and union defendants' compliance with it. (citing collection of cases). *See also* Hartnett, 390 F.Supp.3d at 600-02, *aff'd*, 963 F.3d 301 (3d Cir. 2020) (court found claims for declaratory and injunctive relief moot post-Janus since "[p]laintiffs face no realistic possibility that they will be subject to the unlawful collection of 'fair share' fees"); Blakeney v. Marsico, 340 Fed.Appx. 778, 780 (3d Cir. 2009) (Third Circuit held that to satisfy the standing requirement of Article III, a party seeking declaratory relief must allege that there is a substantial likelihood that he will suffer harm in the future) (citations omitted).

The court again concurs with the courts in Diamond and Hartnett, and holds that our plaintiffs' request for declarative judgment in their FAC is moot based on Janus and, based on the undisputed fact that AFSCME stopped collecting fair-share fees from state non-union member employees, including plaintiffs, following the Janus decision. As AFSCME indicates, (Doc. 28 at 13), the Janus decision and its subsequent cessation of collecting fair share fees from state non-union member employees "occurred more than one year before Plaintiffs filed their Complaint and more than two

years before Plaintiffs filed their [FAC], and there is no reasonable likelihood that the collection of fair share fees will reoccur." *See also* Oliver v. SEIU Local 668, 415 F.Supp.3d 602, 613 (E.D. Pa. 2019), *aff'd*, 830 Fed.Appx. 76 (3d Cir. 2020) (holding "Plaintiff's claims for declaratory and injunctive relief regarding the application of 43 P.S. §§ 1101.301(18), 1101.401, and 1101.705 suffers from lack of standing and mootness.").[5]

Thus, AFSCME's motion to dismiss will be granted with respect to plaintiffs' request for declaratory judgment.

III. CONCLUSION

Based on the foregoing reasons, defendant AFSCME's motion to dismiss plaintiffs' FAC, **(Doc. 16)**, pursuant to Fed. R. Civ. P. 12(b)(1) and (6), **(Doc. 18)**, is **GRANTED**, and all of the plaintiffs' claims are **DISMISSED WITH PREJUDICE**. An appropriate order will issue.

s/ Malachy E. Mannion
MALACHY E. MANNION
United States District Judge

[5] Also, as AFSCME notes, (Doc. 24 at 19 n. 5), there are several other cases holding that when a union had received fair-share fees before Janus and then stopped receiving such fees after Janus, a claim for declaratory judgment was non-justiciable. (citations omitted).

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

David SCHASZBERGER, *et al.*,	:	
Plaintiffs	:	**CIVIL ACTION NO. 3:19-1922**
v.	:	**(JUDGE MANNION)**
AMERICAN FEDERATION OF STATE, COUNTY & MUNICIPAL EMPLOYEES, COUNCIL 13,	:	
Defendant	:	

ORDER

(Filed May 20, 2021)

In accordance with the court's memorandum issued this same day, **IT IS HEREBY ORDERED THAT**:

(1) Defendant AFSCME's motion to dismiss, **(Doc. 18)**, the plaintiff's First Amended Complaint, **(Doc. 16)**, is **GRANTED** and, all of the plaintiffs' claims are **DISMISSED WITH PREJUDICE**.

(2) The Clerk of Court is directed to **CLOSE THIS CASE**.

s/ Malachy E. Mannion
MALACHY E. MANNION
United States District Judge

DATED: May 20, 2021
19-1922-01-Order