

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA
HARRISBURG, PENNSYLVANIA

JOSEPH J. MCCAHERN; ANTHONY CHAJKOWSKI;
WILLIAM CLARK; YOLANDA M. EDGERTON;
DOUGLAS FARGO; BRIAN HOCKENBERRY;
PATRICIA A. HOPKINS; MATTHEW KLEMAN;
RICHARD G. LESINSKI; STEVEN D. LEWIS;
WENDELL LIVENGOOD; WILLIAM MORTIMORE;
MICHAEL B. ROBINSON; ALBERT I. ROWE;
CRAIG SILKS; TODD SMITH; NEIL SNYDER; JOHN
VARGA; AND DONALD M. WHIPPLE, SR.,

Plaintiffs,

v.

PENNSYLVANIA TURNPIKE COMMISSION; JOSEPH
G. BRIMMEIER, CHIEF EXECUTIVE OFFICER,
PENNSYLVANIA TURNPIKE COMMISSION;
ANTHONY Q. MAUN, DIRECTOR OF
ACCOUNTING AND PAYROLL, PENNSYLVANIA
TURNPIKE COMMISSION; AND TURNPIKE AND
PUBLIC EMPLOYEES, TEAMSTERS LOCAL UNION
NO. 77, INTERNATIONAL BROTHERHOOD OF
TEAMSTERS,

Defendants.

CASE NO.

**PLAINTIFFS'
VERIFIED
COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF**

COME NOW Plaintiffs, Joseph J. McCahon, Anthony Chajkowski, William Clark, Yolanda M. Edgerton, Douglas Fargo, Brian Hockenberry, Patricia A. Hopkins, Matthew Kleman, Richard G. Lesinski, Steven D. Lewis, Wendell Livengood, William Mortimore, Michael B. Robinson, Albert I. Rowe, Craig Silks, Neil Snyder, John Varga, and Donald M. Whipple, Sr., by and through their undersigned counsel, and state the following claim for relief against Defendants Pennsylvania Turnpike Commission (“PTC”), Joseph G. Brimmeier, Chief Executive Officer, Pennsylvania Turnpike Commission, Anthony Q. Maun, Director of Accounting and Payroll, Pennsylvania Turnpike Commission, and Turnpike and Public Employees, Teamsters Union Local No. 77, International Brotherhood of Teamsters (“Local 77”), as follows:

I. PRELIMINARY STATEMENT

1. This is a civil rights action pursuant to 42 U.S.C. § 1983 for preliminary and permanent injunctive relief, declaratory relief, and monetary relief to redress and to prevent the deprivation under color of the Pennsylvania Public Employe Relations Act, 43 PA.STAT.ANN. §§ 1101.1, *et seq.*, and/or the Public Employee Fair Share Fee Law (“PEFSFL”), 43 PA.STAT.ANN. §§ 1102.1, *et seq.*, and/or other state law and/or by a state actor, of rights, privileges, and immunities under the First and Fourteenth Amendments to the United States Constitution. It

seeks to redress and prevent the deprivation under color of the PERA, the PEFSFL, and the monopoly or collective bargaining agreement between Plaintiffs' exclusive bargaining representative and their public employer, of the rights, privileges, and immunities under the First, Fifth, and Fourteenth Amendments of the United States Constitution. Pursuant to the "Union Security — Dues Check-Off" article of their collective bargaining agreement ("CBA") and the PERA and the PEFSFL, Defendants have deprived, and are threatening to continue to deprive, Plaintiffs of their constitutional rights. Specifically, Defendant Turnpike and Public Employees, Teamsters Union Local No. 77, International Brotherhood of Teamsters ("Local 77"), acting in concert with Defendant Pennsylvania Turnpike Commission ("PTC") and its herein-named officers, requires the Plaintiffs (and all similarly-situated employees in their bargaining unit) to maintain their membership in the Local 77, and have denied Plaintiffs their right to resign from union membership and terminate all incidents of union membership, including the payment of full union dues.

2. Alternatively, and assuming *arguendo* that any obligation is imposed by a CBA which purports to impose a requirement exceeding the parties' constitutional authority to bargain, an amount of dues or fees — unilaterally determined by Local 77 and its various state and national affiliates, which the PTC has continued to seize from Plaintiffs for the benefit of Local 77 notwithstanding

their resignation from union membership and revocation of their dues checkoff authorization cards — is used for the unions’ political, ideological, and other nonbargaining activities. Thus, the compulsory dues or fees taken from objecting employees exceeds the amount permitted by the First, Fifth, and Fourteenth Amendments. Defendant Local 77 and the PTC, acting under color of their CBA and the PEFSFL, have denied, until the expiration of the bargaining agreement (30 June 2007), Plaintiffs their right to resign and to refuse to pay for that portion of the dues or fees to which they object. *Teachers Local No. 1 v. Hudson*, 475 U.S. 292 (1986).

3. For these reasons, Plaintiffs ask this Court:

a. For a declaration that Pennsylvania Public Employee Fair Share Fee Law (“PEFSFL”), 43 PA.STAT.ANN. §§ 1102.1, *et seq.* (eff. 6/3/93), as applied, is null and void and a violation of the First, Fifth, and Fourteenth Amendments’ rights to association, self-organization, assembly, petition, and freedoms of speech, thought, and conscience;

b. For a declaration that Article IV of Defendants’ collective bargaining agreement, on its face and as applied, is null and void and a violation of the First, Fifth, and Fourteenth Amendments’ rights to association, self-organization, assembly, petition, and freedoms of speech, thought, and conscience;

c. For a declaration that Defendants have violated Plaintiffs' constitutional rights to association, self-organization, assembly, petition, and freedoms of speech, thought, and conscience because Defendants refused to honor Plaintiffs' resignations from union membership, and provide them with the opportunity to vindicate their objection to the payment of that portion of Local 77's and its affiliates' dues expended for their political, ideological, and other nonbargaining activities;

d. To restrain Defendants and those working in concert with them from engaging in, and continuing to engage in, the wrongful and unlawful conduct violative of Plaintiffs' constitutional rights;

e. For a monetary judgment in, or equitable restitution of, the dues or fees taken from Plaintiffs, together with appropriate interest, subsequent to their resignations from union membership; and

f. For attorneys' fees, pursuant to 42 U.S.C. § 1988, and any other appropriate relief.

II. JURISDICTION AND VENUE

4. This action arises under the Constitution and laws of the United States, particularly the First, Fifth, and Fourteenth Amendments to the United States Constitution. The jurisdiction of this Court, therefore, is invoked under 28

U.S.C. § 1331.

5. This is also an action under the Federal Civil Rights Act of 1871, 42 U.S.C. § 1983, to redress the deprivation, under color of state law, of rights, privileges and immunities secured to Plaintiffs by the Constitution of the United States, particularly the First, Fifth, and Fourteenth Amendments thereto. The jurisdiction of this Court, therefore, is invoked under 28 U.S.C. § 1343.

6. This case is also an actual controversy where Plaintiffs are seeking a declaration of their rights under the Constitution of the United States. Under 28 U.S.C. §§ 2201 and 2202, this Court may declare the rights of Plaintiffs and grant further necessary and proper relief based thereon, including preliminary and permanent injunctive relief, pursuant to Rule 65, FED.R.CIV.P.

7. Pursuant to 28 U.S.C. § 1391(b) and § 1392, venue is proper in this Court because the Defendants either reside and/or have offices and conducts their business in the judicial district of the United States District Court for the Middle District of Pennsylvania.

III. PARTIES

8. Plaintiffs Joseph J. McCahon, Anthony Chajkowski, William Clark, Yolanda M. Edgerton, Douglas Fargo, Brian Hockenberry, Patricia A. Hopkins, Matthew Kleman, Richard G. Lesinski, Steven D. Lewis, Wendell Livengood,

William Mortimore, Michael B. Robinson, Albert I. Rowe, Craig Silks, Todd Smith, Neil Snyder, John Varga, and Donald M. Whipple, Sr., are employees of the Pennsylvania Turnpike Commission. They are employed in a bargaining unit represented, exclusively for purposes of collective bargaining, by Turnpike and Public Employees, Teamsters Union Local No. 77, International Brotherhood of Teamsters (“Local 77”), pursuant to the Public Employee Fair Share Fee Law (“PEFSFL”), 43 PA.STAT.ANN. § 1102.1, *et seq.* Plaintiffs are not members of Local 77, having resigned their memberships in Local 77 by letters sent to Local 77 at various times within the last six months.

9. Each Plaintiff is a “Public employe” or “employe” within the meaning of the Public Employee Relations Act (“PERA”), 43 PA.STAT.ANN. § 1101.301(2).

10. Defendant Pennsylvania Turnpike Commission (“PTC”) is a “Public employer” within the meaning of the PERA, 43 PA.STAT.ANN. §§ 1101.301(1) & 1102.2, and a “Political subdivision” within the meaning of 43 PA.STAT.ANN. § 1102.2. By and through its officers and/or agents, the PTC has negotiated a series of collective bargaining agreements with Local 77.

11. Defendant Local 77 is an “Employee organization” and “Exclusive representative” within the meaning of the PERA, 43 PA.STAT.ANN. § 1101.301(3) & (4), and an “employee organization” and an “exclusive representative” within

the meaning of the PEFSFL, 43 PA.STAT.ANN. § 1102.2. Through a series of collective bargaining agreements with Defendant PTC, Local 77 represents employees of the PTC, including Plaintiffs, exclusively for purposes of collective bargaining with the PTC. Defendant Local 77 maintains a place of business at 540 Pennsylvania Avenue, Suite 206, Fort Washington, Pennsylvania 19034, and conducts its business and operations throughout the Commonwealth of Pennsylvania and within the Middle District of Pennsylvania. Upon information and belief, Defendant Local 77 is affiliated with and pays monies to, *inter alia*, the International Brotherhood of Teamsters, the Pennsylvania Conference of Teamsters, the Eastern Conference of Teamsters, a Teamsters Joint Council, and the “Change to Win” coalition.

12. Defendant Joseph G. Brimmeier (hereinafter “Brimmeier”) is the Chief Executive Officer of the PTC. As such, he is generally responsible for all operations of the Commission, including labor relations. He is sued in his official capacity.

13. Defendant Anthony Q. Maun (hereinafter “Maun”) is the Director of Accounting and Payroll for the PTC. As such, he is charged with the responsibility of issuing wages to employees of the PTC, including Plaintiffs, and processing all deductions therefore, including union dues and/or agency fees pursuant to the “Union Security/Dues Check-Off” article of the PTC/Local 77

collective bargaining agreement. He is sued in his official capacity.

IV. CAUSE OF ACTION

14. Acting in concert under color of state law — to-wit, the Public Employe Relations Act, 43 PA.STAT.ANN. 1101.201 *et seq.*, and the Public Employee Fair Share Fee Law, 43 PA.STAT.ANN. § 1102.1, *et seq.* — Defendants PTC and Local 77 have entered into a series of CBAs controlling the terms and conditions of Plaintiffs’ (and others) employment. Relevant portions of the CBA effective by its terms from 1 October 2004, through 30 September 2007 (“the CBA”), which is identical in pertinent part to the current CBA, are attached hereto and incorporated herein as Exhibit A.

15. Pursuant to the PERA, 43 PA.STAT.ANN. § 1101.705, and the PEFSFL, 43 PA.STAT.ANN. § 1102.1, *et seq.*, the CBA contains an “Union Security — Dues Check-Off” article, which provides in pertinent part that:

Section 1.

A. Any employee who, on the effective date of this agreement, has joined the Union or who joins the Union in the future must, as a condition of employment, remain a member for the duration of this agreement with the proviso that any such employee may resign from the Union during a period of fifteen (15) days prior to the expiration of this agreement.

Exhibit A, CBA, Article IV, § 1(A).

16. The Public Employe Relations Act, 43 PA.STAT.ANN.

§ 1101.301(18), provides in pertinent part that:

(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 PA.STAT.ANN. § 1101.301(18). The Public Employe Relations Act, 43

PA.STAT.ANN. § 1101.705, also provides in pertinent part 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 PA.STAT.ANN. § 1101.705.

17. Notwithstanding the provisions of the CBA and the provisions of the PERA, Plaintiffs resigned their memberships in Defendant Local 77 by sending to it resignation letters within the last six months. The resignation letter sent by Plaintiff Varga, identical in substance to that sent by each Plaintiff, is attached hereto and incorporated herein as Exhibit B.

18. Notwithstanding their resignation letters, Defendant Local 77, by its Secretary-Treasurer, Jock P. Rowe, responded to each Plaintiff with identical letters acknowledging receipt of each Plaintiffs’ resignation letter, but stating that

“I must respectfully decline your resignation request at this time,” citing the authority of Article 4, § 1 of the CBA, and 43 PA.STAT.ANN. § 1101.301(18). The letter received by Plaintiff Mortimore, identical in substance to that received by each Plaintiff, is attached hereto and incorporated herein as Exhibit C.

19. In addition to their resignations from union membership, each Plaintiff contemporaneously sent a letter to their employer, informing the PTC of their resignation from union membership, and invocation of their rights under *Hudson, supra*. The letter sent by Plaintiff Varga, identical in substance to that sent by each Plaintiff, is attached hereto and incorporated herein as Exhibit D.

20. Notwithstanding each Plaintiffs’ resignation from union membership, and invocation of their rights to pay reduced fees under *Hudson*, the PTC has continued automatically to deduct, and Local 77 has continued to accept payment by the PTC of, union dues from each Plaintiffs’ wages. Indeed, the PTC and/or Defendant Maun responded to some Plaintiffs, noting that it/he had “received no correspondence from Local 77 indicating that you have resigned from the Union, that you are otherwise no longer a member of the Union, or that you have revoked dues check-off authorization.” The letter received by Plaintiff Mortimore, identical in substance to that sent to each Plaintiff, is attached hereto and incorporated herein as Exhibit E.

21. As nonmembers or forced members subject to a forced-unionism

provision, Plaintiffs are entitled to receive appropriate procedural safeguards to protect their constitutional rights **prior to** the demand for and/or collection of any fees from them.

22. Plaintiffs did not receive, after their resignations from union membership and prior to the continued collection of fees equal to full union dues from their wages, any notice of their rights and the procedural safeguards which are required by the United States Supreme Court's decision in *Hudson, supra*, in any respect, including but not limited to the following:

- a. Local 77 failed to provide any notice or explanation of the amount of the fee, or total union expenditures allocated into understandable, useful chargeable and non-chargeable categories, verified by an independent auditor;
- b. Local 77 failed to provide any financial information about the chargeable and nonchargeable expenses of its many affiliates;
- c. Local 77 failed to provide an opportunity to object and to challenge the amount of its fee before an impartial decisionmaker; and
- d. Local 77 failed to provide an escrow of amounts reasonably in dispute pending the outcome of such a challenge.

23. Said collections of full union dues from Plaintiffs' wages after their resignations from union membership, and Local 77's acceptance of those fees

from the PTC, occurred without the appropriate safeguards and procedural protections that are necessary for the constitutional seizure of fees, to-wit:

- a. The collection of full union dues from Plaintiffs' wages, as described above in ¶ 20, occurred without the required disclosure of the major categories of Local 77's expenditures, and allocation between chargeable and nonchargeable components, verified by an independent audit;
- b. The collection of full union dues from Plaintiffs' wages, as described above in ¶ 20, occurred without the required audit of union expenditures and the allocation between chargeable and nonchargeable categories of expenditures for each and every Local 77 affiliate receiving a portion of the fee;
- c. The collection of full union dues from Plaintiffs' wages, as described above in ¶ 20, occurred without the required reasonably prompt opportunity to challenge Local 77's calculation of the fee before an impartial decisionmaker; and
- d. The collection of full union dues from Plaintiffs' wages, as described above in ¶ 20, occurred without the required escrow of amounts reasonably in dispute pending challenges to the amount of the fee before an impartial decisionmaker.

24. The refusal of Defendant Local 77 to recognize Plaintiffs' resignations from union membership, and its acceptance of full union dues collected from Plaintiffs by the PTC after Plaintiffs' resignations from union membership, under color of state law, without providing any of the procedural protections required under the United States Constitution, violates their rights, privileges, and immunities granted by the First, Fifth, and Fourteenth Amendments to the United States Constitution, and violates 42 U.S.C. § 1983.

25. Plaintiffs object to the compelled financial subsidization of the activities of Defendant Local 77 for any purposes other than collective bargaining, contract administration, and grievance adjustment for the bargaining unit of employees in which they are employed, and/or for any other purposes for which they cannot be compelled to subsidize their collective bargaining representative.

26. On information and belief, portions of the dues collected by Local 77 have been or will be used by Defendant and/or its affiliates for purposes that are not "germane" to collective-bargaining activity, not justified by the government's vital policy interest in labor peace and avoiding "free riders," and/or significantly add to the burdening of free speech that is inherent in the allowance of an "agency shop," including, but not limited to:

a. lobbying and other political activities that do not concern legislative ratification of, or fiscal appropriations for, the dissenting

nonmember's collective-bargaining agreement;

b. otherwise chargeable activities that do not ultimately enure to the benefit of the employees in the dissenting nonmember's bargaining unit;

c. litigation that does not concern the dissenting nonmember's bargaining unit and union literature reporting on such activities;

d. public relations activities; and,

e. organizing and membership activities undertaken to protect or strengthen Defendant Local 77's or its affiliates' existing status as exclusive bargaining representatives.

27. On information and belief, portions of the fee demanded by Defendant Local 77 have been and/or will be used by Defendant and/or its affiliates for purposes which Defendant cannot prove to be constitutionally chargeable to Plaintiffs because Defendant Local 77, and/or its affiliates, have failed to maintain contemporaneous business records showing the chargeable or nonchargeable nature of the expenses and/or the time of salaried employees.

V. CLAIM FOR RELIEF
(Violation of 42 U.S.C. § 1983 and
the Constitution of the United States)

Plaintiffs reassert the foregoing and further allege:

28. To the extent that the statutes governing Plaintiffs' employment, the

Public Employee Relations Act, 43 PA.STAT.ANN. §§ 1101.301(18) & 1101.705, and the Public Employee Fair Share Fee Law, 43 PA.STAT.ANN. § 1102.1, *et seq.*, authorize forced-unionism agreements, they may only constitutionally do so to the extent that they permit an “agency shop,” and do not authorize public employers, such as Defendant PTC, to enter into and/or enforce agreements requiring bargaining unit employees to become and/or remain members of labor unions, including Defendant Local 77.

29. As determined by the United States and Pennsylvania Supreme Courts, the state has a compelling interest in permitting a union and employer to agree that all employees subject to a monopoly bargaining agreement must pay their *pro rata* share of the union’s costs in meeting its obligations as the exclusive bargaining representative.

30. There is no compelling state interest justifying the government’s requirement that individuals become or remain members of a private organization, including a labor organization, for up to three years.

31. In the alternative, if there is, somehow, a compelling state interest in requiring members of a labor organization to remain members for the duration of the monopoly bargaining agreement, there is no compelling state interest for government to require its employees to pay for a union’s political, ideological, and other nonbargaining activities.

32. The “Union Security — Dues Check-Off” article, Exhibit A, Article IV, between Defendants Local 77 and the PTC, on its face and/or as applied by Defendants, permits Local 77 to require that employees maintain unwilling allegiance to Local 77 and/or its affiliates throughout the life of the CBA and, therefore, violate the limited constitutional authorization for forced-unionism schemes under the First Amendment, as set forth in relevant Supreme Court decisionmaking.

33. The Public Employe Relations Act, 43 PA.STAT.ANN. §§ 1101.301(18) & 1101.705, and the “Union Security — Dues Check-Off” article, Exhibit A, Article IV, between Defendants Local 77 and the PTC, on their faces and/or as applied by Defendants, permit Local 77 to require that employees maintain unwilling allegiance to Local 77 and/or its affiliates throughout the life of the CBA and are, therefore, unconstitutional in that they both create a chilling effect and work a prior restraint upon Plaintiffs’ exercise of their rights to association, self-organization, assembly, petition, and freedoms of speech, thought, and conscience, as guaranteed by the First, Fifth, and Fourteenth Amendments to the Constitution of the United States.

34. The Public Employe Relations Act, 43 PA.STAT.ANN. §§ 1101.301(18) & 1101.705, and the “Union Security — Dues Check-Off” article, Exhibit A, Article IV, between Defendants Local 77 and the PTC, on their

faces and/or as applied by Defendants, permit Local 77 to use the monies exacted from Plaintiffs and other objecting members for political, ideological, and other nonbargaining causes and are, therefore, unconstitutional in that they both create a chilling effect and work a prior restraint upon Plaintiffs' exercise of their rights to association, self-organization, assembly, and petition, and freedoms of speech, thought, and conscience, as guaranteed by the First, Fifth, and Fourteenth Amendments to the Constitution of the United States.

35. As a result of Defendants' unlawful actions described in paragraphs 13-26, Plaintiffs:

a. have been prevented from exercising their rights and privileges as a citizen of the United States to resign from a private organization with which they no longer agree;

b. have been prevented from exercising their rights and privileges as a citizen of the United States not to pay dues for any political, ideological, and nonbargaining activity which they oppose.

c. have been deprived of their civil rights guaranteed to them under the statutes of the United States; and

d. have suffered monetary damages in the amount collected from them, or alternatively, for that amount of dues spent on political, ideological, and nonbargaining activities to which they object.

36. If not enjoined, Defendants and their agents will continue the aforesaid deprivation and abridgement of Plaintiffs' constitutional rights, thereby causing irreparable harm, damage, and injury to Plaintiffs for which there is no adequate remedy at law.

VI. PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment as follows:

A. **Declaratory:** A judgment based upon the actual, current, and *bona fide* controversy between the parties as to the legal relations among them, pursuant to 28 U.S.C. § 2201 and Rule 57, FED.R.CIV.P., declaring:

1. that the "Union Security — Dues Check-Off" article, Exhibit A, Article IV, between Defendants Local 77 and the PTC, on its face and as applied, unconstitutionally abridges the Plaintiffs' rights under the First, Fifth, and Fourteenth Amendments to the Constitution of the United States;
2. that the Public Employe Relations Act, 43 PA.STAT.ANN. §§ 1101.301(18) & 1101.705, and the Public Employee Fair Share Fee Law, 43 PA.STAT.ANN. § 1102.1, *et seq.*, on their face and/or as applied, violates the First, Fifth, and Fourteenth Amendments to the United States Constitution; and

3. that the First and Fourteenth Amendments prevent the

Defendants from restricting the rights of Plaintiffs to resign from union membership at any time and/or requiring objecting nonmembers to pay for the union's political, ideological, and other nonbargaining activities.

B. Injunctive: A permanent injunction:

1. enjoining Defendants, their officers, employees, agents, attorneys, and all other persons in active concert with them, from:
 - a. engaging in any of the activities listed in Part A above which the Court declares illegal;
 - b. enforcing the "Union Security — Dues Check-Off" article, Exhibit A, Article IV, between Defendants Local 77 and the PTC, which requires Plaintiffs to remain members of Local 77 for the duration of the monopoly bargaining agreement; and
 - c. requiring Plaintiffs to pay for the political, ideological, and other nonbargaining activities of Local 77 and/or its affiliates.
2. requiring Defendants, their officers, employees, agents, attorneys, and all other persons in active concert with them, to:
 - a. expunge the "Union Security — Dues Check-Off" article, Exhibit A, Article IV, between Defendants Local 77 and the PTC;
 - b. honor each Plaintiff's request to resign from union

membership, *nunc pro tunc* to the date of each resignation; and

c. refund to each Plaintiff all union dues deducted from their wages subsequent to the date of each resignation.

C. **Monetary:** A judgment awarding Plaintiffs compensatory damages for the injuries sustained as a result of Defendants' unlawful interference with and deprivation of their constitutional and civil rights including, but not limited to, the amount of dues deducted from their wages after each Plaintiff's resignation, and such amounts as principles of justice and compensation warrant.

D. **Attorneys' Fees and Costs:** A judgment awarding Plaintiffs costs, including reasonable attorneys' fees under 42 U.S.C. § 1988; and

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E. **Other:** Such other and further relief as the Court may deem just and proper.

DATED: ___ March 2007

Respectfully submitted,

/s/ W. James Young

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