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**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

MOTION FOR SUMMARY JUDGMENT

Plaintiffs Jane Ladley (“Ms. Ladley”) and Christopher Meier (“Mr. Meier”) (collectively, “Plaintiffs”), by and through undersigned counsel, move for summary judgment pursuant to Pennsylvania Rule of Civil Procedure 1035.2 and

Lancaster County Rule of Civil Procedure 1035.2(a) and, in support, aver the following:

1. There are no genuine issues of material fact.
2. Because the record demonstrates that Defendant Pennsylvania State Education Association (“PSEA”) has violated Plaintiffs’ state and federal constitutional rights to due process, speech, association, and expression, as well as title 71, section 575(h), of the Pennsylvania Statutes (“section 575”) and 42 U.S.C. § 1983, Plaintiffs are entitled to judgment as a matter of law.

MATERIAL FACTS ABOUT WHICH THERE ARE NO GENUINE ISSUES

3. Ms. Ladley and Mr. Meier seek declaratory and injunctive relief, alleging that the PSEA maintains a practice of obstructing and censoring their charity selections under section 575 in a manner that violates their state and federal constitutional rights as well as state and federal law.

Ms. Ladley

4. At the time Ms. Ladley lodged her religious objection, she was a public school teacher¹ but a nonmember, as defined in section 575(a), of the PSEA and its affiliates. Second Am. Compl. for Declaratory and Injunctive Relief (“Second Am. Compl.”) ¶¶ 9, 16.

¹ Ms. Ladley is now retired.

5. Ms. Ladley taught in the Avon Grove School District (“Avon Grove”), where the Avon Grove Education Association (“AGEA”) is the exclusive representative for collective bargaining. Second Am. Compl. ¶ 16.

6. Beginning March 14, 2013, the AGEA bargained with Avon Grove for an “agency shop” agreement which would require all members of the bargaining unit represented by the AGEA, including Ms. Ladley, to become (or remain) union members, or, in the alternative, pay the annual so-called “fair share fee.” Second Am. Compl. ¶¶ 18-20 & Exhs. A, B, C, D.

7. The fair share fee amount for Ms. Ladley was approximately \$435.14 per year. Second Am. Compl. ¶ 19 & Exh. C.

8. On December 12, 2013, the PSEA mailed to Ms. Ladley a letter informing her of her obligation to pay the PSEA a fair share fee. Second Am. Compl. ¶ 20 & Exh. D.

9. However, Ms. Ladley had “sincere religious beliefs prevent[ing her] from joining or financially supporting PSEA and/or its affiliates.” Second Am. Compl. ¶¶ 22-23 & Exhs. E, F.

10. On January 4, 2014, Ms. Ladley filed timely notice with the PSEA informing them that, pursuant to section 575(e), she wished to “challenge . . . the payment of fair share fees for bona fide religious grounds.” In the letter, Ms. Ladley

outlined the reasoning behind her objection and asked for a response via regular mail or e-mail. Second Am. Compl. ¶ 22 & Exh. E.

11. On March 7, 2014, the PSEA's legal department "accepted" Ms. Ladley's verified statement of religious objection. Second Am. Compl. ¶ 23 & Exh. F.

12. Also in its March 7, 2014 letter to Ms. Ladley, the PSEA asked Ms. Ladley to designate a charity and provided a list of "charities that PSEA has agreed to in the past." Second Am. Compl. ¶ 23 & Exh. F.

13. On March 16, 2014, as requested, Ms. Ladley provided the PSEA with her choice of a charity, the Coalition for Advancing Freedom's "Sustainable Freedom Scholarship," a college scholarship fund designed "to encourage our youth to become knowledgeable about the U.S. Constitution and the principles of freedom upon which our Country was founded." Second Am. Compl. ¶ 24 & Exh. G.

14. On March 19, 2014, the PSEA legal department emailed Ms. Ladley with a response to Ms. Ladley's March 16, 2014 letter. It read, in pertinent part:

Please note that PSEA/NEA is not amenable to your suggestion as the charity appears to be political and we have a policy of not allowing political organizations to receive fair share fees. Kindly contact me with another selection. Thank you.

Second Am. Compl. ¶ 25 & Exh. H.

15. In the March 19, 2014 email to Ms. Ladley, there was no indication that Ms. Ladley’s “exclusive representative”—the AGEA—provided any input as to Ms. Ladley’s designation. Second Am. Compl. ¶ 26 & Exh. H.

16. On March 30, 2014, Ms. Ladley emailed the PSEA legal department to request clarification on the PSEA’s “policy” of not allowing donations to “political organizations.” Second Am. Compl. ¶ 27 & Exh. I.

17. In response, on March 31, 2014, the PSEA legal department emailed Ms. Ladley, again rejecting the scholarship fund and reiterating that the PSEA “ha[s] a policy of not allowing political organizations to receive fair share fees.” Second Am. Compl. ¶ 28 & Exh. J. No further explanation of this “policy” was provided. See id.

18. In the March 31, 2014 email to Ms. Ladley, there was no indication that Ms. Ladley’s “exclusive representative”—the AGEA—provided any input as to the PSEA’s “policy.” Second Am. Compl. ¶ 28 & Exh. J.

19. The PSEA’s March 31, 2014 email to Ms. Ladley also explained that PSEA was not amenable to Ms. Ladley’s selection because the Coalition for Advancing Freedom was, in its view, a “religious” organization. As supposed

evidence, the PSEA quoted from a page within the Coalition for Advancing Freedom’s website, reading “We believe in God in the Judeo-Christian tradition, and like our founders, believe that faith and religious practice contribute positively to a moral and civil society.” The PSEA informed Ms. Ladley that it was forwarding Ms. Ladley’s inquiry to a PSEA attorney. Second Am. Compl. ¶ 30 & Exh. J.

20. On May 5, 2014, Ms. Ladley sent a letter to the PSEA selecting the Constitutional Organization of Liberty (“COOL”) as her alternate charity choice for receipt of her funds. Second Am. Compl. ¶ 32 & Exh. K. The letter specified that COOL is a part of the Alexander Hamilton Institute for Constitutional Studies, a 501(c)(3)² organization with a tax ID number of 27-3074543. Second Am. Compl. Exhs. K & N.

21. The PSEA has previously recognized that COOL is a “charity” and has never raised the tax-exempt status of the organization as a reason to deny its selection. See, e.g., Second Am. Compl. Exh. M.

22. Ms. Ladley did not hear back from the PSEA for almost two months. Second Am. Compl. ¶ 33.

² 26 U.S.C. § 501(c)(3).

23. On June 24, 2014, Ms. Ladley sent an email to the PSEA requesting an update on the PSEA's view of her selection of COOL as her alternate charity choice. Second Am. Compl. ¶ 33 & Exh. L.

24. Finally, on March 5, 2015—almost a year later—the PSEA sent a letter to counsel for Ms. Ladley rejecting COOL on the ground that it was “a partisan organization, and the PSEA has a policy of not agreeing to partisan organizations to receive religious objectors’ fair share fees.” Second Am. Compl. ¶ 34 & Exh. M.

25. The PSEA offered no support for its conclusion that COOL was “partisan” in nature. Second Am. Compl. Exh. M.

26. To be exempt under 26 U.S.C. § 501(c)(3), a corporation cannot “participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.” 26 U.S.C. § 501(c)(3); see also 1 NONPROFIT ORGANIZATIONS: LAW & TAXATION § 12:19.

27. Following Ms. Ladley's retirement, Avon Grove and the AGEA entered into a new collective bargaining agreement, retroactive to July 1, 2014, and also containing a fair share fee provision. Second Am. Compl. ¶ 37 & Exh. O.

28. On July 12, 2016, the PSEA added to its practice by adopting new procedures (“Procedures”) for handling such disputes and gave notice to Ms.

Ladley, by letter to counsel for Ms. Ladley dated July 27, 2016, of such adoption and the PSEA's decision to apply the Procedures in her instance.³ Second Am. Compl. Exh. P.

29. Had the Procedures been in place at the time Ms. Ladley requested agreement on her designated charities, Ms. Ladley's requests would have also been denied based on the standards set forth in the Procedures. Def. Pennsylvania State Educ. Ass'n's Ans. to the First Set of Interrogs. by Pls. Jane Ladley & Christopher Meier, at Interrog. No. 5. A true and correct copy of the PSEA's Answers to Plaintiff's First Set of Interrogatories is incorporated and attached hereto as "Motion for Summary Judgment Exhibit A."

30. In its Procedures, the PSEA states that, among other conditions, it will only approve a religious objector's nonreligious charity if "[t]he charity does not

³ The PSEA's notice to Ms. Ladley and Mr. Meier appears to have been sent consistent with the last, flush-left paragraph on page 2 of its Procedures, which reads:

This policy is effective immediately and applicable to all current pending requests for religious objector status. If PSEA has not been able to agree upon a nonreligious charity to receive the equivalent of the fee for a currently recognized religious objector, the religious objector will be notified of the existence of this policy and the issue of an appropriate charity to receive the equivalent of the fee attributable to that religious objector will be submitted to next available calculation arbitration occurring at least 30 days after such notice.

advance policies or positions inconsistent with PSEA or NEA constitution and bylaws, resolutions, or policies.” Second Am. Compl. Exh. P, at 4 (Procedures B.2(e)).

31. In the PSEA’s July 27, 2016 letter to counsel for Ms. Ladley, the PSEA informed counsel for Ms. Ladley that Ms. Ladley was “invited to participate in [] arbitration to resolve the dispute over the mutual selection of the charities which will receive [her funds] collected from [her].” Second Am. Compl. Exh. P. Accordingly, the Procedures require that:

- a. The PSEA will provide arbitration to Ms. Ladley, if requested, on “the issue of which charity should receive the equivalent of the fair share fee plus accrued interest from the escrow account.” Second Am. Compl. Exh. P, at 4 (Procedures B.4);
- b. Arbitration will be “final and binding.” Second Am. Compl. Exh. P, at 4 (Procedures B.5); and
- c. If Ms. Ladley does not wish to arbitrate or does not make a “timely” request, the PSEA will send her funds “to a nonreligious charity chosen by the PSEA at its sole discretion.” Second Am. Compl. Exh. P, at 4 (Procedures B.6) (emphasis added).

32. After she filed a preliminary injunction motion in this Court to enjoin the unilateral disposition of her funds under the Procedures, Ms. Ladley and the PSEA entered into an agreement whereby the PSEA agreed not to enforce its Procedures against Ms. Ladley for the duration of the impending lawsuit—that is, until her case reaches final adjudication on the merits. In return, and given that the agreement between the PSEA and Ms. Ladley was equivalent to the preliminary injunction sought in this case, Ms. Ladley withdrew her preliminary injunction motion.

33. Ms. Ladley’s funds remain in escrow. Second Am. Compl. ¶ 41.

Mr. Meier

34. Mr. Meier is a public school teacher but a nonmember, as defined in section 575(a), of the PSEA and its affiliates. Second Am. Compl. ¶¶ 10, 43.

35. The Penn Manor Education Association (“PMEA”) is the exclusive representative for collective bargaining for the public school teachers employed by the Penn Manor School District (“Penn Manor”). Second Am. Compl. ¶ 43.

36. In 2012, the PMEA bargained with Penn Manor for an “agency shop” agreement, which would require all members of the bargaining unit represented by the PMEA to become (or remain) union members, or, in the alternative, pay the annual fair share fee. Second Am. Compl. ¶¶ 45-46 & Exhs. Q, R.

37. At that time, the fair share fee amount for Mr. Meier was approximately \$435.14 per year. Second Am. Compl. ¶ 46 & Exh. R.

38. On December 11, 2012, the PSEA mailed to Mr. Meier a letter informing him of his obligation to pay the PSEA a fair share fee. Second Am. Compl. ¶ 48.

39. On January 10, 2013, Mr. Meier filed timely notice to the PSEA informing them that, pursuant to section 575(e), he was lodging a “religious objection to the compulsory union dues (so-called ‘fair share fees’).” In the letter, Mr. Meier stated that he could not “in good conscience financially support any organization that promotes a non-educational agenda which conflicts with [his] deeply held religious beliefs.” He also selected the National Right to Work Legal Defense Foundation (“NRTWLDF”) as his charity of choice. Mr. Meier asked for a response via regular mail or e-mail. Second Am. Compl. ¶ 49 & Exh. S.

40. NRTWLDF is a 501(c)(3) organization with a tax ID number of 59-1588825. Second Am. Compl. ¶ 50 & Exh. T.

41. The PSEA has previously recognized that NRTWLDF is a “charity” and has never raised the tax-exempt status of the organization as a reason to deny its selection. See, e.g., Second Am. Compl. Exhs. U, AA.

42. On February 21, 2013, the PSEA's legal department responded to Mr. Meier. The PSEA wrote that more information about the basis of the objection was required of Mr. Meier in order for the PSEA to accept his religious objection. The PSEA also informed Mr. Meier that it was "not amenable" to his charity selection, and subsequently provided a list of charities which the PSEA "would find acceptable." Second Am. Compl. ¶ 51 & Exh. U.

43. On March 15, 2013, Mr. Meier wrote to the PSEA to provide the clarity sought in the PSEA's letter. Mr. Meier reiterated his "sincere and earnest" religious objection. He also wrote that his "religious beliefs are in conflict with several specifically identified resolutions of both the PSEA and the NEA" Second Am. Compl. ¶ 52 & Exh. V.

44. On January 17, 2014, Mr. Meier again filed timely notice to the PSEA to "renew [his] previously stated objection to payment of this 'fair share fee.'" In the letter, Mr. Meier reiterated that he could not "in good conscience financially support any organization that promotes a non-educational agenda which conflicts with [his] deeply held religious beliefs." Mr. Meier asked for a response, including an update on the status of his religious objection from the previous year and an assurance that his funds were still being held in escrow, via regular mail or e-mail. Second Am. Compl. ¶ 54 & Exh. W.

45. On June 26, 2014, more than five months later, the PSEA's legal department responded to Mr. Meier's letter. The PSEA legal department informed Mr. Meier that, in order for the PSEA to accept his religious objection, he must provide the PSEA with a "statement of which of the PSEA and NEA resolutions are in conflict with [his] religious beliefs" within 30 days. The PSEA legal department confirmed that "Any fees deducted from [Mr. Meier's] pay during these past two school years (2012-13 and 2013-14) have been placed in an escrow during the pendency of this matter." Second Am. Compl. ¶ 55 & Exh. X.

46. On June 27, 2014, Mr. Meier sent a letter to the PSEA in order to provide the requested information regarding the basis for his religious objection. Mr. Meier stated that his "faith prevents [him] from financially supporting any organization that promotes conflict as a means to achieve its objectives" Mr. Meier also cited the PSEA's and NEA's "non-educational agenda, including support for the controversial agendas of groups including [P]lanned [P]arenthood." Mr. Meier again selected the NRTWLDF as his charity of choice. Second Am. Compl. ¶ 56 & Exh. Y.

47. On July 1, 2014, a new CBA between Penn Manor and the PMEA took effect, which also included an agency shop provision. Second Am. Compl. ¶ 57 & Exh. Z.

48. On July 31, 2014, the PSEA legal department sent Mr. Meier a letter stating that his “objection for religious reasons to the 2012-13 and 2013-14 fair share fees is accepted.” However, the PSEA legal department reiterated its stance that it was not amenable to the NRTWLDF as the recipient charity of Mr. Meier’s funds. The PSEA legal department wrote that the NRTWLDF “has been a litigant against PSEA and NEA on several occasions, and thus, would create a conflict of interest for us to agree to have fees sent to that organization.” Once again, the PSEA legal department listed the same twelve charities “that have been acceptable to PSEA as charities receiving fair share fees.” Second Am. Compl. ¶ 58 & Exh. AA.

49. On July 12, 2016, the PSEA added to its practice by adopting new Procedures for handling such disputes and gave notice to Mr. Meier, by letter to counsel for Mr. Meier dated July 27, 2016, of such adoption and the PSEA’s decision to apply the Procedures in his instance. Second Am. Compl. Exh. P.

50. The Procedures also clarify that they are “effective immediately and applicable to all currently pending requests for religious objector status.” Second Am. Compl. Exh. P, at 4.

51. Had the Procedures been in place at the time Mr. Meier requested agreement on his designated charity, Mr. Meier’s requests would have also been

denied based on the standards set forth in the Procedures. Mot. for Summ. J. Exh. A, at Interrog. No. 5.

52. In the PSEA's July 27, 2016 letter to counsel for Mr. Meier, the PSEA informed counsel for Mr. Meier that Mr. Meier was, "invited to participate in [] arbitration to resolve the dispute over the mutual selection of the charities which will receive [his funds] collected from [him]." Second Am. Compl. Exh. P. Accordingly, the Procedures require that:

- a. The PSEA will provide arbitration to Mr. Meier, if requested, on "the issue of which charity should receive the equivalent of the fair share fee plus accrued interest from the escrow account." Second Am. Compl. Exh. P, at 4 (Procedures B.4);
- b. Arbitration will be "final and binding." Second Am. Compl. Exh. P, at 4 (Procedures B.5); and
- c. If Mr. Meier does not wish to arbitrate or does not make a "timely" request, the PSEA will send his funds "to a nonreligious charity chosen by the PSEA at its sole discretion." Second Am. Compl. Exh. P, at 4 (Procedures B.6) (emphasis added).

53. After he filed a preliminary injunction motion in this Court to enjoin the unilateral disposition of his funds under the Procedures, Mr. Meier and the

PSEA entered into an agreement whereby the PSEA agreed not to enforce its Procedures against Mr. Meier for the duration of the impending lawsuit—that is, until his case reaches final adjudication on the merits. In return, and given that the agreement between the PSEA and Mr. Meier was equivalent to the preliminary injunction sought in this case, Mr. Meier withdrew his preliminary injunction motion.

54. Mr. Meier’s funds remain in escrow. Second Am. Compl. ¶ 62.

PSEA

55. The PSEA is affiliated with the National Education Association. Second Am. Compl. ¶ 11; Def. PSEA’s Ans. with New Matter to Pls.’ Second Am. Compl. for Declaratory & Injunctive Relief (“Answer & New Matter”) ¶ 219.

56. The PSEA is also an “employe organization” and a “statewide employe organization” as defined in section 575(a). Second Am. Compl. ¶¶ 11, 169-170, 199 & n.7; Answer & New Matter ¶ 224.

57. The AGEA and PMEA, local affiliates of the PSEA, are “exclusive representatives” as defined in section 575(a). Second Am. Compl. ¶¶ 16, 43, 171-172, 200-201; see Answer & New Matter ¶ 225.

58. At the present time, the PSEA has approximately 179,000 members organized in 587 affiliated local Education Associations (professional school

employees) and 449 affiliated Education Support Professional Associations (non-professional school employees) spread across Pennsylvania. Answer & New Matter ¶ 239.

59. At the present time, there are approximately 6,183 nonmembers of the PSEA (equating to 3.45% of overall membership) who work under contracts that are negotiated by the PSEA's local affiliates and that have a contractual provision providing for the collection of fair share fees from nonmembers. Answer & New Matter ¶ 242.

60. At the present time, there are approximately 292 nonmembers in collective bargaining units represented by the PSEA who have filed religious objections to paying a fair share fee to the PSEA and who have been accepted as bona fide religious objectors by the PSEA. Answer & New Matter ¶ 262.

61. Therefore, religious objectors (292) represent less than two-tenths of one percent (0.163128491%) of overall PSEA membership (179,000).

62. Section 575(d)—and United States Supreme Court precedent—requires the PSEA to mail an annual notice to nonmembers that explains the calculation of the fair share fee, advises them of the opportunity to challenge the amount of the fee, and notifies them that they may object to payment of the fee to the PSEA based upon a bona fide religious objection to having money they

earned used by a union. See Second Am. Compl. ¶¶ 20, 48 & Exh. D; Answer & New Matter ¶ 232. The PSEA's December 15, 2016 Notice ("PSEA Notice") is incorporated and attached hereto as "Motion for Summary Judgment Exhibit B."

63. For the 2015-16 school year, annual PSEA dues for full-time employees were \$511.00 for Education Association members and \$255.00 for Education Support Professional members. Answer & New Matter ¶ 243. For the 2016-17 school year, annual PSEA dues were \$517.00 and \$267.00, respectively. Mot. for Summ. J. Exh. B, at 2.

64. The 2015-16 PSEA fair share fee for full-time employees was \$393.47 for Education Association members and \$196.74 for Education Support Professional employees. Answer & New Matter ¶ 244. For the 2016-17 year, the fair share fee was \$382.58 and \$197.58. Mot. for Summ. J. Exh. B, at 2.

65. Section 575(e) allows nonmembers to raise two types of objections to the payment of the fair share fee after they receive the annual notice: a calculation objection and/or a religious objection. Second Am. Compl. ¶ 21; Answer & New Matter ¶ 233.

66. After the religious objection is accepted, the PSEA's practice is to look to the objector to identify an "acceptable" charity. The PSEA's practice is also to

suggest examples of charities to which it has agreed in the past. Answer & New Matter ¶ 251.

67. PSEA's practice is to engage an independent escrow agent to hold all religious objector funds until the challenge is resolved. Answer & New Matter ¶¶ 248-249.

68. While the nonmember and the PSEA are reaching agreement on the charity to receive the nonmember's funds, the PSEA's practice is keep such funds in the interest-bearing escrow account. Answer & New Matter ¶ 249.

69. Once a mutually agreeable charity is selected by the nonmember, the PSEA's practice is to forward funds attributable to that nonmember, plus any interest accrued in the escrow account, to the selected charity. Answer & New Matter ¶ 250.

70. For religious objectors identifying charities to which the PSEA is not amenable, the PSEA's practice is to have an "informal exchange" with the religious objector and to secure "agreement" or have the objector select an "alternate" charity. Answer & New Matter ¶ 255.

71. The PSEA states that, in evaluating a religious objector's proposed charity, "several criteria may be applied, together or separately." Answer & New Matter ¶ 256. According to the PSEA, its "several criteria" include the following:

- a. "PSEA will require that the charity be a recognized 501(c)(3) organization under the Internal Revenue Code," Answer & New Matter ¶ 257;
- b. "PSEA will not agree to a charity where it appears that the religious objector has a personal interest in the selected charity (such as being a founder, officer, or member of a local charity who may be able to benefit personally from the work of the charity)," Answer & New Matter ¶ 258;
- c. "PSEA will not agree to a charity that may appear to be 'non-religious,' (as required by the statute) if it appears that the underlying principles or overarching mission of the selected entity are essentially congruent with or directly supportive of those of a religious entity. It is PSEA's belief that payment of the fair share fee to that organization would be tantamount to supporting the tenets of the religious organization, and therefore inconsistent with the stated legislative intent that the religious objector's fair share fees be paid over to a non-religious charity," Answer & New Matter ¶ 259; and

- d. “PSEA will not agree to a charity that is a political, ‘advocacy’ or ‘partisan’^[4] organization with a mission or objective that is known to advance issues and advocate for policies that are directly antagonistic to the interests of PSEA/NEA/ or its local affiliates, or which conflict directly with the established policies of PSEA or NEA,” Answer & New Matter ¶ 260.

72. On July 12, 2016, the PSEA adopted its Procedures, adding to the “several criteria,” supra, at ¶ 71, requirements that:⁵

- a. “The charity does not promote or further the purported grounds for the religious objection,” Second Am. Compl. Exh. P, at 4 (Procedures B.2(c));
- b. “The charity does not serve to individually benefit the [religious objector] or his or her family,” Second Am. Compl. Exh. P, at 4 (Procedures B.2(d)); and

⁴ 501(c)(3) organizations cannot lawfully operate as partisan organizations. 26 U.S.C. § 501(c)(3) (defining a 501(c)(3) organization as an organization that, among other requirements, “does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.”); see also 1 NONPROFIT ORGANIZATIONS: LAW AND TAXATION § 12:19.

⁵ Other requirements articulated in the Procedures, at B.2(a)-(b), appear to be reiterations of the PSEA’s “several criteria.”

- c. “The charity does not advance policies or positions inconsistent with PSEA or NEA constitution and bylaws, resolutions, or policies,”
Second Am. Compl. Exh. P, at 4 (Procedures B.2(e)).

73. The PSEA’s list of “several criteria,” supra, at ¶ 71, and the additional restrictions set forth in its Procedures, supra, at ¶ 72, are a nonexhaustive collection of reasons that the PSEA may use to reject a religious objector’s proposed charities.

74. The PSEA has other reasons not included in its list of “several criteria,” supra, at ¶ 71, or its Procedures, supra, at ¶ 72, for which it will reject a religious objector’s proposed charities.

75. For example, neither the PSEA’s list of “several criteria,” supra, at ¶ 71, nor its Procedures, supra, at ¶ 72, include the reason the PSEA provided for rejecting Mr. Meier’s proposed charity—that allowing Mr. Meier to fund the NRTWLDF would represent a “conflict of interest” for the PSEA.

76. Additionally, the PSEA maintains that it has the authority under section 575 to disregard one of the “several criteria,” supra, at ¶ 71, or its Procedures, supra, at ¶ 72, if it desires.

77. In fact, the PSEA has previously disregarded its list of “several criteria,” supra, at ¶ 71. On March 7, 2014, the PSEA provided to Ms. Ladley a list of

“charities that PSEA has agreed to in the past.” Second Am. Compl. ¶¶ 23, 121 &

Exh. F. The list included the following organizations:

- Alzheimer’s Association
- American Cancer Society
- American Diabetes Association
- American Heart Association
- American Red Cross
- Cystic Fibrosis Foundation
- Make-A-Wish Foundation
- March of Dimes
- Muscular Dystrophy Association
- National Multiple Sclerosis Society
- Special Olympics
- United Way

Second Am. Compl. ¶ 121a & Exh. F.

78. In 2013 (or from 2013-14, as documented), the following charities spent the corresponding amounts directly on “Lobbying,” as reported to the IRS:

- Alzheimer’s Association: \$1,844,797
- American Cancer Society: \$17,056,480
- American Diabetes Association: \$1,280,997
- American Heart Association: \$3,258,509
- American Red Cross: \$369,706
- Cystic Fibrosis Foundation: \$561,245
- March of Dimes: \$2,090,509
- Muscular Dystrophy Association: \$333,447
- National Multiple Sclerosis Society: \$930,190
- Special Olympics: \$91,200
- United Way: \$247,685

Second Am. Compl. ¶ 121b & Exh. BB.

79. Under the Procedures, if a religious objector and the PSEA cannot reach agreement as to a nonreligious charity, the PSEA's Procedures state that the PSEA will mail a "written notice" to the religious objector "of his or her right to arbitrate the issue of which charity should receive the equivalent of the fair share fee plus accrued interest from the escrow account, provided the [religious objector] requests arbitration in writing received by PSEA within 40 days of the date of said notice from PSEA." Procedures, at B.4.

80. The Procedures mandate that "[t]he arbitrator's decision shall be considered final and binding by PSEA." Procedures, at B.5.

81. The Procedures state that, "[i]f the PSEA does not receive a timely request to arbitrate, PSEA will within 60 days direct the financial institution to remit the equivalent of the fair share fee plus accrued interest from the escrow account to a nonreligious charity chosen by PSEA at its sole discretion consistent with Appendix A," which lists various examples of charitable categories to which the PSEA has signaled general agreement. Procedures, B.6 (emphasis added).

**MS. LADLEY AND MR. MEIER ARE ENTITLED TO JUDGMENT
AS A MATTER OF LAW**

82. For the reasons addressed below, in the Second Amended Complaint, and the brief supporting the instant motion, the PSEA has violated Plaintiffs' state

and federal constitutional rights to due process, speech, association, and expression, as well as title 71, section 575(h), of the Pennsylvania Statutes and 42 U.S.C. § 1983.

83. The PSEA acts under the color of state law in exercising authority under section 575. See Op. & Order 9, Ladley v. Pennsylvania State Educ. Ass'n, No. CI-14-08552 (Pa. Ct. C.P. Lancaster Cty. Apr. 20, 2016); see also Mem. & Order 10, Williams v. Pennsylvania State Educ. Ass'n, No. 1:16-cv-02529-JEJ (M.D. Pa. Apr. 25, 2017) (“Williams Order”); Mem. & Order 18, Misja v. Pennsylvania State Educ. Ass'n, No. 1:15-cv-1199-JEJ (M.D. Pa. Mar. 28, 2016) (“Misja Order”).⁶

Free Speech, Association, and Expression

84. The PSEA’s practice, including its Procedures, violates Plaintiffs’ rights to freedom of speech, association, and expression under the First and Fourteenth Amendments to the United States Constitution and Article I, sections 1, 7, and 26, of the Pennsylvania Constitution.

85. “Because an individual should be allowed to believe as he sees fit without coercion from the state, his First Amendment interests are implicated when the state forces him to contribute to the support of an ideological cause he

⁶ The Misja Order and Williams Order are attached hereto as, respectively, Appendix “A” and “B.”

opposes.” Amidon v. Student Ass’n of State Univ. of N.Y. at Albany, 508 F.3d 94, 99 (2d Cir. 2007); see Galda v. Rutgers, 772 F.2d 1060, 1064 (3d Cir. 1985) (“[C]ompelling, as well as prohibiting ‘contributions for political purposes works no less an infringement’ on constitutional rights.”).

86. “Article I, Section 7 [of the Pennsylvania Constitution] provides broader protections of expression than the related First Amendment guarantee in a number of different contexts.” DePaul v. Commonwealth, 969 A.2d 536, 546 (Pa. 2009).

87. The PSEA prohibits Plaintiffs from sending their money to certain organizations and effectively compels Plaintiffs to send their money to organizations they do not wish to support, in violation of their rights to free speech, association, and expression.

88. The PSEA’s practice does not serve a compelling state interest that cannot be achieved through means significantly less restrictive of First Amendment freedoms.

89. Additionally, the PSEA’s practice is a pernicious viewpoint-based restriction, operating in a manner that “suggests an attempt to give one side of a debatable public question an advantage in expressing its views to the people.” First Nat’l Bank of Bos. v. Bellotti, 435 U.S. 765, 785-86 (1978).

90. The PSEA imposes viewpoint-based restrictions by prohibiting Plaintiffs from sending their money to a charity on the basis that, in the PSEA’s judgment, it has “a mission or objective that is known to advance issues and advocate for policies that are directly antagonistic to the interests of PSEA/NEA/ or its local affiliates, or which conflict directly with the established policies of PSEA or NEA.” Answer & New Matter ¶ 260.

91. The PSEA imposes viewpoint-based restrictions by prohibiting Plaintiffs from sending their money to a charity on the basis that, in the PSEA’s judgment, it “advance[s] policies or positions inconsistent with PSEA or NEA constitution and bylaws, resolutions, or policies.” Procedures, at B.2(e).

92. The PSEA imposes viewpoint-based restrictions by prohibiting Plaintiffs from sending their money to a charity on the basis that, in the PSEA’s judgment, it is a “political,” “advocacy,” or “partisan” organization, Answer & New Matter ¶ 260, particularly when the PSEA allows other religious objectors to support other such organizations, Second Am. Compl. ¶ 121.

93. The PSEA imposes viewpoint-based restrictions by prohibiting Plaintiffs from sending their money to a charity on the basis that, in the PSEA’s judgment, “it appears that the underlying principles or overarching mission of the selected entity are essentially congruent with or directly supportive of those of a

religious entity,” Answer & New Matter ¶ 259, particularly when the PSEA routinely approves organizations that, for example, care for the sick, hungry, children, or animals—work “essentially congruent with or directly supportive of” Plaintiffs’ faith. See James 5:14; 1 John 3:17-18; Psalm 82:3; Proverbs 12:10.

94. The PSEA imposes viewpoint-based restrictions by prohibiting Plaintiffs from sending their money to a charity on the basis that, in the PSEA’s judgment, it “promote[s] or further[s] the purported grounds for the religious objection.” Procedures, at B.2(c).

95. The PSEA imposes viewpoint-based restrictions by prohibiting Ms. Ladley from sending her money to a scholarship fund designed “to encourage our youth to become knowledgeable about the U.S. Constitution and the principles of freedom upon which our Country was founded,” Second Am. Compl. ¶ 24 & Exh. G, particularly when the PSEA purports to approve “scholarships, education foundations, and parent/teacher organizations.” Second Am. Compl. Exh. P, at 5.

96. The PSEA imposes viewpoint-based restrictions by prohibiting Ms. Ladley from sending her money to a charity on the basis that, in the PSEA’s judgment, it espouses a “belie[f] in God in the Judeo-Christian tradition, and like our founders, believe that faith and religious practice contribute positively to a moral and civil society.” Second Am. Compl. ¶ 30 & Exh. J.

97. The PSEA imposes viewpoint-based restrictions by prohibiting Mr. Meier from sending his money to a charity on the basis that, in the PSEA's judgment, it "has been a litigant against PSEA and NEA on several occasions, and thus, [in the PSEA's judgment,] would create a conflict of interest for [the PSEA] to agree to have [religious objector funds] sent to that organization." Second Am. Compl. ¶ 58 & Exh. AA.

98. Even if the PSEA could demonstrate a compelling interest in dictating which activities a religious objector may fund, the PSEA's practice would be an unnecessarily restrictive means of accomplishing that interest. For example, the PSEA's practice includes "policies" that rule out large, vague categories of charities without reference to the PSEA's reasons it would find itself unable to continue representing teachers who fund certain charitable activities. It is difficult to imagine, particularly without the PSEA's focused help, how it may be unable to represent a teacher who, for instance, gives to a scholarship fund designed "to encourage our youth to become knowledgeable about the U.S. Constitution and the principles of freedom upon which our Country was founded." Second Am. Compl. ¶ 24 & Exh. G.

Due Process

99. The PSEA's practice, including its Procedures, violates Plaintiffs' rights to due process under the First and Fourteenth Amendments to the United States Constitution and Article I, sections 1, 9, and 11, of the Pennsylvania Constitution. See, e.g., Misja Order 30-31 ("Without an opportunity for resolution, § 575 is primed to run headlong into a confrontation with the Due Process Clause of the Fourteenth Amendment.")

100. "The nonunion employee, whose First Amendment rights are affected by the agency shop itself and who bears the burden of objecting, is entitled to have his objections addressed in an expeditious, fair, and objective manner." Chi. Teachers Union, Local No. 1 v. Hudson, 475 U.S. 292, 307 (1986). "[T]he government and union have a responsibility to provide procedures that minimize the impingement and that facilitate a nonunion employee's ability to protect his rights." Id. at 307 n.20.

101. Likewise, the Fourteenth Amendment guarantees due process to citizens in the hearing and determination of disputes with state actors over deprivations of liberty or property. "At the core of procedural due process jurisprudence is the right to advance notice of significant deprivations of liberty or property and to a meaningful opportunity to be heard." Abbott v. Latshaw, 164

F.3d 141, 146 (3d Cir. 1998); see also Mathews v. Eldridge, 424 U.S. 319, 333 (1976) (“The fundamental requirement of due process is the opportunity to be heard ‘at a meaningful time and in a meaningful manner.’”) (quoting Armstrong v. Manzo, 380 U.S. 545, 552 (1965)).

102. The PSEA fails to sufficiently minimize the impingement of Plaintiffs’ First Amendment rights or facilitate Plaintiffs’ ability to protect their rights.

103. The PSEA has failed to provide Plaintiffs with an expeditious process.

104. The PSEA has failed to provide Plaintiffs with a fair process.

105. The PSEA has failed to provide Plaintiffs with meaningful notice of policies regarding the process or standards applied by the PSEA in addressing religious objectors’ charity selections. The policies that have been provided are highly dependent on the PSEA’s arbitrary interpretation, result in arbitrary and capricious enforcement, and turn on information only available to the PSEA.

106. The PSEA failed to provide Plaintiffs a meaningful opportunity to be heard, first, by denying access to an independent decisionmaker. Once the PSEA did provide access to an independent decisionmaker, it did so in a manner violative of Plaintiffs’ meaningful right to be heard and to petition the government for redress of grievances and with no meaningful standard by which to judge Plaintiffs’ designated charities.

107. The PSEA, by threatening to dispose of Plaintiffs' funds if they do not agree to arbitration, see Procedures, at B.6, deprives Plaintiffs of due process.

108. The PSEA's mandatory "final and binding" arbitration on "the issue of which charity should receive the equivalent of the fair share fee plus accrued interest from the escrow account" precludes a civil suit or alternative remedy and deprives Plaintiffs of a remedy by due course of law and denies or delays the administration of justice and exercise of their rights. Procedures, at B.4, B.5.

109. The PSEA "participates in both the prosecutorial and adjudicatory aspects" of the religious objection proceeding. Stone & Edwards Ins. Agency v. Dep't of Ins., 636 A.2d 293, 297 (Pa. Cmwlth. 1994); see, e.g., Lyness v. State Bd. of Med., 605 A.2d 1204. The PSEA both objects to a nonmember's choice of charity and then denies a meaningful process by which the nonmember can argue that its determination should be overturned, in violation of guarantees of due process under the Pennsylvania Constitution.

The PSEA Violates Section 575

110. The PSEA's practice, including its Procedures, are arbitrary, capricious, unreasonable, and clearly at odds with the meaning of the statute, which is to allow a nonmember to designate a charity without serial objections from PSEA based upon unwritten and unknowable criteria.

111. Although section 575(h) contains language specifying that nonreligious charities must be “agreed upon,” if such language permits the indefinite postponement, and ultimate frustration, of a nonmember’s funds, then such a reading would produce absurd results and, ultimately, a facially unconstitutional rendering.

112. Instead, “agreement” in this context must be mere “manifestation of mutual assent,” Agreement, Black’s Law Dictionary (10th ed. 2014),⁷ that the charity selected by the religious objector is both “nonreligious” and a “charity,” 71 P.S. § 575(h).

113. The PSEA violated section 575 by arbitrarily, capriciously, and unreasonably failing to provide Plaintiffs with meaningful notice of its policies or standards relative to charity sections, failing to provide a fair, expeditious process

⁷ Black’s Law Dictionary clarifies that “agreement” is a broad term. For example:

An agreement, as the courts have said, is nothing more than a manifestation of mutual assent by two or more [] legally competent persons to one another. Agreement is in some respects a broader term than contract, or even than bargain or promise. It covers executed sales, gifts, and other transfers of property.

(10th ed. 2014) (quoting 1 Samuel Williston, A Treatise on the Law of Contracts § 2, at 6 (Walter H.E. Jaeger ed., 3d ed. 1957)).

to achieve “agreement” with religious objectors, and employing highly subjective determinations made by PSEA staff to reject charity selections.

114. The PSEA arbitrarily, capriciously, and unreasonably withheld its agreement to Plaintiffs’ designated charities.

115. The PSEA’s Procedure violates section 575 because it forces involuntary arbitration or permits the PSEA to send religious objectors’ funds to a nonreligious charity absent agreement from the religious objector.

116. The PSEA violates section 575 by usurping the role of the “exclusive representative” in addressing charity selections under section 575(h).

The PSEA Violates 42 U.S.C. § 1983

117. In mandating arbitration, the PSEA’s Procedure deprives Plaintiffs of the ability to vindicate their civil rights under 42 U.S.C. § 1983. See Williams Order 13-14 (labelling the PSEA’s newly adopted procedures “effectively unenforceable” as “unconstitutional.”); Hohe v. Casey, 956 F.2d 399, 409 (3d Cir. 1992) (declaring section 575(g) “invalid in its entirety” because it required “final and binding” arbitration for challenges to the calculation of nonmember fair share fees).

WHEREFORE, Ms. Ladley and Mr. Meier request that this Court declare that the PSEA issue judgment in their favor. Should this Court instead rule for the PSEA,

this Court should impose a stay pending appeal, so as to prevent the transfer of any funds until this matter is final.

Respectfully submitted,

THE FAIRNESS CENTER

Date: June 30, 2017



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