

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

JANE LADLEY and CHRISTOPHER MEIER,

Plaintiffs,

vs.

PENNSYLVANIA STATE EDUCATION
ASSOCIATION,

Defendant.

No. CI-14-08552

Judge Leonard G. Brown, III

NOTICE TO DEFEND

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

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IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

Lancaster Bar Association
Lawyer Referral Service
28 East Orange Street
Lancaster, PA 17602
Telephone: 717-393-0737

David R. Osborne

PA Attorney ID# 318024

Karin M. Sweigart

PA Attorney ID# 317970

The Fairness Center

225 State Street, Suite 303

Harrisburg, PA 17101

844-293-1001

david@fairnesscenter.org

karin@fairnesscenter.org

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SECOND AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

INTRODUCTION

1. Plaintiffs Jane Ladley (“Ms. Ladley”) and Christopher Meier (“Mr. Meier”), former and current public school teachers, respectively, and religious

objectors to public-sector union membership, by and through counsel, bring this lawsuit against Defendant Pennsylvania State Education Association (“PSEA”) to vindicate their constitutional and statutory rights to free speech, association, expression, and due process.

2. Public school teachers in Pennsylvania may be subjected to compulsory payment of a union “fair share fee” under title 71, section 575 of the Pennsylvania Statutes (“section 575”).¹ However, section 575 expressly protects religious objectors from payment of fair share fees to the union and allows them instead to “pay the equivalent of the fair share fee to a nonreligious charity agreed upon by the nonmember and the [union].” 71 P.S. § 575(h).

3. Unfortunately, as Ms. Ladley and Mr. Meier will demonstrate, the PSEA strips religious objectors of their due process rights and access to the court and imposes viewpoint-based restrictions on their speech and association. The PSEA has further denied to Ms. Ladley and Mr. Meier a mechanism consistent with constitutional due process even to challenge its actions—thereby putting itself and its practice beyond review. Accordingly, section 575 is being unconstitutionally and illegally applied to Ms. Ladley and Mr. Meier.

1. Section 575 is also commonly known as “The Fair Share Fee Law.”

4. Accordingly, Ms. Ladley and Mr. Meier respectfully request that this Court declare that the PSEA's practice is a violation of their constitutional and statutory rights, declare that the PSEA's practice is a patently unreasonable application of section 575(h), and request that this Court permanently enjoin such violations.

JURISDICTION AND VENUE

5. Ms. Ladley and Mr. Meier bring this lawsuit pursuant to 42 U.S.C. § 1983 for violations of their rights under the First and Fourteenth Amendments to the United States Constitution; the Pennsylvania Declaratory Judgment Act, 42 Pa.C.S. §§ 7531-7541; Article I, sections 1, 7, 9, 11, and 26 of the Pennsylvania Constitution; and 42 U.S.C. § 1988. Ms. Ladley and Mr. Meier seek declaratory and injunctive relief against the PSEA's practice of obstructing and censoring of their charity selections under section 575.

6. This Court has jurisdiction over this action pursuant to the provisions of the Pennsylvania Declaratory Judgments Act, 42 Pa.C.S. §§ 7531 – 7541, and concurrent jurisdiction over section 1983 claims, Jackson v. E. Hempfield Twp. Police Dep't, 37 Pa. D. & C.4th 360, 362, 1997 WL 1133696 (Pa. Com. Pl. 1997).

7. Venue is proper before this Court pursuant to Pennsylvania Rule of Civil Procedure 2179(a)(2), as Defendant PSEA regularly conducts business in Lancaster County.

8. Permissive joinder of Plaintiffs is proper before this Court pursuant to Pennsylvania Rule of Civil Procedure 2229(a), as Plaintiffs “assert [their] right to relief jointly, severally, separately or in the alternative, in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences if any common question of law or fact affecting the rights to relief of all such persons will arise in the action.”

PARTIES

9. Ms. Ladley recently retired from her position as a public school teacher in Delaware and Chester Counties, after serving for a total of 25 years. Ms. Ladley served Chester County and Avon Grove as a Response to Instruction and Intervention teacher, where she, among other things, planned reading and math interventions for struggling students, kept and tracked data on students’ progress in the programs, and made recommendations for any future testing. Ms. Ladley was the team leader for all the support teachers, and she regularly met with administration and other team leaders to coordinate information and formulate strategy. Ms. Ladley served Avon Grove as a member of the Literacy

Panel across grade levels to plan new initiatives. Ms. Ladley is an adult individual with an address of 113 Robin Hill Drive, Oxford, PA 19363.

10. Mr. Meier is a public school teacher in Lancaster County, where he has served for 10 years as a teacher at Penn Manor High School. Throughout his tenure with the district, Mr. Meier has taught at the high school level, including several Advanced Placement, along with various career prep, college prep, and honor courses. Mr. Meier has also served the students as a track and field coach, academic quiz bowl coach, National History Day coordinator, and been a part of several curriculum development and coordination roles for new courses and program initiatives at the school. Mr. Meier is an adult individual with an address of 65 Fresh Meadow Drive, Lancaster, PA 17603

11. Defendant PSEA is a nonprofit corporation registered under the laws of Pennsylvania, a “statewide employe organization” as used in section 575, and domiciled in Pennsylvania, with a principal address of 400 North 3rd Street, Harrisburg, Pennsylvania 17105. The PSEA is affiliated with the National Education Association (“NEA”).

12. The PSEA acts “under the color of state law” because its practice is “power possessed by virtue of state law and made possible only because the wrongdoer is clothed with the authority of state law,” specifically, section 575,

the Public School Code,² and the Public Employee Relations Act.³ West v. Atkins, 487 U.S. 42, 49 (1988) (quoting United States v. Classic, 313 U.S. 299 (1941)); see Misja v. Pennsylvania State Educ. Ass’n, No. 1:15-cv-1199, mem. at 18 (M.D. Pa. Mar. 28, 2016) (addressing the PSEA’s religious objection process and concluding that, “[i]n bargaining with, and collaborating on such an agreement, and ultimately relying on the state for the agreement’s execution to an extent, we find that a public-sector union has sufficiently forayed into the waters of state action such that it may be sued pursuant to § 1983”); see also Harris v. Quinn, 573 U.S. ___, 134 S. Ct. 2618 (2014); Otto v. Pennsylvania State Educ. Ass’n, 330 F.3d 125 (3d Cir. 2003).

STANDING AND LEGAL STANDARD

13. Ms. Ladley’s and Mr. Meier’s interests in this controversy are direct, substantial, and present. As a direct result of the PSEA’s construction of section 575, Ms. Ladley and Mr. Meier have suffered in the past, and will continue to suffer in the future, nonmonetary damages including violations of their constitutional and statutory rights and the inability to donate to a “nonreligious charity” in accordance with section 575(h).

2. 24 P.S. §§ 11-1101-A – 11-1172-A.

3. 43 P.S. §§ 1101.301 – 1101.2301.

14. Under the Pennsylvania Declaratory Judgments Act, “Any person . . . whose rights, status, or other legal relations are affected by a statute . . . may have determined any question of construction . . . arising under the . . . statute . . . and obtain a declaration of rights, status, or other legal relations thereunder.” 42 Pa.C.S. § 7533.

15. Permanent injunctions are appropriate when the parties “establish [their] clear right to relief. . . . The part[ies] need not establish either irreparable harm or immediate relief, and a court may issue a final injunction if such relief is necessary to prevent a legal wrong for which there is no adequate redress at law.” Pestco, Inc. v. Associated Prods, Inc., 880 A.2d 700, 710 (Pa. Super. 2005) (quoting Buffalo Twp. v. Jones, 813 A.2d 659, 663-64 (Pa. 2002)).

FACTUAL BASIS

A. MS. JANE LADLEY

16. Ms. Ladley recently retired as a public school teacher after serving for a total of 25 years. For the last 17 years of her teaching career, Ms. Ladley taught at the Kemblesville Elementary School, Avon Grove Intermediate School, and Penn London Elementary School, all in the Avon Grove School District (“Avon Grove”), where the Avon Grove Education Association (“AGEA”) is the exclusive representative for collective bargaining.

17. Until 2012, the CBA between the AGEA and Avon Grove did not allow for the collection of fees from teachers who declined to be union members.

18. However, on March 14, 2013, the AGEA bargained with Avon Grove for an “agency shop” agreement. An agency shop agreement dictates that “all the employees are represented by a union selected by the majority” and that “[w]hile employees in the unit are not required to join the union, they must nevertheless pay the union an annual fee to cover the cost of union services related to collective bargaining (so-called chargeable expenses).” Knox v. Serv. Emps. Int’l Union, Local 1000, 567 U.S. ___, 132 S.Ct. 2277, 2284 (2012). A true and correct copy of the of the collective bargaining agreement (“CBA”) between Avon Grove and the AGEA dated July 1, 2012 to June 30, 2014 is attached hereto as Exhibit “A” and incorporated herein by reference. Additionally, a true and correct copy of Avon Grove’s Board Minutes on March 14, 2013, is attached hereto as Exhibit “B” and incorporated herein by reference.

19. Therefore, all employees of the District must become (or remain) union members, or, in the alternative, pay the annual “fair share fee,” as defined in section 575(a).⁴ The fair share fee amount for Ms. Ladley was approximately

4. Section 575(a) defines “fair share fee” as:
the regular membership dues required of members of the exclusive representative less the cost for the previous fiscal year of its activities

\$435.14 per year. A true and correct copy of Ms. Ladley’s paystub—with fair share fee extractions marked “FS”—is attached hereto as Exhibit “C” and incorporated herein by reference.

20. On December 12, 2013, the PSEA mailed to Ms. Ladley a letter informing her that, because the AGEA negotiated for the right to extract fees from nonmembers, she would have to pay a minimum of the fair share fee as a condition of her continued employment. A true and correct copy of the letter is attached hereto as Exhibit “D” and incorporated herein by reference.

21. Section 575 provides significant protections for public employees who have declined to become (or remain) union members and are subject to payment of fair share fees under an agency shop agreement. First, nonmembers may object to “the propriety of the fair share fee.” 71 P.S. § 575(e)(1). Second, nonmembers may object to any payment of fair share fees by raising a “bona fide” religious objection. 71 P.S. § 575(e)(2). For verified and accepted bona fide religious objections, the statute provides that “the challenging nonmember shall

or undertakings which were not reasonably employed to implement or effectuate the duties of the employe organization as exclusive representative.

The amount of the “fair share fee” is calculated by the union and should reflect all union expenditures on behalf of employees, minus the portion of union dues used “to contribute to political candidates and to express political views unrelated to [the union’s] duties as exclusive bargaining representative.” Aboud v. Detroit Bd. of Educ., 431 U.S. 209 (1977).

pay the equivalent of the fair share fee to a nonreligious charity agreed upon by the nonmember and the exclusive representative.” 71 P.S. § 575(h). Section 575(h) is silent as to the meaning of “agreed upon” and imposes no deadline on “agree[ment]” or disposition of escrowed funds. See id.

22. On January 4, 2014, Ms. Ladley filed timely notice to 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. A true and correct copy of the letter is attached hereto as Exhibit “E” and incorporated herein by reference.

23. On March 7, 2014, the PSEA’s legal department “accepted” Ms. Ladley’s verified statement of religious objection.⁵ The PSEA also asked Ms.

5. In its March 7 letter to Ms. Ladley, the PSEA represented that it had taken a generous view of Ms. Ladley’s right to reject payment of dues and had therefore declined to require that the objection be “based upon the tenets or teachings of a bona fide church or religious body of which the employe is a member,” as mandated under the statute. 71 P.S. § 575(a). In fact, the National Labor Relations Board has long advised that “it may be constitutionally impermissible to distinguish between a person who holds certain religious or moral beliefs and a person who belongs to an organized religion, body, or sect that holds such beliefs.” 12 NLRB Advice Mem. Rep. 22010, 1984 WL 972702 (Sept. 27, 1984); accord Wilson v. NLRB, 920 F.2d 1282, 1290 (6th Cir. 1990) (holding such a requirement unconstitutional); Katter v. Ohio Emp’t Relations Bd., 492 F. Supp. 2d 851, 864 (S.D. Ohio 2007) (same).

Ladley⁶ to designate a charity and provided a list of “charities that PSEA has agreed to in the past.” A true and correct copy of the letter is attached hereto as Exhibit “F” and incorporated herein by reference.

24. 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.” A true and correct copy of the letter is attached hereto as Exhibit “G” and incorporated herein by reference.

25. 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.

A true and correct copy of the letter is attached hereto as Exhibit “H” and incorporated herein by reference.

6. That Ms. Ladley should be the first to identify a substitute charity reflects that, following approval of her bona fide religious objection, the funds belong to her and that the responsibility of payment to the charity is hers. See 71 P.S. § 575(h) (“[T]he challenging nonmember shall pay the equivalent of the fair share fee . . .”).

26. In the March 19, 2014, email to Ms. Ladley, there was no indication that the “exclusive representative”—the AGEA—provided any input as to Ms. Ladley’s designation.⁷ See Exh. H.

27. 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.” A true and correct copy of the letter is attached hereto as Exhibit “I” and incorporated herein by reference.

28. 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.” Again, the PSEA did not indicate whether the AGEA passed similar judgment against Ms. Ladley’s designation. A true and correct copy of the email is attached hereto as Exhibit “J” and incorporated by reference.

29. Ms. Ladley does not owe “fair share fees” because she has objected—and her objection has been accepted as bona fide—to payment of fair share fees.

7. Section 575 requires that the substitute charity be “agreed upon by the nonmember and the exclusive representative,” as opposed to the distinctly defined “statewide employe organization.” 71 P.S. § 575(a) (emphasis added).

30. 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 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. Exh. J.

31. The PSEA had no reason to determine that the Coalition for Advancing Freedom is a "religious" organization.

32. 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. A true and correct copy of the email is attached hereto as Exhibit "K" and incorporated by reference.

33. Ms. Ladley did not hear back from the PSEA for almost two months. On June 24, 2014, Ms. Ladley sent an email to the PSEA requesting an update on her selection of COOL as her alternate charity choice. A true and correct copy of the email is attached hereto as Exhibit "L" and incorporated by reference.

34. Finally, on March 3, 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.” (Emphasis added). A true and correct copy of the letter is attached hereto as Exhibit “M” and incorporated by reference.

35. The PSEA has no reason to determine that COOL is a “partisan” organization. A true and copy of a letter from the Internal Revenue Service (“IRS”) demonstrating that COOL is a 501(c)(3) organization is attached hereto as Exhibit “N” and incorporated by reference.

36. As a 501(c)(3) organization, COOL “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.” 26 U.S.C. § 501(c)(3); see also 1 NONPROFIT ORGANIZATIONS: LAW AND TAXATION § 12:19.

37. Following Ms. Ladley’s retirement, Avon Grove and the AGEA entered into a new CBA, retroactive to July 1, 2014. The new CBA also imposes agency shop on Avon Grove schoolteachers. A true and correct copy of the CBA dated July 1, 2014, to June 30, 2017, is attached hereto as Exhibit “O” and incorporated by reference.

38. On July 12, 2016, the PSEA added to its practice by adopting new procedures (“Procedures”) for handling such disputes. A true and correct copy of the letter communicating to Ms. Ladley the “Pennsylvania State Education Association (‘PSEA’) Procedures for Fair Share/Agency Fee Religious Objections Acceptance of Objections and Mutually Agreed To Charities” is attached hereto as Exhibit “P” and incorporated by reference.

39. 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 advance policies or positions inconsistent with PSEA or NEA constitution and bylaws, resolutions, or policies.” Exh. P, at B.2(c).

40. The Procedures also contain a mechanism that effectively precludes civil suits and mandates “final and binding” arbitration. Specifically, the Procedures require that:

- a. The PSEA will provide arbitration, if requested, on “the issue of which charity should receive the equivalent of the fair share fee plus accrued interest from the escrow account.”⁸ Exh. P, at B.4.

8. The Procedures would remain problematic even if the PSEA allowed the arbitrator to address constitutional issues. See Hohe v. Casey, 956 F.2d 399, 409 (3d Cir. 1992) (“As we read [our precedent], it concluded only that unions must provide nonmembers with an alternative to litigation. . . . It did not conclude that

b. Arbitration will be “final and binding.” Id. at B.5.

c. If Plaintiffs do not wish to arbitrate or do not make a “timely” request, the PSEA will send religious objectors’ funds “to a nonreligious charity chosen by the PSEA at its sole discretion.” Id., at B.6 (emphasis added).

41. As of the date of filing, Ms. Ladley’s funds remain in escrow.

42. Ms. Ladley is uncertain and insecure as to her rights as an “accepted” bona fide religious objector for purposes of section 575.

B. MR. CHRISTOPHER MEIER

43. Mr. Meier is a public school teacher in Lancaster County, where he has served for 10 years as a teacher at Penn Manor High School in the Penn Manor School District (“Penn Manor”). The Penn Manor Education Association (“PMEA”) is the exclusive representative for collective bargaining.

44. Until recently, the CBA between the PMEA and Penn Manor did not allow for the collection of fees from teachers who declined to be union members.

45. However, in 2012, the PMEA bargained with Penn Manor for an “agency shop” agreement, which, as discussed previously,⁹ requires all employees

states or unions could require nonmembers to arbitrate constitutional issues.”) (emphasis added).

9. Supra at ¶ 18.

to become (or remain) union members or, in the alternative, pay the annual fair share fee. A true and correct copy of the CBA between Penn Manor and the PMEA dated July 1, 2012 to June 30, 2014 is attached hereto as Exhibit “Q” and incorporated herein by reference.

46. The agency shop provision in the 2012-2014 collective bargaining agreement gave the PMEA the contractual authority to extract from Mr. Meier a fair share fee in the amount of approximately \$435.14 per year. A true and correct copy of Mr. Meier’s paystub—with fair share fee extractions marked “PSEA F/S”—is attached hereto as Exhibit “R” and incorporated herein by reference.

47. As discussed previously, for verified and accepted bona fide religious objections, section 575 provides that “the challenging nonmember shall pay the equivalent of the fair share fee to a nonreligious charity agreed upon by the nonmember and the exclusive representative.” 71 P.S. § 575(h). Again, section 575(h) is silent as to the meaning of “agreed upon” and imposes no deadline on “agree[ment]” or disposition of escrowed funds. See id.

48. On December 11, 2012, the PSEA mailed to Mr. Meier a letter informing him that, because the PMEA negotiated for the right to extract fees

from nonmembers, he would have to pay a minimum of the fair share fee as a condition of his continued employment.

49. 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 as his charity of choice. Mr. Meier asked for a response via regular mail or e-mail. An approximate representation of the letter is attached hereto as Exhibit “S” and incorporated herein by reference.

50. National Right to Work Legal Defense Foundation is a 501(c)(3) charity. A true and correct copy of a letter from the IRS identifying the National Right to Work Legal Defense Foundation as a 501(c)(3) charity is attached hereto as Exhibit “T” and incorporated herein by reference.

51. 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,¹⁰ and subsequently provided a list of charities which the PSEA “would find acceptable.” An approximate representation of the letter is attached hereto as Exhibit “U” and incorporated herein by reference.

52. 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” An approximate representation of the letter is attached hereto as Exhibit “V” and incorporated herein by reference.

53. After waiting for a response from the PSEA for a month, Mr. Meier emailed the PSEA on three occasions—April 13, 2013, April 15, 2013 and April 16, 2013—to inquire about the status of his religious objection. Mr. Meier never heard back from the PSEA, and his funds in the amount of the 2012-2013 fair share fee continued to accrue in an interest-bearing escrow account.

54. 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

10. The PSEA’s February 21, 2013 letter also informed Mr. Meier that the PMEAs were not amenable to his selection. However, the PSEA failed to indicate the PMEAs’ position on the matter in subsequent correspondence with Mr. Meier.

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. An approximate representation of the letter is attached hereto as Exhibit “W” and incorporated herein by reference.

55. On June 26, 2014, more than five months later, the PSEA’s legal department responded to Mr. Meier’s letter. The PSEA legal department again 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.” An approximate representation of the letter is attached hereto as Exhibit “X” and incorporated herein by reference.

56. 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 National Right to Work Legal Defense Foundation as his charity of choice. An approximate representation of the letter is attached hereto as Exhibit "Y" and incorporated herein by reference.

57. On July 1, 2014, a new CBA between Penn Manor and the PMEA took effect, which also included an agency shop provision. A true and correct copy of the CBA between Penn Manor and the PMEA dated July 1, 2014 to June 30, 2017 is attached hereto as Exhibit "Z" and incorporated herein by reference.

58. 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 National Right to Work Legal Defense Foundation as the recipient charity of Mr. Meier's funds. The PSEA legal department wrote that the National Right to Work Legal Defense Foundation "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." An approximate

representation of the letter is attached hereto as Exhibit “AA,” and incorporated herein by reference.

59. Again, on July 12, 2016, the PSEA added to its practice by adopting new Procedures. Exh. P.

60. 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 advance policies or positions inconsistent with PSEA or NEA constitution and bylaws, resolutions, or policies.” Exh. P, at B.2(c).

61. The Procedures also contain a mechanism that effectively precludes civil suits and mandates “final and binding” arbitration. Specifically, the Procedures require that:

- a. The PSEA will provide arbitration, if requested, on “the issue of which charity should receive the equivalent of the fair share fee plus accrued interest from the escrow account.”¹¹ Exh. P, at B.4.
- b. Arbitration will be “final and binding.” Id. at B.5.

11. The Procedures would remain problematic even if the PSEA allowed the arbitrator to address constitutional issues. See Hohe v. Casey, 956 F.2d 399, 409 (3d Cir. 1992) (“As we read [our precedent], it concluded only that unions must provide nonmembers with an alternative to litigation. . . . It did not conclude that states or unions could require nonmembers to arbitrate constitutional issues.”) (emphasis added).

c. If Plaintiffs do not wish to arbitrate or do not make a “timely” request, the PSEA will send religious objectors’ funds “to a nonreligious charity chosen by the PSEA at its sole discretion.” Id. at B.6 (emphasis added).

62. As of the date of filing, Mr. Meier’s funds remain in escrow.

63. Mr. Meier is uncertain and insecure as to his rights as an “accepted” bona fide religious objector for purposes of section 575.

C. PSEA

64. At the present time, the PSEA has approximately 152,000 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. For the 2015-16 school year, annual PSEA dues are \$511.00 for Education Association members and \$255.50 for full-time Education Support Professional members.

65. Based on the above, in dues alone, the PSEA will collect anywhere from \$38,836,000 to \$77,672,000 during the 2015-16 school year, depending on the breakdown between Education Association and Education Support Professional membership.

66. At the present time, there are approximately 6,178 nonmembers of the PSEA (equating to just over 4% 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. The 2015-16 PSEA fair share fee for Education Association employees will be \$393.47; the fair share fee will be \$203.29 for full-time Education Support Professional employees.

67. However, at the present time, there are approximately 283 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. Religious objectors represent less than two-tenths of one percent (00.186184%) of overall PSEA membership.

68. Accordingly, approximately 5,895 nonmembers are still required to pay a fair share fee.

69. Based on the above, in fair share fees alone, the PSEA will collect anywhere from \$1,198,394.55 to \$2,319,505.65 during the 2015-16 school year, depending on the breakdown between Education Association and Education Support Professional nonmembership.

70. Based on the above, in dues and fair share fees during the 2015-16 school year alone, the PSEA will collect anywhere from \$40,034,394.55 to \$79,991,505.65.

SUMMARY OF CLAIMS

71. Ms. Ladley and Mr. Meier seek a declaratory judgment that the PSEA cannot legally maintain its practice with respect to disposition of religious objector funds and cannot engage in pernicious viewpoint discrimination by restricting their choices of charity simply because Ms. Ladley's and Mr. Meier's chosen charities takes positions with which the PSEA does not agree. In maintaining its arbitrary and unreasonable practice, the PSEA (1) violates Ms. Ladley's right to due process under both the First and Fourteenth Amendments to the United States Constitution; (2) violates Mr. Meier's right to due process under both the First and Fourteenth Amendments to the United States Constitution (3) violates Ms. Ladley's right to due process under the Pennsylvania Constitution;¹²

12. "Article I, Sections 1, 9 and 11 of the Pennsylvania Constitution give to the people of Pennsylvania the right to due process guaranteeing those appearing in any judicial or administrative tribunal the right to a fair and impartial hearing. While the rights protected under those Articles and the rights guaranteed under the Fourteenth Amendment are substantially coextensive, the Pennsylvania due process rights are more expansive in that, unlike under the Fourteenth Amendment, a violation of due process occurs, even if no prejudice is shown, when the same entity or individual participates in both the prosecutorial and

(4) violates Mr. Meier’s right to due process under the Pennsylvania Constitution; (5) infringes upon Ms. Ladley’s freedoms of speech, association, and expression under the First Amendment to the United States Constitution; (6) infringes upon Mr. Meier’s freedoms of speech, association, and expression under the First Amendment to the United States Constitution; (7) infringes upon Ms. Ladley’s freedoms of speech, association, and expression under Article I, sections 1, 7, and 26 of the Pennsylvania Constitution;¹³ (8) infringes upon Mr. Meier’s freedoms of speech, association, and expression under Article I, sections 1, 7, and 26 of the Pennsylvania Constitution; (9) violates the plain language of section 575 in arbitrarily, capriciously, and unreasonably delaying and denying Ms. Ladley’s charity selection process and by failing to refer Ms. Ladley’s charity dispute to the “exclusive representative,” the AGEA, for resolution; (10) violates the plain language of section 575 in arbitrarily, capriciously, and unreasonably delaying and denying Mr. Meier’s charity selection process and by failing to refer Mr. Meier’s charity dispute to the “exclusive representative,” the PMEA, for resolution; (11) maintains Procedures inconsistent with 42 U.S.C. § 1983 by depriving Ms. Ladley

adjudicatory aspects of a proceeding.” Stone & Edwards Ins. Agency v. Dep’t of Ins., 636 A.2d 293, 297 (Pa. Cmwlth. 1994) (emphasis added).

13. “Article I, Section 7 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).

of the chance to vindicate her civil rights; and (12) maintains Procedures inconsistent with 42 U.S.C. § 1983 by depriving Mr. Meier of the chance to vindicate his civil rights. Ms. Ladley and Mr. Meier also seek (13) a permanent injunction to enforce this Court's declaratory judgment.

**COUNT I: SECTION 575 UNCONSTITUTIONAL AS APPLIED TO MS. LADLEY
DENIAL OF DUE PROCESS
(42 U.S.C. § 1983; U.S. Const. amends. I and XIV)**

72. The allegations of the foregoing paragraphs are realleged and incorporated by reference as if set forth fully herein.

73. The PSEA has failed to provide Ms. Ladley with due process under the First and Fourteenth Amendment, namely, an expeditious process including notice, an opportunity to be heard, and access to an independent decisionmaker to break disagreement with the PSEA and to determine the proper disposition of funds withheld from her paycheck.¹⁴

14. See, e.g., Chicago Teachers Union, Local No. 1 v. Hudson, 475 U.S. 292, 307 & n.20 (1986) (finding unconstitutional a union's practice of internally deciding—and obstructing—challenges to nonmember fees “because it did not provide for a reasonably prompt decision by an impartial decisionmaker” and on the basis that “the government and union have a responsibility to provide procedures that minimize that impingement [of First Amendment rights] and that facilitate a nonunion employee's ability to protect his rights.”).

74. Once the PSEA did provide access to an independent decisionmaker, it did so in a manner violative of Ms. Ladley's right to be heard and to petition the government for redress of grievances.

75. On January 4, 2014, Ms. Ladley objected to payment of fair share fees on religious grounds pursuant to section 575¹⁵ and has attempted to direct her funds to a nonreligious charity as permitted by the statute.

76. To date—over two years later—the PSEA has yet to complete the religious objection process, despite Ms. Ladley's good-faith attempts at resolution.

77. The PSEA's practice in dealing with religious objections fails to sufficiently minimize the impingement of Ms. Ladley's First Amendment rights or her burden under section 575 of objecting to payment of compelled fees.

78. The PSEA has failed to provide Ms. Ladley with meaningful notice of policies regarding the process or standards applied by the PSEA in addressing religious objectors' charity selections. For instance, the policies that have been provided are highly dependent on PSEA interpretation.

79. The PSEA has failed to provide Ms. Ladley with an expeditious process.

15. Religious objector bears the burden of objecting to payment of fair share fees. See 71 P.S. § 575.

80. The PSEA has failed to provide Ms. Ladley with a fair process.

81. The PSEA denies Ms. Ladley access to an independent and impartial decisionmaker.

82. Rather, the PSEA imposes an extremely protracted process driven by the PSEA's own ad hoc, arbitrary determinations, while denying Ms. Ladley access to an impartial decisionmaker. The PSEA's practice continues to ensure that Ms. Ladley's funds are withheld from her and from a nonreligious charity of her choice.

83. The PSEA's Procedure forces Ms. Ladley to choose between "final and binding" arbitration or watch as the PSEA sends her funds to "a nonreligious charity chosen by the PSEA at its sole discretion." Exh. P.

84. The PSEA's take-it-or-lose-it proposition effectively mandates "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," precluding a civil suit or alternative remedy.

85. The PSEA's Procedure allowing for unilateral selection of a nonreligious charity within 40 days of notice effectively precludes a civil suit or alternative remedy and deprives Ms. Ladley of her property without due process of law.

86. The PSEA's practice fails to provide due process under the First and Fourteenth Amendments to the United States Constitution, which process requires notice, an opportunity to be heard at a meaningful time, access to an impartial decisionmaker, and the ability to petition the government for redress of grievances.¹⁶

**COUNT II: SECTION 575 UNCONSTITUTIONAL AS APPLIED TO MR. MEIER
DENIAL OF DUE PROCESS
(42 U.S.C. § 1983; U.S. Const. amends. I and XIV)**

87. The allegations of the foregoing paragraphs are realleged and incorporated by reference as if set forth fully herein.

88. The PSEA has failed to provide Mr. Meier with due process under the First and Fourteenth Amendment, namely, an expeditious process including notice, an opportunity to be heard, and access to an independent decisionmaker to break disagreement with the PSEA and to determine the proper disposition of funds withheld from his paycheck.¹⁷

16. See 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)).

17. See, e.g., Hudson, 475 U.S. at 307 & n.20 (finding unconstitutional a union’s practice of internally deciding—and obstructing—challenges to nonmember fees “because it did not provide for a reasonably prompt decision by an impartial decisionmaker” and on the basis that “the government and union have a responsibility to provide procedures that minimize that impingement [of

89. Once the PSEA did provide access to an independent decisionmaker, it did so in a manner violative of Mr. Meier's right to be heard and to petition the government for redress of grievances.

90. On December 11, 2012, Mr. Meier objected to payment of fair share fees on religious grounds pursuant to section 575¹⁸ and has attempted to direct his funds to a nonreligious charity as permitted by the statute.

91. To date—three-and-a-half years later—the PSEA has yet to complete the religious objection process, despite Mr. Meier's good-faith attempts at resolution.

92. The PSEA's practice in dealing with religious objections fails to sufficiently minimize the impingement of Mr. Meier's First Amendment rights or his burden under section 575 of objecting to payment of compelled fees.

93. The PSEA has failed to provide Mr. Meier with meaningful notice of any written policies regarding the process or standards applied by the PSEA in addressing religious objectors' charity selections. For instance, the policies that have been provided are highly dependent on PSEA interpretation.

First Amendment rights] and that facilitate a nonunion employee's ability to protect his rights.").

18. Religious objector bears the burden of objecting to payment of fair share fees. See 71 P.S. § 575.

94. The PSEA has failed to provide Mr. Meier with an expeditious process.

95. The PSEA has failed to provide Mr. Meier with a fair process.

96. The PSEA denies Mr. Meier access to an independent and impartial decisionmaker.

97. Rather, the PSEA imposes an extremely protracted process driven by the PSEA's own ad hoc, arbitrary determinations, while denying Mr. Meier access to an impartial decisionmaker. The PSEA's practice continues to ensure that Mr. Meier's funds are withheld from him and from a nonreligious charity of his choice.

98. The PSEA's Procedure forces Mr. Meier to choose between "final and binding" arbitration or watch as the PSEA sends his funds to "a nonreligious charity chosen by the PSEA at its sole discretion." Exh. P.

99. The PSEA's take-it-or-lose-it proposition effectively mandates "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," precluding a civil suit or alternative remedy.

100. The PSEA's Procedure allowing for unilateral selection of a nonreligious charity within 40 days of notice effectively precludes a civil suit or

alternative remedy and deprives Mr. Meier of his property without due process of law.

101. The PSEA's practice fails to provide due process under the First and Fourteenth Amendments to the United States Constitution, which process requires notice, an opportunity to be heard at a meaningful time, and access to an impartial decisionmaker.¹⁹

**COUNT III: SECTION 575 UNCONSTITUTIONAL AS APPLIED TO MS. LADLEY
DENIAL OF DUE PROCESS
(Pa. Const. art I §§ 1, 9, and 11)**

102. The allegations of the foregoing paragraphs are realleged and incorporated by reference as if set forth fully herein.

103. In addition to violating Ms. Ladley's due process rights under the First and Fourteenth Amendments, the PSEA's practice violates Ms. Ladley's rights to due process under Article I, Sections 1, 9 and 11 of the Pennsylvania Constitution.²⁰

19. See Mathews, 424 U.S. at 333 ("The fundamental requirement of due process is the opportunity to be heard 'at a meaningful time and in a meaningful manner.' ") (quoting Armstrong, 380 U.S. at 552).

20. "Article I, Sections 1, 9 and 11 of the Pennsylvania Constitution give to the people of Pennsylvania the right to due process guaranteeing those appearing in any judicial or administrative tribunal the right to a fair and impartial hearing. While the rights protected under those Articles and the rights guaranteed under the Fourteenth Amendment are substantially coextensive, the Pennsylvania due process rights are more expansive in that, unlike under the Fourteenth

104. The PSEA’s mandatory “final and binding” arbitration deprives Ms. Ladley of a remedy by due course of law and denies or delays the administration of justice and exercise of his rights, violating Article I, Section 11 of the Pennsylvania Constitution.

105. 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 (Pa. 1992). The PSEA both objects to a nonmember’s choice of charity and then denies any process by which the nonmember can argue that its determination should be overturned, in violation of guarantees of due process under the Pennsylvania Constitution.²¹

106. In sum, this Court should find that the process provided by the PSEA fell short of that due to Ms. Ladley under the state constitution.

Amendment, a violation of due process occurs, even if no prejudice is shown, when the same entity or individual participates in both the prosecutorial and adjudicatory aspects of a proceeding.” Stone & Edwards Ins. Agency v. Dep’t of Ins., 636 A.2d 293, 297 (Pa. Cmwlth. 1994) (emphasis added).

21. See also R. v. Dep’t of Public Welfare, 636 A.2d 142, 153 (Pa. 1994) (adopting “Matthews” [sic] methodology to assess due process claims brought under Section 1 of Article I of the Pennsylvania Constitution).

**COUNT IV: SECTION 575 UNCONSTITUTIONAL AS APPLIED TO MR. MEIER
DENIAL OF DUE PROCESS
(Pa. Const. art I §§ 1, 9, and 11)**

107. The allegations of the foregoing paragraphs are realleged and incorporated by reference as if set forth fully herein.

108. In addition to violating Mr. Meier’s due process rights under the First and Fourteenth Amendments, the PSEA’s practice violates Mr. Meier’s rights to due process under Article I, Sections 1, 9 and 11 of the Pennsylvania Constitution.²²

109. The PSEA’s mandatory “final and binding” arbitration deprives Mr. Meier of a remedy by due course of law and denies or delays the administration of justice and exercise of his rights, violating Article I, Section 11 of the Pennsylvania Constitution

110. The PSEA “participates in both the prosecutorial and adjudicatory aspects” of the religious objection proceeding. Stone & Edwards, 636 A.2d at 297;

22. “Article I, Sections 1, 9 and 11 of the Pennsylvania Constitution give to the people of Pennsylvania the right to due process guaranteeing those appearing in any judicial or administrative tribunal the right to a fair and impartial hearing. While the rights protected under those Articles and the rights guaranteed under the Fourteenth Amendment are substantially coextensive, the Pennsylvania due process rights are more expansive in that, unlike under the Fourteenth Amendment, a violation of due process occurs, even if no prejudice is shown, when the same entity or individual participates in both the prosecutorial and adjudicatory aspects of a proceeding.” Stone & Edwards, 636 A.2d at 297 (emphasis added).

see, e.g., Lyness, 605 A.2d 1204. The PSEA both objects to a nonmember's choice of charity and then denies any process by which the nonmember can argue that its determination should be overturned, in violation of guarantees of due process under the Pennsylvania Constitution.²³

111. In sum, this Court should find that the process provided by the PSEA fell short of that due to Mr. Meier under the state constitution.

**COUNT V: SECTION 575 UNCONSTITUTIONAL AS APPLIED TO MS. LADLEY
DENIAL OF RIGHTS TO SPEECH, ASSOCIATION, AND EXPRESSION
(42 U.S.C. § 1983; U.S. Const. amend. I)**

112. The allegations of the foregoing paragraphs are realleged and incorporated by reference as if set forth fully herein.

113. The PSEA has violated and continues to violate Ms. Ladley's rights to freedom of speech, association, and expression under the First Amendment by engaging in practices that effectively prohibit her from sending her money to an organization she selected and compel her to send her money to an organization she does not wish to support.

23. See also R., 636 A.2d at 153 (adopting "Matthews" [sic] methodology to assess due process claims brought under Section 1 of Article I of the Pennsylvania Constitution).

114. The PSEA's practice does not serve a compelling state interest that cannot be achieved through means significantly less restrictive of associational freedoms.

115. Moreover, the PSEA's practice is a pernicious viewpoint-based restriction. The PSEA's practice operates 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 Boston v. Bellotti, 435 U.S. 765, 785-86 (1978).

116. The PSEA imposes viewpoint-based restrictions by prohibiting Ms. Ladley from sending her money to a charity that, in the PSEA's judgment, is "political." Exh. H.

117. The PSEA imposes viewpoint-based restrictions by prohibiting Ms. Ladley from sending her money to a charity that, in the PSEA's judgment, is a "religious" organization. Exh. J.

118. The PSEA imposes viewpoint-based restrictions by prohibiting Ms. Ladley from sending her money to a charity that 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." Exh. J.

119. The PSEA imposes viewpoint-based restrictions by prohibiting Ms. Ladley from sending her money to a charity that, in the PSEA’s judgment, is “partisan.” Exh. M.

120. The PSEA’s Procedure imposes viewpoint-based restrictions by claiming for the PSEA the power to approve a religious objector’s nonreligious charity only if “[t]he charity does not advance policies or positions inconsistent with PSEA or NEA constitution and bylaws, resolutions, or policies.” Exh. P, at B.2(c).

121. Additionally, the PSEA has opposed Ms. Ladley’s funding of putatively ideological or political causes with which it disagrees, even as it allows religious objectors to fund ideological or political organizations:

- a. In a March 7, 2014 letter to Ms. Ladley seeking additional information concerning the nature of her objection, the PSEA’s legal department provided an approved list of several charities to which Ms. Ladley’s “fair share fee” could be donated:

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

Exh. F.

b. However, a review of these organizations' IRS Form 990 documents reveals that many such organizations spend a significant amount of money on undeniably "political" activities. 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: \$1,380,997
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

A true and correct copy of the relevant portion of each organization's IRS Form 990 is incorporated by reference and attached hereto as composite Exhibit "BB."

122. 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—those that are "political," those founded upon vaguely religious motivation, or those that are "partisan"—without reference to certain charitable activities or their conflict, if any, with legal PSEA operations.

123. At the very least, the PSEA's practice includes ad hoc, unreasonable, arbitrary determinations based on subjective, unwritten policies.

124. Even the stated reasons given to Ms. Ladley for rejecting her charity selections cannot be evenly applied. The Red Cross, for example, may have been founded, in part, out of religious motivation. Likewise, the putative concern over "political" or "partisan" organizations is equally present with respect to the acceptable charities identified by the PSEA.

**COUNT VI: SECTION 575 UNCONSTITUTIONAL AS APPLIED TO MR. MEIER
DENIAL OF RIGHTS TO SPEECH, ASSOCIATION, AND EXPRESSION
(42 U.S.C. § 1983; U.S. Const. amend. I)**

125. The allegations of the foregoing paragraphs are realleged and incorporated by reference as if set forth fully herein.

126. The PSEA has violated and continues to violate Mr. Meier's rights to freedom of speech, association, and expression under the First Amendment by engaging in practices that effectively prohibit him from sending his money to an

organization he selected and compel him to send his money to an organization he does not wish to support.

127. The PSEA's practice does not serve a compelling state interest that cannot be achieved through means significantly less restrictive of associational freedoms.

128. Moreover, the PSEA's practice is a pernicious viewpoint-based restriction. The PSEA's practice operates 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." Bellotti, 435 U.S. at 785-86.

129. The PSEA imposes viewpoint-based restrictions by prohibiting Mr. Meier from sending his money to a charity that, in the PSEA's judgment, creates "a conflict of interest." Exh. X.

130. The PSEA's Procedure imposes viewpoint-based restrictions by claiming for the PSEA the power to approve a religious objector's nonreligious charity only if "[t]he charity does not advance policies or positions inconsistent with PSEA or NEA constitution and bylaws, resolutions, or policies." Exh. P, at B.2(c).

131. There is no conflict of interest in allowing Mr. Meier to use his money to fund a particular charity.

132. The PSEA simply disagrees with the viewpoint espoused by Mr. Meier and his choice of charity.

133. 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 unwritten "policies" that rule out large, vague categories of charities—those that are "political" or vaguely religious—without reference to certain charitable activities or their conflict, if any, with legal PSEA operations.

134. At the very least, the PSEA's practice includes ad hoc, unreasonable, arbitrary determinations based on subjective, unwritten policies.

135. Even the stated reason given to Mr. Meier for rejecting his charity selection cannot be evenly applied. The PSEA's "interests," let alone the myriad potential "conflicts" with those unknown interests could exist in many ways with respect to many different charities. For instance, federal and state educational funding is in constant competition with issues supported by charities.

**COUNT VII: SECTION 575 UNCONSTITUTIONAL AS APPLIED TO MS. LADLEY
DENIAL OF RIGHTS TO SPEECH, ASSOCIATION, AND EXPRESSION
(Pa. Const. art. I, §§ 1, 7, and 26)**

136. The allegations of the foregoing paragraphs are realleged and incorporated by reference as if set forth fully herein.

137. The PSEA's practice denies to Ms. Ladley her rights to speech, association, and expression under Article 1, sections 1, 7, and 26 of the Pennsylvania Constitution.²⁴

**COUNT VIII: SECTION 575 UNCONSTITUTIONAL AS APPLIED TO MR. MEIER
DENIAL OF RIGHTS TO SPEECH, ASSOCIATION, AND EXPRESSION
(Pa. Const. art. I, §§ 1, 7, and 26)**

138. The allegations of the foregoing paragraphs are realleged and incorporated by reference as if set forth fully herein.

139. The PSEA's practice denies to Mr. Meier his rights to speech, association, and expression under Article 1, sections 1, 7, and 26 of the Pennsylvania Constitution.²⁵

**COUNT IX: PSEA'S VIOLATIONS OF THE PLAIN LANGUAGE OF SECTION 575 AS TO
MS. LADLEY**

140. The allegations of the foregoing paragraphs are realleged and incorporated by reference as if set forth fully herein.

**A. ARBITRARY, CAPRICIOUS, AND UNREASONABLE APPLICATION OF THE PLAIN
LANGUAGE OF SECTION 575**

24. "Article I, Section 7 provides broader protections of expression than the related First Amendment guarantee in a number of different contexts." DePaul, 969 A.2d at 546.

25. "Article I, Section 7 provides broader protections of expression than the related First Amendment guarantee in a number of different contexts." DePaul, 969 A.2d at 546.

141. Section 575(h) is clear and unambiguous in conferring upon a public employee the right to choose a nonreligious charity of his or her choice to receive funds otherwise owed to a union. A substitute designated must satisfy just two substantive requirements: (1) it must be a “charity”; and (2) it must be “nonreligious.”

142. PSEA has denied to Ms. Ladley the right to choose a nonreligious charity of her choice to receive her fair share fee.

143. Such action is 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.

144. The PSEA’s practice of adding additional, broad requirements to section 575 is unreasonable and inconsistent with the plain language of the statute.

145. In specifying that religious objector funds go to a “nonreligious charity,” the General Assembly plainly permitted that any nonreligious 501(c)(3) organization or its functional equivalent may serve as an alternative to payment of fair share fees.

146. Ms. Ladley’s proposed charities—which qualified under the statute as nonreligious charities—were rejected by the PSEA.

147. 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.

148. At the very least, the mutual agreement requirement cannot provide support for a sweeping practice like the one created by the PSEA. It would have made little sense to the General Assembly to grant veto rights to the union over the selection of a charity when the statutory text plainly evidences concern over the legitimacy of the objection, not the name of the charity.

149. The protection for religious objectors was added in 1988 as a countermeasure to the law allowing state and school employee unions to secure agency shop agreements. See P.L. 493, No. 84, § 2 (Pa. S.B. 291 (Reg. Sess. 1987-88)). The religious objection protection was included to ensure that public employees would not have to fund efforts against their own consciences.²⁶

26. See 37 Pa. House L.J. 702 (May 26, 1987). Rep. Cowell, speaking in favor of the legislation as passed, remarked “[A] constitutional procedure must be established to protect the rights of the employee who would be subject to the fair

150. Yet the PSEA’s policy turns the protection into a tool that the union may use to control Ms. Ladley and dictate how she directs her funds. Ms. Ladley was accepted by the PSEA as having a “bona fide” religious objection to the use of her funds for union purposes. Instead of honoring the protections afforded by the General Assembly for teachers like Ms. Ladley, the PSEA practice effectively works against religious objectors.

151. The PSEA’s reading of section 575(h) with respect to lack of “agreement” would leave the nonmember in “no-man’s land”—and the courts without any enforceable standards—without any conceivable resolution to his or her religious objection process.

152. The PSEA has arbitrarily, capriciously, and unreasonably failed to provide Ms. Ladley with notice of any written policies regarding the process or standards applied by the PSEA in addressing religious objectors’ charity selections.

153. The PSEA has arbitrarily, capriciously, and unreasonably failed to provide Ms. Ladley with an expeditious process.

154. The PSEA has arbitrarily, capriciously, and unreasonably failed to provide Ms. Ladley with a fair process.

share fee but who may in fact have some objections for any of those dollars being used for . . . religious purposes.” Id.

155. The PSEA arbitrarily, capriciously, and unreasonably denied Ms. Ladley access to an independent and impartial decisionmaker.

156. The PSEA arbitrarily, capriciously, and unreasonably prohibited Ms. Ladley from sending her money to a charity on the basis that it is, in the PSEA's judgment, a "political" organization. Exh. H.

157. The PSEA arbitrarily, capriciously, and unreasonably prohibited Ms. Ladley from sending her money to a charity on the basis that it is, in the PSEA's judgment, a "religious" organization. Exh. J.

158. The PSEA arbitrarily, capriciously, and unreasonably prohibited Ms. Ladley from sending her money to a charity on the basis that 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." Exh. J.

159. The PSEA arbitrarily, capriciously, and unreasonably prohibited Ms. Ladley from sending her money to a charity on the basis that it is, in the PSEA's judgment, a "partisan" organization.

160. The PSEA arbitrarily, capriciously, and unreasonably prohibited Ms. Ladley from sending her money to the Coalition for Advancing Freedom.

161. The PSEA arbitrarily, capriciously, and unreasonably prohibited Ms. Ladley from sending her money to fund the “Sustainable Freedom Scholarship.”

162. The PSEA arbitrarily, capriciously, and unreasonably prohibited Ms. Ladley from sending her money to fund COOL.

163. Rather, the PSEA imposes an extremely protracted process driven by the PSEA’s own ad hoc, arbitrary determinations, while denying Ms. Ladley access to an impartial decisionmaker. The PSEA’s practice continues to ensure that Ms. Ladley’s funds are withheld from her and from a nonreligious charity of her choice.

B. PSEA’S ADOPTION OF POLICIES THAT DISREGARD RELIGIOUS OBJECTORS ENTIRELY

164. The PSEA’s Procedure violates the plain language of section 575(h) because it permits the PSEA to send religious objectors’ funds to a nonreligious charity absent agreement from the religious objector.

165. “Final and binding” arbitration as set forth in the Procedures does not produce “agreement” for purposes of section 575(h) because it does not seek or ensure true consent to arbitrate. A religious objector accepting arbitration has no choice but to accept arbitration or lose his ability to direct his funds.

166. Unilateral direction of religious objectors' funds by the PSEA is flatly inconsistent with the "agreed upon" requirement in section 575.

C. PSEA'S USURPATION OF ROLE OF "EXCLUSIVE REPRESENTATIVE"

167. Section 575(h) clearly tasks the "exclusive representative"—here, the AGEA—with the task of resolving charity designations. Therefore, the PSEA should not even be involved in the very matter at issue in this case, and should have referred Ms. Ladley's designation to the AGEA.

168. Section 575(h) plainly provides:

(h) When a challenge is made under subsection (e)(2), the objector shall provide the exclusive representative with verification that the challenge is based on bona fide religious grounds. If the exclusive representative accepts the verification, the challenging nonmember shall pay the equivalent of the fair share fee to a nonreligious charity agreed upon by the nonmember and the exclusive representative. If the exclusive representative rejects the verification because it is not based on bona fide religious grounds, the challenging nonmember may challenge that determination within forty (40) days from receipt of notification.

(Emphases added).

169. Section 575(a) includes the following definitions:

"Exclusive representative" shall mean the employe organization selected by the employes of a public employer to represent them for purposes of collective bargaining pursuant to the act of July 23, 1970 (P.L. 563, No. 195), known as the "Public Employe Relations Act."

. . . .
“Statewide employe organization” shall mean the Statewide affiliated parent organization of an exclusive representative, or an exclusive representative representing employes Statewide, and which is receiving nonmember fair share payments.

(Footnote omitted).

170. Here, the PSEA is clearly the “Statewide employe organization” because it is the affiliated parent organization for the AGEA receiving, though not from Ms. Ladley, nonmember fair share payments.

171. Meanwhile the AGEA is the “exclusive representatives” for purposes of section 575(h).

172. Under the CBA between Avon Grove and the AGEA, the AGEA is recognized “as the exclusive and sole representative for collective bargaining for all professional employees . . . as certified and determined by the Pennsylvania Labor Relations Board.” Exh. A, at p. 1; Exh. O, at p.1.

173. The clear wording of section 575(h) leaves the PSEA with no other “available option” in dealing with religious objections and the designation of a charity. Otto, 330 F.3d at 134.

174. The statute’s text clearly requires that the “exclusive representative,” the AGEA, must resolve this matter along with Ms. Ladley. Additionally, the local,

exclusive representative is in a better position to assess her situation and is directly accountable to those with whom Ms. Ladley works.

175. The PSEA accordingly must be prevented from interfering with the process by which Ms. Ladley may direct her funds.

**COUNT X: PSEA’S VIOLATIONS OF THE PLAIN LANGUAGE OF SECTION 575 AS TO
MR. MEIER**

176. The allegations of the foregoing paragraphs are realleged and incorporated by reference as if set forth fully herein.

**A. ARBITRARY, CAPRICIOUS, AND UNREASONABLE APPLICATION OF THE PLAIN
LANGUAGE OF SECTION 575**

177. Section 575(h) is clear and unambiguous in conferring upon a public employee the right to choose a nonreligious charity of his or her choice to receive funds otherwise owed to a union. A substitute designated must satisfy just two substantive requirements: (1) it must be a “charity”; and (2) it must be “nonreligious.”

178. PSEA has denied to Mr. Meier the right to choose a nonreligious charity of his choice to receive her fair share fee.

179. Such action is 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.

180. The PSEA's practice of adding additional, broad requirements to section 575 is unreasonable and inconsistent with the plain language of the statute.

181. In specifying that religious objector funds go to a "nonreligious charity," the General Assembly plainly permitted that any nonreligious 501(c)(3) organization or its functional equivalent may serve as an alternative to payment of fair share fees.

182. Mr. Meier's proposed charities—which qualified under the statute as nonreligious charities—were rejected by the PSEA.

183. 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.

184. At the very least, the mutual agreement requirement cannot provide support for a sweeping practice like the one created by the PSEA. It would have made little sense to the General Assembly to grant veto rights to the union over

the selection of a charity when the statutory text plainly evidences concern over the legitimacy of the objection, not the name of the charity.

185. The protection for religious objectors was added in 1988 as a countermeasure to the law allowing state and school employee unions to secure agency shop agreements. See P.L. 493, No. 84, § 2 (Pa. S.B. 291 (Reg. Sess. 1987-88)). The religious objection protection was included to ensure that public employees would not have to fund efforts against their own consciences.²⁷

186. Yet the PSEA’s policy turns the protection into a tool that the union may use to control Mr. Meier and dictate how he directs his funds. Mr. Meier was accepted by the PSEA as having a “bona fide” religious objection to the use of his funds for union purposes. Instead of honoring the protections afforded by the General Assembly for teachers like Mr. Meier, the PSEA practice effectively works against religious objectors.

187. The PSEA’s reading of section 575(h) with respect to lack of “agreement” would leave the nonmember in “no-man’s land”—and the courts

27. See 37 Pa. House L.J. 702 (May 26, 1987). Rep. Cowell, speaking in favor of the legislation as passed, remarked “[A] constitutional procedure must be established to protect the rights of the employee who would be subject to the fair share fee but who may in fact have some objections for any of those dollars being used for . . . religious purposes.” Id.

without any enforceable standards—without any conceivable resolution to his or her religious objection process.

188. The PSEA has arbitrarily, capriciously, and unreasonably failed to provide Mr. Meier with notice of any written policies regarding the process or standards applied by the PSEA in addressing religious objectors' charity selections.

189. The PSEA has arbitrarily, capriciously, and unreasonably failed to provide Mr. Meier with an expeditious process.

190. The PSEA has arbitrarily, capriciously, and unreasonably failed to provide Mr. Meier with a fair process.

191. The PSEA arbitrarily, capriciously, and unreasonably denied Mr. Meier access to an independent and impartial decisionmaker.

192. The PSEA arbitrarily, capriciously, and unreasonably prohibited Mr. Meier from sending his money to a charity on the basis that, in the PSEA's judgment, it merely represents a "conflict of interest." Exh. X.

193. The PSEA arbitrarily, capriciously, and unreasonably prohibited Mr. Meier from sending his money to the National Right to Work Legal Defense Foundation.

194. Rather, the PSEA imposes an extremely protracted process driven by the PSEA's own ad hoc, arbitrary determinations, while denying Mr. Meier access

to an impartial decisionmaker. The PSEA's practice continues to ensure that Mr. Meier's funds are withheld from him and from a nonreligious charity of his choice.

B. PSEA'S ADOPTION OF POLICIES THAT DISREGARD RELIGIOUS OBJECTORS ENTIRELY

195. The PSEA's Procedure violates the plain language of section 575(h) because it permits the PSEA to send religious objectors' funds to a nonreligious charity absent agreement from the religious objector.

196. "Final and binding" arbitration as set forth in the Procedures does not produce "agreement" for purposes of section 575(h) because it does not seek or ensure true consent to arbitrate. A religious objector accepting arbitration has no choice but to accept arbitration or lose his ability to direct his funds.

197. Unilateral direction of religious objectors' funds by the PSEA is flatly inconsistent with the "agreed upon" requirement in section 575.

C. PSEA'S USURPATION OF ROLE OF "EXCLUSIVE REPRESENTATIVE"

198. Section 575(h) clearly tasks the "exclusive representative"—here, the PMEA—with the task of resolving charity designations. Therefore, the PSEA should not even be involved in the very matter at issue in this case, and should have referred Mr. Meier's designation to the PMEA.

199. Here, the PSEA is clearly the “Statewide employe organization” because it is the affiliated parent organization for the PMEA receiving, as a general matter, nonmember fair share payments.

200. Meanwhile, the PMEA is the “exclusive representatives” for purposes of section 575(h).

201. Under the CBA between Penn Manor and the PMEA, the PMEA is recognized as the “duly certified representative of the professional employees of the [Penn Manor School] District, as set forth . . . by the Pennsylvania Labor Relations Board.” Exh. Q, at p.1; Exh. Z, at p. 1.

202. The clear wording of section 575(h) leaves the PSEA with no other “available option” in dealing with religious objections and the designation of a charity. Otto, 330 F.3d at 134.

203. The statute’s text clearly requires that the “exclusive representative,” the PMEA, must resolve this matter along with Mr. Meier. Additionally, the local, exclusive representative is in a better position to assess his situation and is directly accountable to those with whom Mr. Meier works.

204. The PSEA accordingly must be prevented from interfering with the process by which Mr. Meier may direct his funds.

COUNT XI: PSEA’S VIOLATION OF 42 U.S.C. § 1983 AS TO MS. LADLEY

205. The allegations of the foregoing paragraphs are realleged and incorporated by reference as if set forth fully herein.

206. In mandating arbitration, the PSEA’s Procedure deprives Ms. Ladley of the ability to vindicate her civil rights under 42 U.S.C. § 1983.

207. In threatening to dispose of her funds without the opportunity to vindicate her civil rights, the PSEA’s Procedure violates 42 U.S.C. § 1983.

208. Even if arbitration were permissible, the PSEA’s Procedure deprives Ms. Ladley of the ability to vindicate her civil rights by mandating arbitration only on “the issue of which charity should receive the equivalent of the fair share fee plus accrued interest from the escrow account.”²⁸ Exh. P, at B.4.

209. At the very least, the PSEA’s Procedure effectively requires, as a precondition to filing of a civil rights suit under 42 U.S.C. § 1983, that Ms. Ladley elect arbitration, contrary to the Third Circuit’s reasoning in Hohe v. Casey, 956 F.2d 399 (3d Cir. 1992).

28. The Procedures would remain problematic even if the PSEA allowed the arbitrator to address constitutional issues. See Hohe v. Casey, 956 F.2d 399, 409 (3d Cir. 1992) (“As we read Hudson, it concluded only that unions must provide nonmembers with an alternative to litigation. . . . It did not conclude that states or unions could require nonmembers to arbitrate constitutional issues.”) (emphasis added).

COUNT XII: PSEA’S VIOLATION OF 42 U.S.C. § 1983 AS TO MR. MEIER

210. The allegations of the foregoing paragraphs are realleged and incorporated by reference as if set forth fully herein.

211. In mandating arbitration, the PSEA’s Procedure deprives Ms. Ladley of the ability to vindicate her civil rights under 42 U.S.C. § 1983.

212. In threatening to dispose of her funds without the opportunity to vindicate her civil rights, the PSEA’s Procedure violates 42 U.S.C. § 1983.

213. Even if arbitration were permissible, the PSEA’s Procedure deprives Ms. Ladley of the ability to vindicate her civil rights by mandating arbitration only on “the issue of which charity should receive the equivalent of the fair share fee plus accrued interest from the escrow account.” Exh. P, at B.4.

214. At the very least, the PSEA’s Procedure effectively requires, as a precondition to filing of a civil rights suit under 42 U.S.C. § 1983, that Mr. Meier elect arbitration, contrary to the Third Circuit’s reasoning in Hohe v. Casey, 956 F.2d 399 (3d Cir. 1992).

COUNT XIII: PERMANENT INJUNCTION TO STOP THE PSEA’S PRACTICE

215. The allegations of the foregoing paragraphs are realleged and incorporated by reference as if set forth fully herein.

216. Because the PSEA's practice is unconstitutional, arbitrary, capricious, and unreasonable, its application to Ms. Ladley and Mr. Meier hurts them, other religious objectors, and the general public.

217. Because Ms. Ladley and Mr. Meier have established a clear right to relief, this Court should enjoin the PSEA from applying its practice to Ms. Ladley and Mr. Meier. See Pestco, 880 A.2d at 710.

218. An injunction is necessary to prevent a legal wrong for which there is no adequate redress at law and harm that is "not subject to exact valuation and compensation through damage awards." Id. (quoting Den-Tal-Ez, Inc. v. Siemens Capital Corp., 566 A.2d 1214, 1233 (Pa. Super. 1989)). Specifically:

- a. The PSEA violated the law as well as Ms. Ladley's and Mr. Meier's federal and state constitutional rights;
- b. As a result, Ms. Ladley and Mr. Meier are unable to send their money to a charity of their choice;
- c. The PSEA appears willing to continue to violate Ms. Ladley's and Mr. Meier's rights in the future; and
- d. Mr. Meier, who will continue to teach under the agency shop provision for the foreseeable future, has no assurance that the PSEA will not, following this Court's ruling in his favor, embrace

this or another similar practice that violates the law and his federal and state constitutional rights.

PRAYER FOR RELIEF

WHEREFORE, Ms. Ladley and Mr. Meier pray this Honorable Court to:

- A. DECLARE that the PSEA's implementation of section 575 is UNCONSTITUTIONAL AS APPLIED to Ms. Ladley and Mr. Meier in that the PSEA's practice:
1. VIOLATES their rights to DUE PROCESS under the First and Fourteenth Amendments;
 2. VIOLATES their rights to DUE PROCESS under Article I, Sections 1, 9 and 11 of the Pennsylvania Constitution;
 3. VIOLATES their rights to speech, association and expression under the First Amendment by rejecting their named non-religious charities out of pernicious viewpoint-based discrimination;
 4. VIOLATES their rights to speech, association and expression under Article I, sections 1, 7 and 26 of the Pennsylvania Constitution; and

5. VIOLATES their rights under Section 575 by arbitrarily, capriciously, and unreasonably rejecting the nonreligious charities they have chosen to receive their respective funds, by adopting Procedures that avoid agreement with religious objectors, and by usurping the place of the local area representative in rejecting the nonreligious charities so designated.
 6. VIOLATES 42 U.S.C. § 1983 by depriving them of the ability to vindicate their civil rights.
- B. PERMANENTLY ENJOIN PSEA from further unconstitutional applications of section 575, including those delineated here;
 - C. AWARD attorney's fees, costs, and expenses in this action pursuant to 42 U.S.C. § 1988; and
 - D. GRANT such further legal and equitable relief as is just and proper.

Respectfully submitted,

THE FAIRNESS CENTER

By:



David R. Osborne

PA Attorney ID# 318024

Date: April 25, 2017

Karin M. Sweigart

PA Attorney ID# 317970

The Fairness Center

225 State Street, Suite 303

Harrisburg, PA 17101

844-293-1001

david@fairnesscenter.org

karin@fairnesscenter.org

VERIFICATION

I, Jane Ladley, being subject to penalties of 18 Pa. C.S. § 4904, relating to unsworn falsification to authorities, hereby state that I was a public school teacher at Penn London Elementary School in the Avon Grove School District and that the facts set forth in the foregoing Second Amended Complaint are true and correct to the best of my knowledge, information and belief.

Date: 4/19/17

By: Jane Ladley

VERIFICATION

I, Christopher Meier, being subject to penalties of 18 Pa. C.S. § 4904, relating to unsworn falsification to authorities, hereby state that I am a public school teacher at Penn Manor High School in the Penn Manor School District and that the facts set forth in the foregoing Second Amended Complaint are true and correct to the best of my knowledge, information and belief.

Date: 04/24/2017

By: 

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of this Second Amended Complaint for Declaratory and Injunctive Relief and referenced exhibits, filed on behalf of Plaintiffs Jane Ladley and Christopher Meier, has on this date been served as follows:

Thomas W. Scott, Esq.
Killian and Gephart, LLP
218 Pine Street
P.O. Box 886
Harrisburg, PA 17108-0886

Attorney General Kathleen Kane
Pennsylvania Office of Attorney General
16th Floor, Strawberry Square
Harrisburg, PA 17120

Date: April 25, 2017

By:



David R. Osborne

PA Attorney ID# 318024

Karin M. Sweigart

PA Attorney ID# 317970

The Fairness Center

225 State Street, Suite 303

Harrisburg, PA 17101

844-293-1001

david@fairnesscenter.org

karin@fairnesscenter.org