

IN THE COURT OF COMMON PLEAS OF
BERKS COUNTY, PENNSYLVANIA

AMERICANS FOR FAIR TREATMENT,

Plaintiff,

v.

READING EDUCATION ASSOCIATION and READING
SCHOOL DISTRICT,

Defendants.

Case No. _____

NOTICE TO DEFEND

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DEFENDERSE**

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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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**COMPLAINT FOR DECLARATORY,
INJUNCTIVE, AND EQUITABLE
RELIEF**

INTRODUCTION

Plaintiff Americans for Fair Treatment (“Americans”), by and through its undersigned counsel, respectfully requests that this Court issue a declaratory judgment and provide injunctive and equitable relief to address the unconstitutional and otherwise illegal practice of “Release Time.” As further developed below, under this practice, Defendant Reading School District (“District”) is obligated to provide a salary, benefits, seniority preferences, and pension contributions for an individual who, by all accounts, is not providing services to the District.¹ Americans requests that this Court declare Release Time fundamentally invalid under state law and grant equitable relief in the form of a permanent injunction and the return of the funds improperly taken from the District.

In support thereof, Petitioners allege the following:

¹ See *Kirsch v. Pub. Sch. Emps.’ Ret. Bd.*, 929 A.2d 663 (Pa. Cmwlth. 2007), *aff’d on other grounds*, 985 A.2d 671 (Pa. 2009) (determining that individuals on Release Time “were employed by the unions. They were not employed as a ‘person engaged in work relating to a public school.’” 929 A.2d at 670 (citation omitted)).

JURISDICTION AND VENUE

1. This Court has jurisdiction pursuant to the provisions of the Pennsylvania Declaratory Judgments Act, 42 Pa.C.S. §§ 7531–7541; the Judicial Code, 42 Pa.C.S. §§ 323, 912, 931(a); and Article V, Section 5(b), of the Pennsylvania Constitution.

2. Venue is proper before this Court under section 931(c) of the Judicial Code and Pennsylvania Rule of Civil Procedure 2179(a)(1), (2), (3), and (4). Both the District and Defendant Reading Education Association (“REA”) are registered or principally placed and regularly conduct business in Berks County; Berks County was the county where the cause of action arose; and Berks County was the county in which the transaction or occurrence took place out of which the cause of action arose.

PARTIES

3. Plaintiff Americans is a not-for-profit corporation and Internal Revenue Service-approved 501(c)(3) organization that equips and empowers Americans to receive fair treatment from government unions. Americans facilitates and supports litigation to enforce and expand human and civil rights for those who have suffered public sector union abuse. Its membership includes public-sector union members and nonmembers as well as supporters of public-sector employees, including taxpayers of the District. Americans is incorporated in the State of Oklahoma with an address of 100 North Broadway Avenue, Suite 1500, Oklahoma City, Oklahoma 73102.

4. Defendant REA is a private, unincorporated association and an “employ organization” as defined in both the Public School Code of 1949 (“Public School Code”), 24 P.S. § 11-1101-A, and the Public Employe Relations Act (“PERA”), 43 P.S. § 1101.301(3). The REA is the exclusive bargaining agent for certain professional employees (or “teachers”) of the District, and its address is 1800 North 12th Street, Reading, Pennsylvania 19604.

5. Defendant District is a school district of the second class, as classified within the Public School Code, 24 P.S. § 2-202, an “employer,” as defined in the Public School Code, 24 P.S. § 11-1101-A, and a “public employer,” as defined in the PERA, 43 P.S. § 1101.301(1). The District receives funding from local sources by way of local taxation² and from the state³ and national⁴ governments, and its address is 800 Washington Street, Reading, Pennsylvania 19601.

STANDING

6. Release Time hurts Reading students, teachers, residents, and taxpayers.

7. Americans has standing to bring a cause of action because at least one of its members has suffered or will suffer a direct, immediate, or substantial injury as a consequence of Release Time. *See Nat’l Solid Wastes Mgmt. Ass’n v. Casey*, 580 A.2d 893, 899 (Pa. Cmwlth. 1990) (“[I]n order for an association to have standing, it must allege that its members, or at least one of its members, has or will suffer a ‘direct, immediate and substantial injury’ to their interest as a consequence of the challenged action.” (citation omitted)).

8. Specifically, Taxpayer A is a member of Americans. A sworn affidavit from Priya Abraham, Managing Director of Americans, is attached hereto as “Exhibit A” and incorporated herein by reference.

9. Taxpayer A is a for-profit corporation that has operated in Reading for over ten years and pays real estate taxes to the Reading School District. Ex. A

10. In fact, Taxpayer A paid a 2016 School Real Estate Tax Bill of over \$10,000. Ex. A.

11. Taxpayer A’s real estate taxes fund Reading schools pursuant to section 6-672 of the Public School Code, 24 P.S. § 6-672. *See Reading Sch. Dist. 2016-2017 Gen. Fund Budget Final 3* (June

² *See* 24 P.S. § 5-507.

³ *See* 24 P.S. §§ 25-2501–25-2599.5.

⁴ *See, e.g.*, Every Student Succeeds Act of 2015, Pub. L. No. 114-95, 129 Stat. 1802 (codified as amended in scattered sections of 20 U.S.C.).

28, 2016), <https://www.readingsd.org/cms/lib07/PA01917154/Centricity/Domain/59/Reading%20School%20District%202016-2017%20Final%20Budget.pdf>. A true and correct copy of the Reading School District 2016-2017 General Fund Budget is attached hereto as “Exhibit B” and incorporated herein by reference.

12. District funds, including Taxpayer A’s tax dollars, are then used in the context of Release Time to benefit the REA and the REA President.

13. Taxpayer A, like the taxpayers in *Ramos v. Allentown Education Ass’n*, No. 150 M.D. 2016, 2016 WL 7383800 (Pa. Cmwlth. Dec. 21, 2016), satisfies the five requirements for taxpayer standing as articulated by the Pennsylvania Supreme Court in *Pittsburgh Palisades Park, LLC v. Commonwealth*, 888 A.2d 655, 662 (Pa. 2005):

- a. As a willing party to agreements containing Release Time provisions, the District is complicit in the REA’s scheme to siphon school district dollars for private union use. As such, judicial review would not otherwise occur and the government action would otherwise go unchallenged without allowing taxpayers to bring this action.
- b. Those directly and immediately affected by the complained of expenditures, the District and the REA, are beneficially affected as opposed to adversely affected. The District is beneficially affected because the provision was bargained for as a part of the negotiation process for the REA’s collective bargaining agreement. The REA is beneficially affected because it gets full-time employees, complete with salary, benefits, and a pension plan, without having to pay for them.
- c. Judicial relief is appropriate to ensure the legality or propriety of the acts of government.

- d. Redress through other channels is unavailable because the REA and the District are bound by and not in position to challenge their own contract and have otherwise demonstrated, by repeatedly entering into agreements with the REA that include provision of Release Time, insistence on maintaining the Release Time practice.
- e. No other persons are better situated to assert a claim against the REA and the District. Neither party to the contract has any interest in addressing the illegality of the practice of Release Time, and the real injury is to taxpayers who are forced to pay the salary and benefits of an individual working for a private organization—the REA.

BACKGROUND & MATERIAL FACTS

Reading School District

14. Data from the U.S. Census Bureau's American Community Survey shows that 39.6% of Reading residents live in poverty compared to a Pennsylvania-wide average of 13.2%, and a national average of 13.5%. U.S. Census Bureau, 2011-2015 American Community Surveys, Income and Poverty, <https://www.census.gov/quickfacts/table/PST045216/4263624,42,00> (last visited May 31, 2017).

15. The Census Bureau estimates the percentage of Reading residents twenty-five years of age or over with a Bachelor's degree or higher is only 9.2%, compared to a Pennsylvania-wide average of 28.6%, and a national average of 29.8%. *Id.* at Education.

16. The estimated percentage of Reading residents twenty-five years of age or over who have graduated from high school is 65.1% compared to a Pennsylvania-wide average of 89.2%, and a national average of 86.7%. *Id.* at Education.

17. The National Education Association has described the District as “America’s most poorly funded school district.” Amanda Litvinov, *Reading, Pa., retains title as America’s most poorly funded sch. dist.*, Educ. Votes (Apr. 27, 2016), <http://educationvotes.nea.org/2016/04/27/reading-pa-retains-title-as-americas-most-poorly-funded-school-district/> (last visited May 25, 2017).

18. The Census Bureau estimates the average annual per capita income in Reading is \$13,217, compared to a Pennsylvania-wide average of \$29,291, and a national average of \$28,930. U.S. Census Bureau, *supra* ¶ 14, at Income and Poverty.

19. The District had a 64.37% high school graduation rate in 2016, Pennsylvania Department of Education, Pennsylvania School Performance Profile – Reading SHS, Academic Performance, <http://paschoolperformance.org/Profile/5513>, compared to an 86.09% graduation rate statewide, Pennsylvania Department of Education, 2015-2016 Pennsylvania 4-Year Cohort Graduation Rates, <http://www.education.pa.gov/Data-and-Statistics/Pages/Cohort-Graduation-Rate-.aspx#tab-1>.

20. For the 2016 Pennsylvania System of School Assessment (“PSSA”) scores in math for grades four through eight,⁵ the District demonstrated the lowest average growth, negative 16.94, among all 633 local education agencies (“LEAs”) in Pennsylvania. Pa. Dept. of Educ., Pa. Value Added Assessment Sys., Reading Sch. Dist. PSSA Math 4-8 ll.1 & 634, col. 5, <https://pvaas.sas.com/schoolComparison.html?as=w&aj=w&w4=2&x9=12&ww=9217&yb=61&x7=1&xd=-3>.

⁵ Column 2 titled “Tested Grades” in the cited chart, and the similar charts to follow that are also cited indicate the total number of grades in the district or charter school taking the PSSA and Keystone tests. The charts only include reported data on the proficiency and progress of grades four through eight for the indicated subject. Pa. Dept. of Educ., Pa. Value Added Assessment Sys., *What Should You Know About PVAAS?* 3, <https://drive.google.com/file/d/0B5FAJU-k0YoNck13Nk11aG8tU1E/view>.

21. For the 2016 PSSA scores in math for grades four through eight, 88% of District students did not attain grade level proficiency in math. *Id.* at l.1, col.8.

22. For the 2016 PSSA scores in math for grades four through eight, the Reading School District's proficiency ranked 494 out of 500 school districts in the state. *See* Pa. Dept. of Educ., Pa. Value Added Assessment Sys., Reading Sch. Dist. PSSA Math 4-8 l.54, col.8, <https://pvaas.sas.com/schoolComparison.html?ab=aZ&as=c&aj=c&x9=12&ww=9217&yb=61&x7=1&w4=2&xd=30>.

23. For the 2016 PSSA scores in reading for grades four through eight, the District demonstrated a growth rate of negative 7.57, the third worst score among all 633 LEAs in Pennsylvania and 499 out of 500 school districts. Pa. Dept. of Educ., Pa. Value Added Assessment Sys., Reading Sch. Dist. PSSA Reading 4-8 ll.1 & 4, col.5, available at <https://pvaas.sas.com/schoolComparison.html?ab=aZ&as=p&aj=p&x9=12&ww=9217&yb=60&x7=1&w4=2&xd=3>.

24. For the 2016 PSSA scores in reading for grades four through eight, 75.8% of District students did not attain grade level proficiency in reading. *See id.* at l.1, col.8.

25. For the 2016 PSSA scores in reading for grades four through eight, the District's proficiency ranked 493 out of 500 school districts in the state. *See* Pa. Dept. of Educ., Pa. Value Added Assessment Sys., Reading Sch. Dist. PSSA Reading 4-8 l.26, col.8, available at <https://pvaas.sas.com/schoolComparison.html?ab=aZ&as=o&aj=o&x9=12&ww=9217&yb=60&x7=1&w4=2&xd=30>.

Release Time History

26. In 2008, the REA and the District agreed to a collective bargaining agreement governing their relationship from September 1, 2008, through August 31, 2012 ("2008 CBA"). Collective Bargaining Agreement by & between the Sch. Dist. of Reading & the Reading Educ.

Ass'n 1 (2008). A true and correct copy of Plaintiff's counsel's September 1, 2016 Right-to-Know Request and the District's October 3, 2016 certified response thereto, including the 2008 CBA between the District and the REA, is attached hereto as composite "Exhibit C" and incorporated herein by reference. Ex. C, at 20–66.

27. In the 2008 CBA, the REA was recognized as "the exclusive Bargaining Agent for the Professional Employees" of the District. Ex. C, at 23.

28. The 2008 CBA contained a provision, under "Article XII: Association Rights and Privileges," which read, in part:

J. Release Time for Association President

The President of the [REA] shall be scheduled for a maximum of two (2) classes or if elementary Employee no more than one-half (1/2) session per day by the Administration.

In the event the President is a middle school or high school Teacher, the Employee shall not be assigned a homeroom.

Ex. C, at 48.

29. On June 7, 2011, the REA and the District agreed by Memorandum of Understanding ("2011 MOU") to amend Article XII, Section J., stating, in part:

The District and the [REA] agree to amend Article XII: Association Rights and Privileges, Section J. Release Time for Association President, with the following language:

The position of Association President shall be full-time release.

All terms and conditions of employment shall be as if the President were a teacher on special assignment.

The President shall be returned to the identical position he/she vacated to assume the presidency.

The position/program vacated by the President shall be filled by a long-term substitute for the duration of the President's term of office.

This MOU is a subject for Bargaining for the successor agreement to the current Collective Bargaining Agreement.⁶

⁶ The final paragraph was handwritten and appears to have been initialed by the signatories to the MOU—the President of the REA and the District Superintendent.

Ex. C, at 5.

30. On August 24, 2016, the District ratified a new collective bargaining agreement, which was intended to govern the relationship between the REA and the District from September 1, 2012, to August 31, 2019 (“2016 CBA”). Collective Bargaining Agreement by & between the Sch. Dist. of Reading & the Reading Educ. Ass’n 1 (Aug. 24, 2016). A true and correct copy of the 2016 CBA is attached as “Exhibit D” and incorporated herein by reference.

31. The 2016 CBA included a new Article XI, Section J., entitled “Release Time for Association President” stating:

J. Release Time for Association President

The President of the [REA] shall be on full-time release and shall be subject to the terms of the Memorandum of Understanding between the Employer and the Association dated June 7, 2011.

Ex. D, at 24.

32. The REA is not contractually obligated to reimburse the District for any of the costs, including the REA President’s salary, benefits, and pension contributions, associated with Release Time. *See* Ex. C, at 5, 48; Ex. D, at 24.

33. The REA does not reimburse the District for any of the costs, including the REA President’s salary, benefits, and pension contributions, associated with Release Time. *See* Ex. D, at 24; Certified Copy of Dist.’s Mar. 30, 2017 Right-to-Know Resp. A true and correct certified copy of Plaintiff’s counsel’s March 24, 2017 Right-to-Know Request and the District’s March 30, 2017 certified response thereto is attached hereto as composite “Exhibit E” and incorporated herein by reference. Ex. E, at 4.

34. On information and belief, since at least September 1, 2008, the District has paid the REA President’s salary, benefits, and pension contributions, without reimbursement from the REA.

35. Former REA President, Bryan Sanguinito (“Sanguinito”), worked part-time for the REA pursuant to the 2008 CBA prior to the effective date of the 2011 MOU.

36. Beginning in 2011, Sanguinito began working full-time for the REA pursuant to the 2011 MOU, until 2013, when he concluded his work on Release Time. *See* Ex. C, at 5–6.

37. Current REA President, Mitchell Hettinger, (“Hettinger”), has worked full-time for the REA pursuant to the 2011 MOU and the 2016 CBA’s Release Time provision since 2013. *See* Ex. C, at 6.

38. Any future REA President would operate under the same Release Time arrangement set forth in the 2016 CBA. Ex. D, at 24.

39. In sum, from 2008 to 2011, the REA President left his classroom on a part-time basis to work for the REA. Ex. C, at 48.

40. And beginning in 2011 and continuing to the present, the REA President wholly ceased to serve as a teacher at any District school. The 2011 MOU and 2016 CBA allow the President to devote *all of his or her working time* to REA-related activities. Ex. C, at 5; Ex. D, at 24.

41. The REA and District are contractually obligated under the 2016 CBA to continue Release Time irrespective of who the REA selects as REA President.⁷ Ex. D, at 24.

Wages and Benefits

42. Yet REA Presidents have continued and will continue under the 2016 CBA to receive part- or full-time wages and benefits from the District, funded by taxpayer money, while on Release Time. Ex. C, at 5, 48; Ex. D, at 24.

43. Additional benefits include pension contributions, medical insurance, dental insurance, vision insurance, prescription drug co-pay benefits, life insurance, personal property insurance, and disability insurance. Ex. C, at 5-6, 31-36; Ex. D, 9-14.

⁷ Hereinafter, Americans will name, where necessary, particular REA Presidents Hettinger and Sanguinito but will otherwise refer generally to the *office* of REA President and, in making such reference, intend to capture any successor officeholders.

44. From 2011 to 2013, Sanguinito received a total of \$150,338 in base salary and an estimated \$23,684 in healthcare benefits from the District in addition to other benefits. Ex. C, at 6.

45. From 2013 to August of 2016, Hettinger received a total of \$243,507 in base salary and an estimated \$49,988 in healthcare benefits from the District in addition to other benefits. Ex. C, at 6.

46. From 2011 to 2013, the District contributed \$29,729.34 to the Public School Employees' Retirement System ("PSERS") in pension contributions for Sanguinito, and the Commonwealth reimbursed the District \$22,293.68 for those contributions in the same span. Ex. C, at 6.

47. As a result of Hettinger's continued accrual of pension credit, from 2013 to August of 2016 the District contributed \$77,067.30 to PSERS, and the Commonwealth reimbursed the District \$34,810.64 for those contributions in the same span. Ex. C, at 6.

Seniority

48. REA Presidents also continue to accrue other contractual advantages while working under Release Time, including seniority preference. Ex. C, at 5; Ex. D, at 24.

49. Accrued seniority allows a REA President to maintain preference over less tenured classroom teachers in the event a reduction of force is necessary, even though the REA President has not been in the classroom for years. Ex. C, at 5, 43; Ex. D, at 19.

50. For example, in June of 2012, the District laid off 110 teachers, sixty-five teaching aids, and twenty-two secretaries to help close a \$40 million deficit in its 2012-2013 budget. David Mekeel, *Reading School District lays off 87 more employees*, Reading Eagle, (June 15, 2012), <http://www2.readingeagle.com/article.aspx?id=393224> (last visited May 24, 2017).

51. Yet while those classroom teachers were laid off, Sanguinito, under Release Time, continued to receive a salary and benefits as if he were a teacher in a classroom. Ex. C, at 6.

SUMMARY OF CLAIMS

52. Petitioners seek declaratory, injunctive, and equitable relief to stop the REA’s Release Time practice. Release Time is void because: (1) it is not authorized by law; (2) the parties lack the capacity to bargain for the employment of an individual who is not working as a public employee; and (3) it violates public policy. Accordingly, this Court should (4) issue a permanent injunction prohibiting Release Time and (5) require the REA to reimburse the District.

**COUNT I: RELEASE TIME IS ILLEGAL BECAUSE
IT IS NOT AUTHORIZED BY LAW
(Americans against the REA and District)**

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

54. “[A] school district is a creature of the legislature and therefore has no power *except by express statutory grant and necessary implication.*” *Giacomucci v. Se. Delco Sch. Dist.*, 742 A.2d 1165, 1170 (Pa. Cmwlth. 1999) (citation omitted). “Because a school district is ‘the administrative arm of the legislature, its authority springs only from legislative enactments.’” *Id.* (quoting *In re James Granat*, 590 A.2d 849, 852 (Pa. Cmwlth. 1991)).

55. Section 6-610 of the Public School Code states:

The board of school directors in every school district shall have the right to use and pay out, in the manner herein provided, any funds of the district for any and all of the purposes therein provided, subject to all the provisions of this act. *The use or payment of any public school funds of any school district, in any manner or for any purpose not provided in this act, shall be illegal.*

24 P.S. § 6-610 (emphasis added).

56. Meanwhile, under PERA, collective bargaining agreements cannot implement provisions “in violation of, or inconsistent with, or in conflict with any statute or statutes enacted by

the General Assembly of the Commonwealth of Pennsylvania or the provisions of municipal home rule charters.” 43 P.S. § 1101.703.

57. There is no statutory basis for Release Time, whether part- or full-time, in the Public School Code. *See* 24 P.S. §§ 1-101–27-2702.

58. There is no statutory basis for Release Time, whether part- or full-time, within PERA. *See* 43 P.S. §§ 1101.101–1101.2301.

59. There is no statutory basis for Release Time as practiced by the REA and District anywhere in Pennsylvania law.

60. The Public School Code provides the statutory authorization for school districts to grant leave, and Release Time does not appear within that authorization. 24 P.S. §§ 11-1166–11-1182.

61. Release Time, both part- and full-time, is in violation of, inconsistent with, and in conflict with the authorized leave statutes in the Public School Code.

62. Accordingly, this Court should declare void—and enjoin the provision of—Release Time.

**COUNT II: RELEASE TIME IS VOID BECAUSE THE PARTIES LACK CAPACITY
(Americans against the REA and District)**

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

64. “The law of this Commonwealth makes clear that a contract is created where there is mutual assent to the terms of a contract *by the parties with the capacity to contract.*” *Shovel Transfer & Storage, Inc. v. Pennsylvania Liquor Control Bd.*, 739 A.2d 133, 136 (Pa. 1999) (emphasis added).

65. The Public School Code describes “collective bargaining” as conference or negotiation between the “employer” and “representative of the employes . . . with respect to wages,

hours and other terms and conditions of employment.” 24 P.S. § 11-1111-A. Likewise, PERA describes “collective bargaining” as a conference or negotiation between a “*public* employer” and a “representative of the *public* employes . . . with respect to wages, hours and other terms and conditions of employment.” 43 P.S. § 1101.701 (emphasis added).

66. The REA and District have no authority to enter into an agreement, memorandum of understanding, or collective bargaining agreement setting out terms and conditions of employment for individuals not working as a public employee, not engaged in public employment, or not employed by a public employer.

67. The District has no authority to provide a salary or benefits, including PSERS contributions, to an individual not engaged in public employment.

68. The REA and the District have no authority to bargain for terms of Release Time.

69. Under the REA’s and District’s Release Time practice, the REA and not the District selects the employee who serves as the REA President.

70. Under Release Time, the REA and not the District directs both the work to be done and the manner in which such work will be done by the REA President.

71. The REA President is subject to the direction of the REA while on Release Time and working for the REA.

72. The REA President is subject to the control of the REA while on Release Time and working for the REA.

73. The REA President is subject to the supervision of the REA while on Release Time and working for the REA.

74. The District does not direct, control, or supervise the REA President while on Release Time and working for the REA.

75. The REA President, or any other individual on Release Time from public employment, is not engaged in public employment for purposes of the Public School Code or PERA, respectively. *See* 24 P.S. § 11-1101-A; 43 P.S. § 1101.301(2).

76. The REA is not a public employer for purposes of the Public School Code or PERA. *See* 24 P.S. § 11-1101-A; 43 P.S. § 1101.301(1).

77. Accordingly, this Court should declare void—and enjoin the provision of—Release Time.

**COUNT III: RELEASE TIME VIOLATES PUBLIC POLICY
(Americans against the AEA and District)**

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

79. A contractual provision may not be enforced if “to do so would be contrary to a clearly expressed public policy.” *Williams v. GEICO Gov’t Emps. Ins. Co.*, 32 A.3d 1195, 1200 (Pa. 2011).

80. “The fundamental public policy, expressed in the Constitution and underlying school laws, is to obtain a better education for the children of the Commonwealth.” *Walker’s Appeal*, 2 A.2d 770, 772 (Pa. 1938).

81. Release Time is void as against public policy.

82. Release Time does not obtain a better education for the children of the District. In fact, Release Time harms students because it obligates the District to devote resources that benefit the REA President and the REA, not the District’s students or classroom teachers teaching students.

83. Because of Full Release Time, in 2012, the District had to furlough a minimum of one additional teacher, a direct harm to students resulting in larger class sizes, less personalized instruction, and loss of continuity in teaching. *See* Ex. C, at 6.

84. Since 2011, \$583,213.64 has been taken from Reading students to pay the salary, benefits, and healthcare costs of the REA President, a private employee, and to enrich the REA, a private organization. This more than half a million dollars could have been used for additional teachers, supplies, better school infrastructure, or a myriad of other possibilities that would have benefited students. *See* Ex. C, at 6.

85. Release Time harms students, directly violating clearly articulated public policy, and this Court should declare void and enjoin the provision allowing for union work on school time funded by the Commonwealth and District.

**COUNT IV: PERMANENT INJUNCTION
(Americans against the REA and District)**

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

87. Permanent injunctions are appropriate when one “establish[es] his or her clear right to relief. . . . [T]he party 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) (citation omitted).

88. Americans has established its clear right to relief.

89. There is no adequate remedy at law for continuing provision of public resources to pay the salary of an employee of a private organization. Americans should not be made to continually seek restitution for such action.

90. This Court should issue a permanent injunction to stop the continuing practice of Release Time and the devotion of public resources for private purposes.

**COUNT V: UNJUST ENRICHMENT/INJUNCTION
REQUIRING RESTITUTION⁸
(Americans against the REA and District)**

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

92. The REA has been unjustly enriched through Release Time, in the provision of public salaries, benefits, and pension contributions for REA Presidents. *See* Ex. C, at 6.

93. Allowing the REA to retain the benefits provided by the District would be unjust, inequitable, and unconscionable because retention thereof would unjustly deprive the District of significant funds to which they are entitled.

94. The Court should require the REA to provide restitution of those funds ceded to the REA under Release Time to the maximum extent allowed by law so that Reading taxpayers are not forced to pay the salary and benefits of the president of a private organization.

PRAYER FOR RELIEF

WHEREFORE, Americans prays that this Court grant it the relief requested herein, specifically that this Court render a judgment in its favor and against the REA and District:

- A. Declaring that Release Time is invalid;
- B. Permanently enjoining further effect for any provision of Release Time;
- C. Requiring the REA to pay improperly disbursed funds given to the REA President back to the District, with interest, including the full amount of the salary, benefits, healthcare costs, and retirement contributions illegally taken and accrued by the REA Presidents under the Release Time provision; and

⁸ Count V may also be understood as a claim “in assumpsit” for moneys improperly disbursed. *See Consumer Party of Pennsylvania v. Commonwealth*, 507 A.2d 323, 327 (1986), *abrogated on other grounds by Pennsylvanians Against Gambling Expansion Fund, Inc. v. Commonwealth*, 877 A.2d 383 (2005).

D. Granting any other relief this Court deems appropriate.

Respectfully Submitted,

THE FAIRNESS CENTER

Dated: June 1, 2017

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