

**UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA  
Harrisburg Division**

GREGORY J. HARTNETT, ELIZABETH M.  
GALASKA, ROBERT G. BROUGH, JR., and  
JOHN M. CRESS,

Plaintiffs,

v.

PENNSYLVANIA STATE EDUCATION  
ASSOCIATION, HOMER-CENTER  
EDUCATION ASSOCIATION, TWIN VALLEY  
EDUCATION ASSOCIATION, ELLWOOD AREA  
EDUCATION ASSOCIATION, HOMER-  
CENTER SCHOOL DISTRICT, TWIN VALLEY  
SCHOOL DISTRICT, and ELLWOOD CITY  
AREA SCHOOL DISTRICT,

Defendants.

**Case No. 1:17-cv-00100-YK**

(Hon. Yvette Kane)

**FIRST AMENDED  
COMPLAINT**

--ELECTRONICALLY FILED--

AND NOW come Plaintiffs Gregory J. Hartnett, Elizabeth M. Galaska, Robert G. Brough, Jr., and John M. Cress, by and through their undersigned attorneys, and state the following claim for relief against Defendants Pennsylvania State Education Association (“PSEA”), Homer-Center Education Association, Twin Valley Education Association, and Ellwood Area Education Association (collectively the “Unions”); Homer-Center School District, Twin Valley School District, and Ellwood City Area School District (collectively the “Districts”), and aver as follows:

## SUMMARY OF THE CASE

1. This is a civil rights action pursuant to 42 U.S.C. § 1983 for declaratory and injunctive relief, as well as nominal damages, to redress and to prevent the deprivation of rights, privileges, and immunities under the First and Fourteenth Amendments to the United States Constitution caused by statutes and Defendants' contracts, policies, and practices that require public school teachers who are not union members to pay a fee to the Unions as a condition of employment.

2. In Pennsylvania, Defendants, public sector unions and school districts, act under the color of state law, specifically title 71, section 575 of the Pennsylvania Statutes (hereinafter "section 575"), the Public Employe Relations Act, 43 P.S. §§ 1101.101–1101.2301 (hereinafter "PERA"), and the Public School Code of 1949, 24 P.S. §§ 1-101–27-2702 (hereinafter "Public School Code"),<sup>1</sup> to force nonmember public school teachers to pay so-called "fair share fees" ("nonmember fees") to a private union as a condition of employment.

3. Plaintiffs in this matter, who are all Pennsylvania public school teachers, do not want the government deciding for them which private organizations they must support and specifically do not want to be compelled by state actors to support labor organizations they have not voluntarily chosen to support and that they may, in fact,

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<sup>1</sup> Pennsylvania also has the Public Employee Fair Share Fee Law, 43 P.S. §§ 1102.1–1102.9, which authorizes unions and political subdivisions to force nonmembers to pay union fees.

oppose. At the heart of the First Amendment is the notion that an individual should be free to believe as he or she will, and that in a free society one's beliefs should be shaped by his or her mind and his or her conscience rather than coerced by a state actor. Subsumed within that constitutional freedom to believe as one will is the right to make one's own choice, free of government compulsion, of which private organizations he or she wants to support. See *Knox v. Serv. Emps. Int'l Union, Local 1000*, 132 S. Ct. 2277, 2288–89 (2012).

4. In *Knox*, the Supreme Court referred to its prior rationale in *Abood v. Detroit Board of Education*, 431 U.S. 209 (1977), justifying compulsory union fees, as “generally insufficient,” 132 S. Ct. at 2289, and “something of an anomaly.” *Id.* at 2290. “Because a public-sector union takes many positions during collective bargaining that have powerful political and civic consequences, the nonmember fees constitute a form of compelled speech and association that imposes a significant impingement on First Amendment rights.” *Id.* at 2289 (citations and alterations omitted).

5. In the course of collective bargaining with public employers, unions inherently take political positions, *Lehnert v. Farris Faculty Ass'n*, 500 U.S. 507, 519–20 (1991), some of which are controversial to certain public sector employees who may believe those positions are not in their best interest or in the best interest of society at large. For example, unions consistently bargain for provisions requiring increased government spending and against important educational reforms. Some teachers may

believe such positions are not beneficial to teachers, students, and/or taxpayers. Even in purely material terms, “seniority” protections and other employment protections advocated by unions benefit some teachers at the expense of other teachers who may fare better under an alternative system.

6. Under recent Supreme Court decisions, there is no compelling governmental interest that justifies these severe infringements to Plaintiffs’ First and Fourteenth Amendment rights and that can withstand exacting First Amendment scrutiny. Compulsory association, speech, and financial support of private organizations must be narrowly tailored to serve a compelling government interest. Pennsylvania’s authorization of nonmember fees—and Defendants’ affirmative acts mandating nonmember fees pursuant to state law—cannot meet this standard. Seizing nonmember fees for even collective bargaining activities serves no compelling state interest and constitutes means not narrowly tailored to advance those interests.

7. Ultimately, Plaintiffs seek the Supreme Court’s review of the constitutionality of its holding in *Abood*, which the Court’s majority questioned in *Knox*, and the constitutionality of the aforementioned Pennsylvania laws to the extent they allow Defendants to extract nonmember fees from Plaintiffs and other nonmember public employees.

8. Although Plaintiffs recognize that at this time the District Court is bound by *Abood*, they respectfully request, given the severe and ongoing infringement of Plaintiffs’ rights to free speech, free association, and free choice, this Court to

eventually declare that Pennsylvania's practice of forcing nonmembers to pay fees to fund union activity of any kind violates the First Amendment and enjoin Defendants from enforcing this unconstitutional arrangement.

### **JURISDICTION AND VENUE**

9. This is an action that arises under the Federal Civil Rights Act of 1871, 42 U.S.C. § 1983, to redress the deprivation, under color of state law, of rights, privileges, and immunities secured to Plaintiffs by the Constitution of the United States, particularly the First and Fourteenth Amendments thereto.

10. The Court has jurisdiction over Plaintiffs' claims pursuant to 28 U.S.C. § 1331—because the claims arise under the United States Constitution—and 28 U.S.C. § 1343—because Plaintiffs seek relief under 42 U.S.C. § 1983.

11. This action is an actual controversy in which Plaintiffs seek a declaration of their rights under the Constitution of the United States. Pursuant to 28 U.S.C. §§ 2201 and 2202, this Court may declare the rights of Plaintiffs and grant further necessary and proper relief based thereon, including injunctive relief pursuant to Federal Rule of Civil Procedure 65.

12. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) because a defendant, PSEA, is domiciled in and operates or does significant business in this judicial district. Additionally, a substantial part of the events giving rise to this action occurred in this judicial district.

## **PARTIES**

13. Plaintiff Gregory J. Hartnett resides in Indiana County, Pennsylvania. He is employed as a public school teacher by the Homer-Center School District in a bargaining unit exclusively represented by Homer-Center Education Association. Mr. Hartnett, however, is not a member of the Homer-Center Education Association or any of its affiliates, and is a “nonmember” as defined by 71 P.S. § 575(a).

14. Plaintiff Elizabeth M. Galaska resides in Berks County, Pennsylvania. She is employed as a public school teacher and librarian by the Twin Valley School District in a bargaining unit exclusively represented by Twin Valley Education Association. Ms. Galaska, however, is not a member of the Twin Valley Education Association or any of its affiliates, and is a “nonmember” as defined by 71 P.S. § 575(a).

15. Plaintiff Robert G. Brough, Jr., resides in Lawrence County, Pennsylvania. He is employed as a public school teacher by the Ellwood City Area School District in a bargaining unit exclusively represented by Ellwood Area Education Association. Mr. Brough, however, is not a member of the Ellwood Area Education Association or any of its affiliates, and is a “nonmember” as defined by 71 P.S. § 575(a).

16. Plaintiff John M. Cress resides in Lawrence County, Pennsylvania. He is employed as a public school teacher by the Ellwood City Area School District in a bargaining unit exclusively represented by the Ellwood Area Education Association.

Mr. Cress, however, is not a member of the Ellwood Area Education Association or any of its affiliates, and is a “nonmember” as defined by 71 P.S. § 575(a).

17. Defendant PSEA is a “statewide employe organization” pursuant to 71 P.S. § 575(a), and it is headquartered at 400 North 3rd Street, Harrisburg, Pennsylvania. PSEA conducts its business and operations throughout the Commonwealth of Pennsylvania, including within the Middle District of Pennsylvania. PSEA is affiliated with and pays monies to, *inter alia*, the National Education Association (“NEA”).

18. Defendant Homer-Center Education Association is the local union recognized as the “exclusive representative,” as defined by 71 P.S. § 575(a), for Mr. Hartnett and the other teachers of Homer-Center School District. Its state affiliate is PSEA, to which, it transfers nonmembers’ fees that it receives from the Homer-Center School District. Its national affiliate is NEA. The Homer-Center Education Association is purportedly located at 45 Wildcat Lane, Homer City, Pennsylvania.

19. Defendant Twin Valley Education Association is the local union recognized as the “exclusive representative,” as defined by 71 P.S. § 575(a), for Ms. Galaska and the other teachers of Twin Valley School District. Its state affiliate is PSEA, to which it transfers nonmembers’ fees that it receives from the Twin Valley School District. Its national affiliate is NEA. The Twin Valley Education Association is purportedly located at 250 Barneston Road, Honey Brook, Pennsylvania.

20. Defendant Ellwood Area Education Association is the local union recognized as the “exclusive representative,” as defined by 71 P.S. § 575(a), for Mr. Brough and Mr. Cress and the other teachers of the Ellwood City Area School District. Its state affiliate is PSEA, to which it transfers nonmembers’ fees that it receives from the Ellwood City Area School District. Its national affiliate is NEA. The Ellwood Area Education Association is purportedly located at 2235 Chewton Wurtemberg Road, Wampum, Pennsylvania.

21. Defendant Homer-Center School District is a “public employer” and “school entity” pursuant to 71 P.S. § 575(a). It pays wages to Mr. Hartnett and makes deductions of nonmember fees therefrom on behalf of the Homer-Center Education Association, pursuant to the terms of the collective bargaining agreement between the Homer-Center School District and the Homer-Center Education Association. The Homer-Center School District maintains offices at 65 Wildcat Lane, Homer City, Pennsylvania.

22. Defendant Twin Valley School District is a “public employer” and “school entity” pursuant to 71 P.S. § 575(a). It pays wages to Ms. Galaska and makes deductions of nonmember fees therefrom on behalf of the Twin Valley Education Association, pursuant to the terms of the collective bargaining agreement between the Twin Valley School District and the Twin Valley Education Association. The Twin Valley School District maintains offices at 4851 North Twin Valley Road, Elverson, Pennsylvania.

23. Defendant Ellwood City Area School District is a “public employer” and “school entity” pursuant to 71 P.S. § 575(a). It pays wages to Mr. Brough and Mr. Cress and makes deductions of nonmember fees therefrom on behalf of the Ellwood Area Education Association, pursuant to the terms of the collective bargaining agreement between the Ellwood City Area School District and the Ellwood Area Education Association. The Ellwood City Area School District maintains offices at 501 Crescent Avenue, Ellwood City, Pennsylvania.

### **FACTUAL ALLEGATIONS**

24. Section 575, PERA, and the Public School Code, allow an exclusive representative and a public school district to collectively bargain over and insert into a collective bargaining agreement a so-called “fair share” fee (“nonmember fee”) provision by which nonmember teachers are compelled to pay a fee to their exclusive representative and its affiliates.

25. Pursuant to section 575(a), a “nonmember” is defined as “an employe of a public employer, who is not a member of the exclusive representative, but who is represented in a collective bargaining unit by the exclusive representative for purposes of collective bargaining.”

26. Pursuant to section 575(a), a nonmember fee is defined as “the regular membership dues required of members of the exclusive representative less the cost for the previous fiscal year of its activities or undertakings which were not reasonably

employed to implement or effectuate the duties of the employe organization as exclusive representative.”

27. Pursuant to section 575(b), “[i]f the provisions of a collective bargaining agreement so provide, each nonmember of a collective bargaining unit shall be required to pay to the exclusive representative a fair share fee.”

28. Pursuant to section 575(c), to implement a nonmember fee agreement, a public employer is required to deduct the nonmember fee from the wages of a nonmember and “transmit the [fee] deducted to the exclusive representative.”

29. Under color of state law, each named local union defendant has negotiated and agreed to a collective bargaining agreement with its respective school district defendant which controls the wages, hours, and other terms and conditions of the nonmember teachers within the bargaining unit, agreements that also include a nonmember fee provision. Copies of the three current collective bargaining agreements at issue are attached hereto as “Exhibit 1,” “Exhibit 2,” and “Exhibit 3,” and incorporated herein.

30. The Homer-Center School District has deducted and continues to deduct nonmember fees from Mr. Hartnett’s wages and transmits said fees to the Homer-Center Education Association pursuant to a nonmember fee provision in the collective bargaining agreement between Homer-Center School District and the Homer-Center Education Association.

31. The Homer-Center Education Association, on information and belief, does not use any nonmember fees but instead transmits all said fees to its state affiliate, PSEA.

32. The Twin Valley School District has deducted and continues to deduct nonmember fees from Ms. Galaska's wages and transmits said fees to the Twin Valley Education Association pursuant to a nonmember fee provision in the collective bargaining agreement between Twin Valley School District and the Twin Valley Education Association.

33. The Twin Valley Education Association, on information and belief, does not use any nonmember fees but instead transmits all said fees to its state affiliate, PSEA.

34. Ellwood City Area School District has deducted and continues to deduct nonmember fees from Mr. Brough's and Mr. Cress' wages and transmits said fees to the Ellwood Area Education Association pursuant to a nonmember fee provision in the collective bargaining agreement between Ellwood City Area School District and the Ellwood Area Education Association.

35. The Ellwood Area Education Association, on information and belief, does not use any nonmember fees but instead transmits all said fees to its state affiliate, PSEA.

36. On information and belief, PSEA distributes some of the nonmember fees it receives from its local affiliates to its various affiliates, including the NEA, and

uses other nonmember fees it collects or receives from nonmembers to fund activities and expenditures that PSEA determines meets the statutory definition of the fees.<sup>2</sup>

37. On information and belief, nonmember fees are not necessary to maintain order or labor peace in the workplace, because, among other reasons, exclusive representation does not depend on the right to collect a fee from nonmembers.

38. In fact, in collective bargaining agreements negotiated with certain school districts throughout Pennsylvania, PSEA or its local affiliate does not require fees from nonmembers.

39. On information and belief, PSEA provides to its local affiliates assistance, in the form of PSEA employees and/or various other resources, including financial assistance, for use by the affiliates in collective bargaining.

40. A union that collects fees from a nonmember must annually provide the nonmember with a “*Hudson*” notice that, among other things, explains how the union calculated the nonmember fee. *See Chicago Teachers Union, No. 1 v. Hudson*, 475 U.S. 292 (1986).

41. A union calculates the nonmember fee by first defining which types of activities it will deem “chargeable” (meaning that it meets the statutory definition) and

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<sup>2</sup> Under state law, nonmember fees may be used to defer the costs of the union’s activities or undertakings which are “reasonably employed to implement or effectuate the duties of the employe organization as exclusive representative.” 71 P.S. § 575(a).

“non-chargeable” (that which the statutory definition excludes from the compulsory union fee) to nonmembers, and then annually determines what percentage of the union’s expenses in a prior fiscal year were chargeable and non-chargeable. The nonmember fee is set at a prior fiscal year’s chargeable percentage.

42. The above calculation must be based on an independent audit of union expenditures.

43. However, auditors *do not* verify whether the union has properly classified its expenditures as chargeable or non-chargeable, as “chargeability is a legal question.” *Otto v. Pennsylvania State Educ. Ass’n*, 330 F.3d 125, 135 n.10 (3d Cir. 2003).

44. If a nonmember disagrees with a union’s classification of certain expenses as chargeable, the nonmember may challenge the classification either through arbitration or in a court of law.

45. On information and belief, PSEA purportedly annually sends each nonmember Pennsylvania teacher, who is represented by an affiliated local union and from whom nonmember fees are collected, a *Hudson* notice. PSEA’s December 15, 2016 Notice (“PSEA Notice”) is attached hereto as “Exhibit 4,” and incorporated herein.

46. On information and belief, the attached PSEA Notice is the basis for the nonmember fees it has received and will receive from nonmember teachers during the 2016-2017 school year.

47. On information and belief, for the 2016–2017 school year, PSEA charges nonmember teachers a fee of 74 percent of the total union dues amount charged to its members.

48. Some teachers and other employees represented by the Unions object to one or more of the public policy positions for which PSEA advocates, including some of the positions that PSEA takes in collective bargaining.

49. Some of the Unions' positions taken during the course of collective bargaining are not in the best interest of every member of the bargaining unit or in the best interest of society at large.

50. The Unions sometimes bargain for provisions in collective bargaining agreements that require increased spending or new allocations of monies by the Districts.

51. The Unions sometimes oppose certain educational reforms that some teachers may believe are beneficial to teachers, students, and/or taxpayers.

52. The Unions take positions in the collective bargaining process that affect the budgets of the Districts.

53. On information and belief, the Districts' labor costs have and will continue to impact said Districts' financial conditions.

54. That clearly demonstrates the degree to which the collective bargaining that takes place between the Unions and Districts, respectively, is an inherently political activity.<sup>3</sup>

55. But for Pennsylvania law authorizing nonmember fees and/or fees provisions, no Pennsylvania nonmember teacher could be forced to pay any nonmember fees or otherwise subsidize PSEA or its affiliates as a condition of employment.

56. But for Pennsylvania law authorizing nonmember fees, Plaintiffs would not pay any union fees or otherwise subsidize PSEA or its affiliates.

57. On information and belief, when the Unions, particularly PSEA, expend dollars collected pursuant to the respective nonmember fee provisions contained in their collective bargaining agreements to engage in chargeable activities—for instance, lobbying or bargaining against reductions to their own benefits packages or more significant reductions to other state or school district programs or services—there is no principled distinction sufficient to justify a constitutional violation between the Unions and various other special interest groups that also expend money on political and ideological activities to protect their own favored programs and services.

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<sup>3</sup> *See Abood*, 431 U.S. at 228 (“[D]ecisionmaking by a public employer is above all a political process. . . . [Such decisionmaking] will depend upon a blend of political ingredients, including community sentiment about unionism generally and the involved union in particular, the degree of taxpayer resistance, and the views of voters as to the importance of the service involved and the relation between the demands and the quality of service.”).

58. Like the petitioners in *Harris v. Quinn*, Plaintiffs have “the right not to be forced to contribute [any moneys] to the union, with which they broadly disagree.” 134 S. Ct. 2618, 2640 (2014).

59. The nonmember fee provisions in this matter, while permitted by the aforementioned Pennsylvania laws, are nonetheless unconstitutional because they significantly infringe on nonmember teachers’ First Amendment rights, while serving no compelling state interest that cannot be achieved through means significantly less restrictive of associational freedoms.

60. Nonmember union fees infringe on the First Amendment rights of the Plaintiffs and other nonmember teachers because nonmember fee requirements compel nonmember employees to support speech against their will and to associate with the respective Unions against their will.

61. The Plaintiffs submit that *Abood* was wrongly decided and should be overturned by the Supreme Court and that the seizure of nonmember union fees are coerced political speech and association that is unconstitutional under the First Amendment. Among other things, there is no justification, much less a compelling one, for mandating that the nonmembers support the Unions, particularly the PSEA, which, upon information and belief, is one of the largest and most powerful and politically and ideological active organizations in Pennsylvania.

62. Even if there were compelling state interests sufficient to justify an infringement of constitutional freedoms, compelling nonmember fees from Plaintiffs is not a narrowly tailored manner of securing those interests.

63. Additionally, the inherently political nature of collective bargaining and its consequences in the Districts and Pennsylvania have further infringed on nonmembers' First Amendment rights, including Plaintiffs', to refrain from supporting public sector unions, including the Unions, in their organizational and collective bargaining activities. Therefore, the First Amendment forbids coercing any money from nonmembers to pay fees pursuant to nonmember fee provisions.

64. Under the Supremacy Clause contained in Article VI of the United States Constitution, the First Amendment, as applied to the Commonwealth of Pennsylvania through the Fourteenth Amendment, supersedes any inconsistent actions taken under color of state law, thus rendering *ultra vires* any public collective bargaining agreement, or a provision thereof, that would violate nonmembers' First Amendment rights.

### **COUNT I**

(Plaintiff Gregory J. Hartnett's claim against PSEA, Homer-Center Education Association, and Homer-Center School District for their violation of 42 U.S.C. § 1983 and the Constitution of the United States)

65. Plaintiff Hartnett re-alleges and incorporates by reference all allegations contained in the forgoing paragraphs of this First Amended Complaint as if fully set forth herein.

66. The First and Fourteenth Amendments to the United States Constitution (“Constitution”) protect the associational, free speech, and free choice rights of United States citizens.

67. Under color of state law, specifically, section 575, PERA, and the Public School Code (to the extent each allows for nonmember fees and fee provisions), defendants PSEA, Homer-Center Education Association, and Homer-Center School District have violated and continue to violate Plaintiff Hartnett’s associational, free speech, and free choice rights under the Constitution when they require in their collective bargaining agreements, and perform according to such requirements, that Plaintiff Hartnett financially support, as a condition of employment, a private entity or labor union, namely, the PSEA and its affiliates.

68. As a direct result of said defendants’ actual and threatened actions taken pursuant to section 575, PERA, and the Public School Code, and their collective bargaining agreement, Plaintiff Hartnett:

a. has been prevented from exercising his rights and privileges as a citizen of the United States to refrain from supporting the agenda and expenses of a private organization which he has not voluntarily chosen to support and with which he objects to support or associate;

b. has been deprived of his civil rights guaranteed to him under the statutes of the United States;

c. is in imminent danger of being deprived of his rights guaranteed to him under the Constitution and statutes of the United States and is in imminent danger of suffering monetary, equitable, and other damages; and

d. is in imminent danger of suffering irreparable harm, damage, and injury that is inherent in the violation of First and Fourteenth Amendment rights, for which there is no adequate remedy at law.

69. If not enjoined by this Court, said defendants and/or their agents will continue to effect the aforementioned deprivations and abridgments of Plaintiff Hartnett's Constitutional rights, thereby causing irreparable harm, damage, and injury for which there is no adequate remedy at law.

## **COUNT II**

(Plaintiff Elizabeth M. Galaska's claim against PSEA, Twin Valley Education Association, and Twin Valley School District for their violation of 42 U.S.C. § 1983 and the Constitution of the United States)

70. Plaintiff Galaska re-alleges and incorporates by reference all allegations contained in the forgoing paragraphs of this First Amended Complaint as if fully set forth herein.

71. The First and Fourteenth Amendments to the United States Constitution ("Constitution") protect the associational, free speech, and free choice rights of United States citizens.

72. Under color of state law, specifically, section 575, PERA, and the Public School Code (to the extent each allows for nonunion fees and fee provisions),

defendants PSEA, Twin Valley Education Association, and Twin Valley School District have violated and continue to violate Plaintiff Galaska's associational, free speech, and free choice rights under the Constitution when they require in their collective bargaining agreements, and perform according to such requirements, that Plaintiff Galaska financially support, as a condition of employment, a private entity or labor union, namely, the PSEA and its affiliates.

73. As a direct result of said defendants' actual and threatened actions taken pursuant to section 575, PERA, and the Public School Code, and their collective bargaining agreement, Plaintiff Galaska:

a. has been prevented from exercising her rights and privileges as a citizen of the United States to refrain from supporting the agenda and expenses of a private organization which she has not voluntarily chosen to support and with which she objects to support or associate;

b. has been deprived of her civil rights guaranteed to her under the statutes of the United States;

c. is in imminent danger of being deprived of her rights guaranteed to her under the Constitution and statutes of the United States and is in imminent danger of suffering monetary, equitable, and other damages; and

d. is in imminent danger of suffering irreparable harm, damage, and injury that is inherent in the violation of First and Fourteenth Amendment rights, for which there is no adequate remedy at law.

74. If not enjoined by this Court, said defendants and/or their agents will continue to effect the aforementioned deprivations and abridgments of Plaintiff Galaska's Constitutional rights, thereby causing irreparable harm, damage, and injury for which there is no adequate remedy at law.

### **COUNT III**

(Plaintiffs Robert G. Brough, Jr.'s and John M. Cress' claim against PSEA, Ellwood Area Education Association, and Ellwood City Area School District for their violation of 42 U.S.C. § 1983 and the Constitution of the United States)

75. Plaintiffs Brough and Cress re-allege and incorporate by reference all allegations contained in the forgoing paragraphs of this First Amended Complaint as if fully set forth herein.

76. The First and Fourteenth Amendments to the United States Constitution ("Constitution") protect the associational, free speech, and free choice rights of United States citizens.

77. Under color of state law, specifically, section 575, PERA, and the Public School Code (to the extent each allows for nonmember fees and fee provisions), defendants PSEA, Ellwood Area Education Association, and Ellwood City Area School District have violated and continue to violate Plaintiffs Brough's and Cress' associational, free speech, and free choice rights under the Constitution when they require in their collective bargaining agreements, and perform according to such requirements, that Plaintiffs Brough and Cress financially support, as a condition of employment, a private entity or labor union, namely, the PSEA and its affiliates.

78. As a direct result of said defendants' actual and threatened actions taken pursuant to section 575, PERA, and the Public School Code, and their collective bargaining agreement, Plaintiffs Brough and Cress:

a. have been prevented from exercising their rights and privileges as citizens of the United States to refrain from supporting the agenda and expenses of a private organization which they have not voluntarily chosen to support and with which they object to support or associate;

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

c. are in imminent danger of being deprived of their rights guaranteed to them under the Constitution and statutes of the United States and are in imminent danger of suffering monetary, equitable, and other damages; and

d. are in imminent danger of suffering irreparable harm, damage, and injury that is inherent in the violation of First and Fourteenth Amendment rights, for which there is no adequate remedy at law.

79. If not enjoined by this Court, said defendants and/or their agents will continue to effect the aforementioned deprivations and abridgments of Plaintiffs Brough's and Cress' Constitutional rights, thereby causing irreparable harm, damage, and injury for which there is no adequate remedy at law.

### PRAYER FOR RELIEF

80. WHEREFORE, Plaintiffs pray that this Court:

a. enter a judgment based upon actual, current, and *bona fide*

controversy between the parties as to the legal relations among them, declaring:

i. that to the extent they authorize nonmember fees (so-called “fair share fees”) and nonmember fee (so-called “fair share fee”) provisions in collective bargaining agreements, title 71, section 575 of the Pennsylvania Statutes, the Public Employe Relations Act, 43 P.S. §§ 1101.101–1101.2301, and the Public School Code of 1949, 24 P.S. §§ 1-101–27-2702, are unconstitutional on their face and as applied in that they impermissibly abridge Plaintiffs’ First and Fourteenth Amendment rights of association, free speech, and free choice by requiring payment of any fees to a union as a condition of employment;

ii. that the nonmember fee requirements contained in the collective bargaining agreements between the Defendants, respectively, impermissibly abridge Plaintiffs’ respective First and Fourteenth Amendment rights of association, free speech, and free choice by requiring Plaintiffs to pay PSEA and/or its affiliates a nonmember fee as a condition of employment;

b. enter a permanent injunction:

i. barring Defendants from seeking or requiring Plaintiffs to, as a condition of employment, pay any nonmember fees that support any union;

- ii. expunging from and barring Defendants from enforcing or relying upon any nonmember fee provision contained in their respective collective bargaining agreements that require nonmembers, as a condition of employment, to pay any fee to a union and barring the insertion of a nonmember fee requirement into any future collective bargaining agreements;
- c. award Plaintiffs nominal damages;
- d. award Plaintiffs such additional relief the Court deems just and proper; and
- e. enter a judgment awarding Plaintiffs their costs and reasonable attorneys' fees pursuant to 42 U.S.C. § 1988.

Respectfully submitted,

THE FAIRNESS CENTER

Dated: March 21, 2017

*s/ Nathan J. McGrath*

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### CERTIFICATE OF SERVICE

I, the undersigned, certify that on March 21, 2017, I electronically filed the foregoing *First Amended Complaint* with the Clerk of Court using the Court's CM/ECF system, which will send electronic notification of said filing to all counsel of record in this matter, who are ECF participants, and that constitutes service thereon pursuant to Local Rule 5.7.

Date: March 21, 2017

s/ Nathan J. McGrath

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