

July 24, 2024

Secretary Al Schmidt
Office of the Secretary of the Commonwealth of Pennsylvania
401 North Street, Rm 302
Harrisburg PA 17120

Francis T. Chardo
District Attorney
Dauphin County
Dauphin County Courthouse - 2nd Floor
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Pennsylvania Office of Attorney General
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Via email to: st-press@pa.gov, fchardo@dauphincounty.gov, and info@attorneygeneral.gov

Re: Report of violations of the Elections Code and/or Criminal Code by the Pennsylvania State Education Association, the Fund for Student Success, and the Democratic Governors Association.

Secretary Schmidt, Mr. Chardo, and Attorney General Henry,

I write to report significant, willful violations of the Election Code and/or Criminal Code by: (1) the Pennsylvania State Education Association (PSEA); (2) PSEA's Fund for Student Success; (3) certain PSEA/FSS officers and staff, including, but not limited to: Richard Askey, Aaron Chapin, Jeffrey Ney, James Vaughn, Joseph Howlett, Lahrsen Harper, and David Taylor ("the PSEA Officers"); and (4) the Democratic Governors Association.

During the 2022 general election, the above-named parties participated in the execution of an illegal scheme to transmit contributions totaling \$1,475,000 from the Pennsylvania State Education Association's (PSEA) general treasury to Shapiro for Pennsylvania, the authorized political committee of then-gubernatorial candidate Josh Shapiro. Specifically:

- The PSEA and the PSEA Officers violated the prohibitions in 25 P.S. § 3253 against corporations making "a contribution or expenditure in connection with the election of any candidate or for any political purpose whatever" and against "any officer or any director of any corporation" consenting to any such contribution or expenditure when, in May

2022, they made two contributions totaling \$1,475,000, drawn from the union’s general treasury, to the Fund for Student Success (FSS), a political organization operated by PSEA which, in turn, contributed the funds to the Democratic Governors Association (DGA) for the purpose of passing the money along to Shapiro for Pennsylvania.

- The FSS/PSEA Officers violated 25 P.S. §§ 3244, 3246, and 3247 by failing to register the FSS as a political committee and file campaign finance reports disclosing receipt of these and other contributions and expenditures with the Pennsylvania Department of State.
- The DGA, which is registered as a political committee with the Department of State, violated 25 P.S. § 3246 by failing to disclose receipt of the two contributions it received from the FSS on its campaign finance reports. Additionally, if DGA representatives knowingly submitted an incomplete report, they may have engaged in criminal perjury or written false statements in violation of 18 Pa.C.S.A. §§ 4902 and/or 4904.
- Some or all of the PSEA Officers:
 - committed theft by deception in violation of 18 Pa.C.S.A. § 3922(a) and engaged in fraudulent and deceptive business practices in violation of 19 Pa.C.S.A. § 4107 by claiming in PSEA communications and membership solicitations that it would not use dues for political contributions, while doing exactly that;
 - committed theft by receipt of stolen property in violation of 18 Pa.C.S.A. § 3925(a) by receiving and using money property known to have been obtained from its members through theft by deception;
 - committed theft by failure to make the required disposition of funds in violation of 18 Pa.C.S.A. § 3927(a) by using members’ dues to make illegal political contributions;
 - dealt in proceeds of unlawful activities in violation of 18 Pa.C.S.A. § 5111(a) by illegally funneling general treasury funds to support Shapiro for Pennsylvania in a manner designed to avoid state campaign finance disclosure rules and other federal transaction reporting requirements; and
 - as a result of the foregoing, also engaged in corrupt organization racketeering in violation of 18 Pa.C.S.A. § 911.

While these violations of Pennsylvania law may or may not have been coordinated, there is strong evidence suggesting that each individual party acted knowingly, if not intentionally, and the cumulative effect of their actions was to prevent any public record of these transactions from being filed with the Department of State that would identify the PSEA as the source of the illegal contributions to Shapiro for Pennsylvania.

I. Parties and Facts

1. The Pennsylvania State Education Association

Based in Harrisburg, PSEA is registered with the Pennsylvania Department of State as a nonprofit corporation¹ and with the Internal Revenue Service (IRS) as a nonprofit business

¹ Pennsylvania Department of State Entity No. 0000722212. A copy of PSEA’s most recent nonprofit corporation annual statement is available online at: <https://www.freedomfoundation.com/wp-content/uploads/2024/06/PSEA-PA-corporate-annual-statement.pdf>

league under 26 U.S.C. § 501(c)(6).² It describes itself as “...the largest and most influential public-sector union in Pennsylvania...”³ PSEA’s members consist of “...persons actively engaged in the profession of teaching or in other educational work” and “persons interested in advancing the cause of public education.”⁴ According to its most recent U.S. Department of Labor Form LM-2, PSEA had 137,087 active members and nearly \$110 million in total receipts in the 2022-23 academic year.⁵

During the 2022 election, PSEA enthusiastically supported Josh Shapiro’s campaign for governor and, just as if not more emphatically, opposed Doug Mastriano’s gubernatorial bid.

For example:

- In December of 2021, PSEA issued an early endorsement of Shapiro’s gubernatorial campaign for the 2022 Democratic primary election.⁶
- A page on PSEA’s website appealed for contributions to a PSEA political committee as a way to, “Help elect a a [sic] pro-public education governor!” in Shapiro.⁷
- As part of its 2022 “voter toolkit,” a page on PSEA’s website featured a glowing profile of Shapiro, describing him in part as, “a rare public servant willing to take on the status quo — ‘a blast of oxygen in the smoke-choked back rooms of quid-pro-quo Harrisburg.’”⁸
- The September and November 2022 issues of the union’s member newsletter, *PSEA Voice* — the final two issues published before that year’s general election — focused extensively, even predominantly, on urging PSEA members and family to vote for Shapiro and against Mastriano, his Republican rival.
 - In the September issue, 13 pages (including the cover) of the 32-page publication were devoted to promoting Shapiro’s candidacy and/or opposing Mastriano’s.⁹
 - In the November issue, 16 of the first 18 pages of the 32-page publication (including the cover) promoted Shapiro’s candidacy and/or disparaged Mastriano.¹⁰

² Pennsylvania State Education Association. IRS Form 990 tax return for the 2021-22 academic year. https://apps.irs.gov/pub/epostcard/cor/230961125_202208_990O_2023060521366278.pdf

³ Pennsylvania State Education Association. “What exactly is PSEA?” <https://www.psea.org/about-psea/benefits-of-membership/>

⁴ Pennsylvania State Education Association. “Constitution and Bylaws as amended May 2018.” Article III, paragraph 2. <https://www.freedomfoundation.com/wp-content/uploads/2024/04/PSEA-Constitution-and-Bylaws-as-amended-May-2018.pdf>

⁵ Pennsylvania State Education Association, U.S. Department of Labor Form LM-2. November 22, 2023. <https://olmsapps.dol.gov/query/orgReport.do?rptId=875205&rptForm=LM2Form>

⁶ Pennsylvania State Education Association. “PSEA recommends Josh Shapiro in Democratic gubernatorial primary.” December 21, 2021. <https://www.psea.org/news--events/newsstand/press-center/news-release---december-21-2021/>

⁷ Pennsylvania State Education Association. “Help elect a a [sic] pro-public education governor!” <https://www.psea.org/issues-action/action-center/psea-pace---shapiro/>

⁸ Pennsylvania State Education Association. “Josh Shapiro.” <https://www.psea.org/issues-action/action-center/voter-toolkit/election-2022/josh-shapiro>

⁹ Pennsylvania State Education Association. *PSEA Voice*, September 2022. <https://www.pageturnpro.com/PSEA/105982-The-VOICE-September-2022/sdefault.html>

¹⁰ Pennsylvania State Education Association. *PSEA Voice*, November 2022. <https://www.pageturnpro.com/PSEA/106393-The-VOICE-November-2022/sdefault.html>

Shapiro was the only gubernatorial candidate endorsed by the PSEA who was running for election in 2022.

In addition to communicating its political endorsements internally to its members, PSEA seeks to advance its political preferences externally through the operation of two political funds: PSEA-PACE and the Fund for Student Success.¹¹

2. PSEA-PACE

PSEA's most visible political fund is PACE. In materials posted on its website, PSEA describes PACE as, "PSEA's political action committee for education. Through PSEA members' voluntary contributions, PACE elects pro-public education candidates who influence your job and your school — from governor to local school boards."¹²

PSEA-PACE is registered with the IRS as a "political organization" pursuant to 26 U.S.C. § 527,¹³ the purpose of which is to support and/or oppose candidates for office.¹⁴ While it has registered with the IRS, PSEA-PACE has elected not to disclose its contributions or expenditures to the IRS on Forms 8872 and to instead disclose its financial transactions to the Pennsylvania Department of State, with which it is registered as a political committee.¹⁵

Its campaign finance reports indicate that PSEA-PACE is funded mostly or exclusively by contributions received from individuals.¹⁶ Indeed, PSEA regularly solicits its members for

¹¹ Item 69 of PSEA's U.S. Department of Labor Form LM-2 for the 2022-23 academic year notes, "The Association has a political action committee (PAC), PSEA-PACE for State Elections. The PAC files returns with the Pennsylvania Department of State and the Internal Revenue Service. The Association also has a Section 527 organization, Fund for Student Success (Fund). The Fund files returns with the Internal Revenue Service." Available online at: <https://olmsapps.dol.gov/query/orgReport.do?rptId=875205&rptForm=LM2Form> Similarly, Schedule R, Part II of PSEA's Internal Revenue Service Form 990 tax return covering the 2021-22 academic year claims both "PSEA-PACE for State Elections" and the "Fund for Student Success" as "related tax-exempt organizations." Available online at:

https://apps.irs.gov/pub/epostcard/cor/230961125_202208_990O_2023060521366278.pdf

¹² Pennsylvania State Education Association. "What do elections have to do with your job & your school?"

https://www.psea.org/globalassets/issues--action/pace/psea_why politics_infographic-informational.pdf

Pennsylvania State Education Association. "What can you do with just \$2?"

https://www.psea.org/globalassets/issues--action/pace/psea_why politics_infographic-campaign-002.pdf

¹³ PSEA-PACE for State Elections. Internal Revenue Service Form 8871. April 3, 2024.

<https://forms.irs.gov/app/pod/basicSearch/downloadFile?formId=125263&formType=e8871>

¹⁴ 26 U.S.C. § 527(e)(1) defines "political organization" as, "a party, committee, association, fund, or other organization (whether or not incorporated) organized and operated primarily for the purpose of directly or indirectly accepting contributions or making expenditures, or both, for an exempt function." In turn, § 527(e)(2) defines "exempt function" as, "the function of influencing or attempting to influence the selection, nomination, election, or appointment of any individual to any Federal, State, or local public office or office in a political organization, or the election of Presidential or Vice-Presidential electors, whether or not such individual or electors are selected, nominated, elected, or appointed."

¹⁵ Committee ID no. 7900366. Pennsylvania Department of State. "Committee Information - PSEA-PACE FOR STATE ELECTIONS." <https://www.pavoterservices.pa.gov/ElectionInfo/CommitteeInfo.aspx?ID=93>

¹⁶ PSEA-PACE for State Elections. Pennsylvania Department of State Campaign Finance Form. Filed March 11, 2024.

<https://www.campaignfinanceonline.pa.gov/Pages/ShowReport.aspx?ReportID=401635&isStatement=0&is24Hour=0>

contributions to PSEA-PACE above and beyond their membership dues.¹⁷

In making its pitch to members for PACE contributions, PSEA regularly notes — correctly — that it cannot use members’ dues to contribute to political parties or candidates and implies — incorrectly — that the union relies on members’ voluntary contributions to PACE in order to “amass the financial resources necessary to elect pro-public education candidates and **hold all elected officials accountable.**” (Emphasis original).¹⁸

- During at least the 2018-19 through 2022-23 school years, PSEA’s membership enrollment forms for both teachers and education support professionals contained the following statement: “No dues dollars may be given to political candidates.”¹⁹
- A document posted on PSEA’s website entitled, “Questions & Answers about Organizing,” states, “PSEA cannot use dues dollars for direct or in-kind contributions to any candidates or political parties. PSEA cannot use dues dollars on activities or communications on behalf of any candidates that go to the public.”²⁰
- The multiple pages on PSEA’s website via which members can contribute to PACE note that, “Contributions to PSEA-PACE are voluntary and members have the right to refuse to contribute without reprisal... No dues dollars can be given to political candidates.”²¹
- An article posted on PSEA’s website from March 2018 entitled, “Electoral politics: ‘Party affiliation is secondary,’” quoted then-PSEA-PACE chair Joe Scheuermann on the importance of contributing to PACE:

¹⁷ Pennsylvania State Education Association. “Contribute to PSEA-PACE.” <https://www.psea.org/issues-action/action-center/psea-pace/>

¹⁸ Pennsylvania State Education Association. “What can you do with just \$2?” https://www.psea.org/globalassets/issues--action/pace/psea_why politics_infographic-campaign-002.pdf

¹⁹ PSEA 2018-2019 ESP Enrollment Form: <https://www.psea.org/globalassets/about-psea/files/espenrollmentform.pdf>

PSEA 2019-2020 ESP Enrollment Form: <https://www.psea.org/globalassets/about-psea/join-psea/2019-2020-esp-enrollment-form.pdf>

PSEA 2020-2021 ESP Enrollment Form: <https://www.psea.org/globalassets/about-psea/join-psea/psea---2020-esp-enrollment-form.pdf>

PSEA 2021-2022 ESP Enrollment Form: <https://www.psea.org/globalassets/about-psea/join-psea/psea---2021-esp-enrollment-form.pdf>

PSEA 2022-2023 ESP Enrollment Form: <https://www.psea.org/globalassets/about-psea/files/psea---2022-2023-esp-enrollment-form.pdf>

PSEA 2018-2019 EA Enrollment Form: <https://www.psea.org/globalassets/about-psea/files/eamembershipform.pdf>

PSEA 2019-2020 EA Enrollment Form: <https://www.psea.org/globalassets/about-psea/join-psea/2019-2020--ea-enrollment-form.pdf>

PSEA 2020-2021 EA Enrollment Form: <https://www.psea.org/globalassets/about-psea/join-psea/psea---2020-ea-enrollment-form.pdf>

PSEA 2021-2022 EA Enrollment Form: <https://www.psea.org/globalassets/about-psea/join-psea/psea---2021-ea-enrollment-form.pdf>

PSEA 2022-2023 EA Enrollment Form: <https://www.psea.org/globalassets/about-psea/files/psea---2022-2023-ea-enrollment-form.pdf>

²⁰ Pennsylvania State Education Association. “Questions & Answers About Organizing.”

<https://www.psea.org/globalassets/regions/westernregion/organizingqa.pdf>

²¹ Pennsylvania State Education Association. “Contribute to PSEA-PACE.” <https://www.psea.org/give>
<https://www.psea.org/issues-action/action-center/psea-pace/>

“Scheuermann noted that raising money through PACE is critical given that many of the attacks on public education are backed by billionaires ‘who can write a check bigger than what we can raise collectively.’ He emphasized that no members’ dues are used to fund political candidates.”²²

The process by which PSEA-PACE funds candidates for office is explained in Schedule I, Part IV, of its IRS Form 990 tax return for 2020:

“The PSEA-PACE board of directors is responsible for interviewing and recommending candidates for each election cycle. The recommendation process is a bipartisan approach, emphasizing education, health care, and labor issues as well as the PSEA-PACE mission. Contributions are made in support of PSEA-PACE recommended candidates or the candidate’s committee for statewide, legislative, and local offices... Contributions are also made to political action committees at the discretion of the board. Contributions to candidates, candidate’s committees, and political action committees are made in compliance with applicable state and federal laws and may include cover letters specifying the purpose of the contribution. PSEA-PACE for state elections also provides grants and other forms of assistance to various non-profit organizations. Potential organizations are evaluated by the PSEA-PACE board of directors and a determination is made regarding the grant amount. Each grant check is accompanied by a cover letter indicating the purpose of the grant and the use of the funds. The grantee is responsible for maintaining adequate records of the grant expenditures and activities and must allow PSEA-PACE access to such records for verification purposes, if deemed necessary.”²³

(Emphasis added).

According to campaign finance reports filed with the Pennsylvania Department of State, PSEA-PACE made eight contributions to Shapiro for Pennsylvania²⁴ — the authorized political committee of Josh D. Shapiro, then a candidate for Pennsylvania governor²⁵ — in 2021-22 totaling more than \$800,000.

²² Pennsylvania State Education Association. “Electoral politics: ‘Party affiliation is secondary’” *PSEA Voice*. March 2018. <https://www.psea.org/news--events/Publications/voice-march-2018/electoral-politics-party-affiliation-is-secondary/>

²³ PSEA-PACE for State Elections. Internal Revenue Service Form 990 for 2020.

<https://forms.irs.gov/app/pod/basicSearch/downloadFile?formId=232116856-990POL-18&formType=p990>

²⁴ Committee ID no. 20160016. Pennsylvania Department of State. “Committee Information - SHAPIRO, JOSH FOR PENNSYLVANIA.” <https://www.pavoterservices.pa.gov/ElectionInfo/CommitteeInfo.aspx?ID=11696>

²⁵ Candidate ID no. 2022C0206. Pennsylvania Department of State. “Candidate Information - SHAPIRO, JOSHUA D.” <https://www.pavoterservices.pa.gov/ElectionInfo/CandidateInfo.aspx?ID=19631>

PSEA-PACE Contributions to Shapiro for Pennsylvania						
Contributor	Recipient	Amount	Type	Date	Source	Report Link
PSEA-PACE	Shapiro for Pennsylvania	\$25,000	Cash	9/2/2021	PACE CFR	https://www.campaignfinanceonline.pa.gov/Pages/ShowReport.aspx?ReportID=386821&isStatement=0&is24Hour=0
				9/22/2021	Shapiro CFR	https://www.campaignfinanceonline.pa.gov/Pages/ShowReport.aspx?ReportID=364609&isStatement=0&is24Hour=0
PSEA-PACE	Shapiro for Pennsylvania	\$25,000	Cash	10/15/2021	PACE CFR	https://www.campaignfinanceonline.pa.gov/Pages/ShowReport.aspx?ReportID=355632&isStatement=0&is24Hour=0
				10/15/2021	Shapiro CFR	https://www.campaignfinanceonline.pa.gov/Pages/ShowReport.aspx?ReportID=364609&isStatement=0&is24Hour=0
PSEA-PACE	Shapiro for Pennsylvania	\$350,000	Cash	2/3/2022	PACE CFR	https://www.campaignfinanceonline.pa.gov/Pages/ShowReport.aspx?ReportID=366807&isStatement=0&is24Hour=0
				3/1/2022	Shapiro CFR	https://www.campaignfinanceonline.pa.gov/Pages/ShowReport.aspx?ReportID=366906&isStatement=0&is24Hour=0
PSEA-PACE	Shapiro for Pennsylvania	\$31,566	In-kind	6/17/2022	PACE CFR	https://www.campaignfinanceonline.pa.gov/Pages/ShowReport.aspx?ReportID=374637&isStatement=0&is24Hour=0
				6/13/2022	Shapiro CFR	https://www.campaignfinanceonline.pa.gov/Pages/ShowReport.aspx?ReportID=374675&isStatement=0&is24Hour=0
PSEA-PACE	Shapiro for Pennsylvania	\$100,000	Cash	6/17/2022	PACE CFR	https://www.campaignfinanceonline.pa.gov/Pages/ShowReport.aspx?ReportID=374637&isStatement=0&is24Hour=0
				6/22/2022	Shapiro CFR	https://www.campaignfinanceonline.pa.gov/Pages/ShowReport.aspx?ReportID=374675&isStatement=0&is24Hour=0
PSEA-PACE	Shapiro for Pennsylvania	\$25,000	Cash	7/7/2022	PACE CFR	https://www.campaignfinanceonline.pa.gov/Pages/ShowReport.aspx?ReportID=374637&isStatement=0&is24Hour=0
				8/10/2022	Shapiro CFR	https://www.campaignfinanceonline.pa.gov/Pages/ShowReport.aspx?ReportID=374675&isStatement=0&is24Hour=0
PSEA-PACE	Shapiro for Pennsylvania	\$125,000	Cash	10/26/2022	PACE CFR	https://www.campaignfinanceonline.pa.gov/Pages/ShowReport.aspx?ReportID=379993&isStatement=0&is24Hour=0

				10/27/2022	Shapiro CFR	https://www.campaignfinanceonline.pa.gov/Pages/ShowReport.aspx?ReportID=380579&isStatement=0&is24Hour=0
PSEA-PACE	Shapiro for Pennsylvania	\$125,000	Cash	11/3/2022	PACE CFR	https://www.campaignfinanceonline.pa.gov/Pages/ShowReport.aspx?ReportID=379993&isStatement=0&is24Hour=0
				11/9/2022	Shapiro CFR	https://www.campaignfinanceonline.pa.gov/Pages/ShowReport.aspx?ReportID=380579&isStatement=0&is24Hour=0
Total		\$806,566				

3. The Fund for Student Success

Despite PSEA’s knowledge that it cannot legally use members’ dues to contribute to political candidates and its representation that the voluntarily-funded PACE is *the only* vehicle the union uses to engage in electoral politics, PSEA in fact maintains a second political committee — the Fund for Student Success (FSS) — that is both funded by PSEA’s general treasury and far less visible to PSEA’s members.

The only reference to the FSS on PSEA’s website is found in a brief article from the September 2018 edition of *PSEA Voice*, the union’s membership newsletter. The article states:

“In July, the PSEA Board of Directors voted to approve the Fund for Student Success, a new PSEA account that will allow the Association to better communicate with the public about the needs of our students, schools, communities, and professions.

The new account provides PSEA greater flexibility to share news and information with friends, families, and neighbors related to issues, policies, elected officials, and pro-public education candidates.

The Fund for Student Success will not – and legally cannot – provide campaign contributions to candidates, elected officials, or campaign committees. PSEA members can support pro-public education candidates and elected officials through their continued support of PSEA-PACE.”²⁶

(Emphasis added).

Like PSEA-PACE, the FSS is registered with the IRS as a “political organization” under 26 U.S.C. § 527.²⁷ The FSS’ Form 990 tax return for 2021 explains that it was “established by” the PSEA and that its “governance structure consists of a chairperson and treasurer appointed by the

²⁶ Pennsylvania State Education Association. “PSEA starts Fund for Student Success.” *PSEA Voice*, September 2018. https://www.psea.org/globalassets/publications/voice/september-2018/01-32pseavoic0918_web.pdf

²⁷ Fund for Student Success. Internal Revenue Service Form 8871, December 6, 2022. <https://forms.irs.gov/app/pod/basicSearch/downloadFile?formId=118538&formType=e8871>

PSEA officers in consultation with the PSEA executive director.”²⁸ Its Form 8871 filings also indicate that the FSS is “connected” to the PSEA and that the only persons associated with the FSS in an official capacity are PSEA officials.²⁹

Just like PSEA-PACE, the primary function of the FSS is, by definition, to advocate for the election or defeat of political candidates. Unlike PSEA-PACE, however, the FSS is *not* registered as a political committee with the Pennsylvania Department of State, instead disclosing its contributions and expenditures only to the IRS on Forms 8872, and is funded by PSEA’s general treasury.³⁰

PSEA’s annual Forms LM-2 filed with the U.S. Department of Labor disclose nine transfers totaling \$3,825,000 from the union’s general treasury to the FSS from its creation in 2018 through August 31, 2023, the last day of the reporting period covered by PSEA’s most recent Form LM-2. The contributions are itemized under Schedule 16, “Political Activities and Lobbying.”³¹

²⁸ Fund for Student Success. Internal Revenue Service Form 990, 2021. <https://www.freedomfoundation.com/wp-content/uploads/2024/04/PSEA-Fund-for-Student-Success-IRS-Form-990-2021.pdf>

²⁹ The FSS’ most recent Form 8871 identifies Phyllis Heverly Fleisher as “treasurer,” “custodian of records,” and the “authorized official” who signed and submitted the document. David Taylor is listed as the FSS’ “chair,” and Lahrsen Harper is identified as the “contact person.”

<https://forms.irs.gov/app/pod/basicSearch/downloadFile?formId=118538&formType=e8871>

PSEA’s most recent Form LM-2 identifies Fleisher as the union’s assistant executive director, Taylor as a member of the PSEA board of directors, and Harper as assistant director of administration.

<https://olmsapps.dol.gov/query/orgReport.do?rptId=875205&rptForm=LM2Form>

³⁰ It’s possible that some funds in the FSS originate from third parties and pass through PSEA’s general fund on their way to the FSS. For instance, the annual Forms LM-2 filed with the U.S. Department of Labor by both the PSEA and its Washington, D.C.-based parent affiliate, the National Education Association, indicate that the NEA contributed \$500,000 to PSEA on July 25, 2022. The NEA’s LM-2 records the expenditure on Schedule 16 – Political Activities and Lobbying, describing its purpose as “political research and polling.” See National Education Association, U.S. Department of Labor Form LM-2, November 29, 2022. Available online at:

<https://olmsapps.dol.gov/query/orgReport.do?rptId=849363&rptForm=LM2Form> On its Form LM-2, the PSEA reported receiving the funds under Schedule 14 – Other Receipts, describing the “purpose” as “2022 battleground grant.” See Pennsylvania State Education Association, U.S. Department of Labor Form LM-2, November 22, 2022. Available online at: <https://olmsapps.dol.gov/query/orgReport.do?rptId=849155&rptForm=LM2Form>

Given the size and obviously political nature of the NEA’s contribution, it’s possible that some or all of the funds were deposited by PSEA in the FSS.

³¹ According to DOL, Schedule 16 is to be used by the filing labor organization to disclose,

“...the labor organization's direct and indirect disbursements to all entities and individuals during the reporting period associated with political disbursements or contributions in money. Also report the labor organization's direct and indirect disbursements to all entities and individuals during the reporting period associated with dealing with the executive and legislative branches of the Federal, state, and local governments and with independent agencies and staffs to advance the passage or defeat of existing or potential laws or the promulgation or any other action with respect to rules or regulations (including litigation expenses). It does not matter whether the lobbying attempt succeeds. A political disbursement or contribution is one that is intended to influence the selection, nomination, election, or appointment of anyone to a Federal, state, or local executive, legislative or judicial public office, or office in a political organization, or the election of Presidential or Vice Presidential electors, and support for or opposition to ballot referenda. It does not matter whether the attempt succeeds. Include disbursements for communications with members (or agency fee paying nonmembers) and their families for registration, get-

Similarly, the publicly available Forms 8872 filed with the IRS by the FSS — which cover April 1, 2020, through December 31, 2023 — disclose receipt of eight contributions from PSEA totaling \$3,325,000. The FSS reported no contributions from any source other than PSEA.

PSEA Contributions to the Fund for Student Success					
Contributor	Recipient	Amount	Date	Source	Report Link
PSEA	Fund for Student Success	\$266,605	8/29/2018	PSEA LM-2	https://olmsapps.dol.gov/query/orgReport.do?rptId=685335&rptForm=LM2Form
PSEA	Fund for Student Success	\$233,395	9/19/2018	PSEA LM-2	https://olmsapps.dol.gov/query/orgReport.do?rptId=711939&rptForm=LM2Form
PSEA	Fund for Student Success	\$500,000	8/2/2019	PSEA LM-2	https://olmsapps.dol.gov/query/orgReport.do?rptId=711939&rptForm=LM2Form
PSEA	Fund for Student Success	\$800,000	6/30/2020	PSEA LM-2	https://olmsapps.dol.gov/query/orgReport.do?rptId=737881&rptForm=LM2Form
				FSS 8872	https://forms.irs.gov/app/pod/basicSearch/downloadFile?formId=117828&formType=e8872
PSEA	Fund for Student Success	\$925,000	6/30/2021	PSEA LM-2	https://olmsapps.dol.gov/query/orgReport.do?rptId=788496&rptForm=LM2Form
				FSS IRS 8872	https://forms.irs.gov/app/pod/basicSearch/downloadFile?formId=125219&formType=e8872
PSEA	Fund for Student Success	\$550,000	6/30/2022	PSEA LM-2	https://olmsapps.dol.gov/query/orgReport.do?rptId=849155&rptForm=LM2Form
			5/27/2022	FSS IRS 8872	https://forms.irs.gov/app/pod/basicSearch/downloadFile?formId=132981&formType=e8872
PSEA	Fund for Student Success	\$250,000	9/1/2022	PSEA LM-2	https://olmsapps.dol.gov/query/orgReport.do?rptId=875205&rptForm=LM2Form
				FSS IRS 8872	https://forms.irs.gov/app/pod/basicSearch/downloadFile?formId=135244&formType=e8872
PSEA	Fund for Student Success	\$50,000	10/17/2022	PSEA LM-2	https://olmsapps.dol.gov/query/orgReport.do?rptId=875205&rptForm=LM2Form
				FSS IRS 8872	https://forms.irs.gov/app/pod/basicSearch/downloadFile?formId=136342&formType=e8872
PSEA		\$250,000	6/15/2023	PSEA LM-2	https://olmsapps.dol.gov/query/orgReport.do?rptId=875205&rptForm=LM2Form

out-the-vote and voter education campaigns, the expenses of establishing, administering and soliciting contributions to union segregated political funds (or PACs), disbursements to political organizations as defined by the IRS in 26 U.S.C. 527, and other political disbursements.”

(Emphasis added).

U.S. Department of Labor, Office of Labor-Management Standards. “Instructions for Form LM-2 Labor Organization Annual Report.”

https://www.dol.gov/sites/dolgov/files/olms/regs/compliance/GPEA_Forms/2020/efile/LM-2_instructionsRevised2020.pdf

	Fund for Student Success			FSS IRS 8872	https://forms.irs.gov/app/pod/basicSearch/downloadFile?formId=140503&formType=e8872
PSEA	Fund for Student Success	\$100,000	10/16/2023	FSS IRS 8872	https://forms.irs.gov/app/pod/basicSearch/downloadFile?formId=143167&formType=e8872
PSEA	Fund for Student Success	\$400,000	10/24/2023	FSS IRS 8872	https://forms.irs.gov/app/pod/basicSearch/downloadFile?formId=143167&formType=e8872
Total		\$4,325,000			

In turn, the Forms 8872 filed with the IRS by the FSS disclose 10 expenditures totaling \$3.3 million to three different entities — PA Alliance Action, Pennsylvanians for Judicial Fairness, and the Democratic Governors Association — including:

- Five contributions to PA Alliance Action totaling \$1.5 million. According to its IRS Form 990 tax return, PA Alliance Action is a tax-exempt social welfare organization under 26 U.S.C. § 501(c)(4).³² According to campaign finance records maintained by the Pennsylvania Department of State, PA Alliance Action’s political expenditures from 2020-24 consisted exclusively of large contributions to seven independent expenditure committees:
 - Agenda PAC³³
 - Casa in Action PAC³⁴
 - Conservation Voters of PA Victory Fund³⁵
 - Environment America Action Fund³⁶
 - Pennsylvania Fund for Change³⁷
 - Pennsylvanians for Judicial Fairness³⁸
 - Put Pennsylvania First³⁹
- Two contributions to Pennsylvanians for Judicial Fairness, an independent expenditure committee,⁴⁰ totaling \$325,000.

³² PA Alliance Action. Internal Revenue Service Form 990, 2021.

https://apps.irs.gov/pub/epostcard/cor/823537729_202112_9900_2023050821178186.pdf

³³ Committee ID no. 20220464. Pennsylvania Department of State. “Committee Information - AGENDA PAC.”

<https://www.pavoterservices.pa.gov/ElectionInfo/CommitteeInfo.aspx?ID=20774>

³⁴ Committee ID no. 20180420. Pennsylvania Department of State. “Committee Information - CASA IN ACTION PAC.” <https://www.pavoterservices.pa.gov/ElectionInfo/CommitteeInfo.aspx?ID=15858>

³⁵ Committee ID no. 20180324. Pennsylvania Department of State. “Committee Information - CONSERVATION VOTERS OF PA VICTORY FUND.”

<https://www.pavoterservices.pa.gov/ElectionInfo/CommitteeInfo.aspx?ID=15762>

³⁶ Committee ID no. 20200249. Pennsylvania Department of State. “Committee Information - ENVIRONMENT AMERICA ACTION FUND.” <https://www.pavoterservices.pa.gov/ElectionInfo/CommitteeInfo.aspx?ID=19710>

³⁷ Committee ID no. 20180167. Pennsylvania Department of State. “Committee Information - PENNSYLVANIA FUND FOR CHANGE.” <https://www.pavoterservices.pa.gov/ElectionInfo/CommitteeInfo.aspx?ID=14606>

³⁸ Committee ID no. 20230157. Pennsylvania Department of State. “Committee Information - PENNSYLVANIANS FOR JUDICIAL FAIRNESS.” <https://www.pavoterservices.pa.gov/ElectionInfo/CommitteeInfo.aspx?ID=21120>

³⁹ Committee ID no. 20220272. Pennsylvania Department of State. “Committee Information - PUT PENNSYLVANIA FIRST.” <https://www.pavoterservices.pa.gov/ElectionInfo/CommitteeInfo.aspx?ID=20582>

⁴⁰ Committee ID no. 20230157. Pennsylvania Department of State. “Committee Information - PENNSYLVANIANS FOR JUDICIAL FAIRNESS.” <https://www.pavoterservices.pa.gov/ElectionInfo/CommitteeInfo.aspx?ID=21120>

- Two contributions to the Democratic Governors Association (DGA) in May 2022 totaling \$1,475,000. Unlike the other recipients of contributions from the FSS, the DGA is *not* registered as an independent expenditure committee and does, in fact, make contributions directly to candidate campaigns.

Fund for Student Success Expenditures - IRS 8872 Filings					
Contributor	Recipient	Amount	Date	Source	Report Link
Fund for Student Success	PA Alliance Action	\$250,000	5/29/2020	FSS IRS 8872	https://forms.irs.gov/app/pod/basicSearch/downloadFile?formId=117828&formType=e8872
Fund for Student Success	PA Alliance Action	\$750,000	9/9/2020	FSS IRS 8872	https://forms.irs.gov/app/pod/basicSearch/downloadFile?formId=119996&formType=e8872
Fund for Student Success	PA Alliance Action	\$200,000	10/14/2020	FSS IRS 8872	https://forms.irs.gov/app/pod/basicSearch/downloadFile?formId=120316&formType=e8872
Fund for Student Success	Democratic Governors Association	\$925,000	5/16/2022	FSS IRS 8872	https://forms.irs.gov/app/pod/basicSearch/downloadFile?formId=132981&formType=e8872
Fund for Student Success	Democratic Governors Association	\$550,000	5/31/2022	FSS IRS 8872	https://forms.irs.gov/app/pod/basicSearch/downloadFile?formId=132981&formType=e8872
Fund for Student Success	PA Alliance Action	\$250,000	9/6/2022	FSS IRS 8872	https://forms.irs.gov/app/pod/basicSearch/downloadFile?formId=135244&formType=e8872
Fund for Student Success	PA Alliance Action	\$50,000	10/18/2022	FSS IRS 8872	https://forms.irs.gov/app/pod/basicSearch/downloadFile?formId=136342&formType=e8872
Fund for Student Success	Pennsylvanians for Judicial Fairness	\$250,000	7/5/2023	FSS IRS 8872	https://forms.irs.gov/app/pod/basicSearch/downloadFile?formId=143167&formType=e8872
Fund for Student Success	Pennsylvanians for Judicial Fairness	\$75,000	10/16/2023	FSS IRS 8872	https://forms.irs.gov/app/pod/basicSearch/downloadFile?formId=143167&formType=e8872
Total		\$3,300,000			

4. The Democratic Governors Association

The DGA describes itself as “the only [political] organization dedicated to electing Democratic governors and candidates...”⁴¹ The DGA is registered both with the IRS as a “political organization” under 26 U.S.C. § 527⁴² and with the Pennsylvania Department of State as a

⁴¹ Democratic Governors Association. “About Us.” <https://democraticgovernors.org/about/>
Additionally, the DGA’s IRS Form 8871 indicates that its purpose is to, “Promote Democratic policies and support the election of Democratic Governors and other non-federal candidates. DGA is a single entity that registers and files reports as a state political action committee under applicable state law.” Democrat Governors Association. Internal Revenue Service Form 8871, January 30, 2024.

<https://forms.irs.gov/app/pod/basicSearch/downloadFile?formId=124139&formType=e8871>

⁴² Democrat Governors Association. Internal Revenue Service Form 8871, January 30, 2024.
<https://forms.irs.gov/app/pod/basicSearch/downloadFile?formId=124139&formType=e8871>

“political action committee” pursuant to 25 P.S. § 3241.⁴³

While the DGA generally files reports of its contributions and expenditures with both authorities, it disclosed the two contributions it received from the FSS in May 2022 *only* on the Forms 8872 it filed with the IRS; the applicable campaign finance report the DGA filed with the Pennsylvania Department of State⁴⁴ — which disclosed hundreds of contributions totaling nearly \$1.4 million — omitted receipt of these two particular contributions.⁴⁵

Contributions Received by the DGA from The FSS - IRS 8872 Filings					
Contributor	Recipient	Amount	Date	Source	Report Link
Fund for Student Success	Democratic Governors Association	\$925,000	5/17/2022	DGA IRS 8872	https://forms.irs.gov/app/pod/basicSearch/downloadFile?formId=133368&formType=e8872
Fund for Student Success	Democratic Governors Association	\$550,000	5/31/2022	DGA IRS 8872	https://forms.irs.gov/app/pod/basicSearch/downloadFile?formId=133368&formType=e8872
Total		\$1,475,000			

Receipt of the nearly \$1.5 million from the FSS prompted an almost immediate flow of contributions from the DGA to Shapiro for Pennsylvania.⁴⁶ Prior to May 2022, the DGA had made only a single, in-kind contribution of just \$47,500 to Shapiro for Pennsylvania on March 30, 2022. That changed, however, after the FSS started writing checks to the DGA.

The DGA received the first cash contribution — \$925,000 — from the FSS on May 17, 2022, the day of Shapiro’s victory in the uncontested Democratic primary election. It received another \$550,000 from the FSS on May 31, 2022. The next day, the DGA contributed \$500,000 to Shapiro for Pennsylvania, the first of four major contributions that would total \$5.6 million.

⁴³ Committee ID no. 2002268. Pennsylvania Department of State. “Committee Information - DEM GOVERNORS’ ASSOC – PA.” <https://www.pavoterservices.pa.gov/ElectionInfo/CommitteeInfo.aspx?ID=1541>

⁴⁴ The DGA’s “30 day post-primary” campaign finance report covering the reporting period from May 3, 2022, through June 6, 2022, is available from the Pennsylvania Department of State here: <https://www.campaignfinanceonline.pa.gov/Pages/ShowReport.aspx?ReportID=373264&isStatement=0&is24Hour=0>

⁴⁵ It’s worth noting that, because of the failure of the FSS to register as a political committee and report its contributions and expenditures, Pennsylvania campaign finance records do not reflect the PSEA’s millions of dollars in contributions to the FSS using members’ dues. Further, the FSS’ failure to register as a political committee and the failure of the DGA to disclose receipt of the two contributions it received from the FSS in May 2022 together mean that *there is no record of the nearly \$1.5 million the FSS contributed to the DGA anywhere in the Department of State’s publicly available campaign finance records*. Thus, to determine the full extent of PSEA’s involvement in Pennsylvania elections, PSEA members or other interested Pennsylvanians would have to consult two separate sets of *federal* records: (1) PSEA’s Form LM-2 filings with the DOL or the FSS’ Form 8872 filings with the IRS, *and* (2) the DGA’s Form 8872 filings with the IRS.

⁴⁶ Committee ID no. 20160016. Pennsylvania Department of State. “Committee Information - SHAPIRO, JOSH FOR PENNSYLVANIA.” <https://www.pavoterservices.pa.gov/ElectionInfo/CommitteeInfo.aspx?ID=11696>

DGA Contributions to Shapiro for Pennsylvania						
Contributor	Recipient	Amount	Type	Date	Source	Link
Democratic Governors Association	Shapiro for Pennsylvania	\$47,500	In-kind	3/30/2022	Shapiro CFR	https://www.campaignfinanceonline.pa.gov/Pages/ShowReport.aspx?ReportID=368922&isStatement=0&is24Hour=0
					DGA CFR	https://www.campaignfinanceonline.pa.gov/Pages/ShowReport.aspx?ReportID=368605&isStatement=0&is24Hour=0
					DGA IRS 8872	https://forms.irs.gov/app/pod/basicSearch/downloadFile?formId=130793&formType=e8872
Democratic Governors Association	Shapiro for Pennsylvania	\$500,000	Cash	6/1/2022	Shapiro CFR	https://www.campaignfinanceonline.pa.gov/Pages/ShowReport.aspx?ReportID=372436&isStatement=0&is24Hour=0
					DGA CFR	https://www.campaignfinanceonline.pa.gov/Pages/ShowReport.aspx?ReportID=373264&isStatement=0&is24Hour=0
					DGA IRS 8872	https://forms.irs.gov/app/pod/basicSearch/downloadFile?formId=133368&formType=e8872
Democratic Governors Association	Shapiro for Pennsylvania	\$2,500,000	Cash	7/13/2022	Shapiro CFR	https://www.campaignfinanceonline.pa.gov/Pages/ShowReport.aspx?ReportID=374675&isStatement=0&is24Hour=0
					DGA CFR	https://www.campaignfinanceonline.pa.gov/Pages/ShowReport.aspx?ReportID=374549&isStatement=0&is24Hour=0
					DGA IRS 8872	https://forms.irs.gov/app/pod/basicSearch/downloadFile?formId=135853&formType=e8872
Democratic Governors Association	Shapiro for Pennsylvania	\$1,000,000	Cash	8/18/2022	Shapiro CFR	https://www.campaignfinanceonline.pa.gov/Pages/ShowReport.aspx?ReportID=374675&isStatement=0&is24Hour=0
					DGA CFR	https://www.campaignfinanceonline.pa.gov/Pages/ShowReport.aspx?ReportID=374549&isStatement=0&is24Hour=0
					DGA IRS 8872	https://forms.irs.gov/app/pod/basicSearch/downloadFile?formId=135853&formType=e8872
Democratic Governors Association	Shapiro for Pennsylvania	\$1,600,000	Cash	9/19/2022	Shapiro CFR	https://www.campaignfinanceonline.pa.gov/Pages/ShowReport.aspx?ReportID=374675&isStatement=0&is24Hour=0
					DGA CFR	https://www.campaignfinanceonline.pa.gov/Pages/ShowReport.aspx?ReportID=374549&isStatement=0&is24Hour=0

					DGA IRS 8872	https://forms.irs.gov/app/pod/basicSearch/downloadFile?formId=135853&formType=e8872
Total		\$5,647,500				

5. Put Pennsylvania First

Despite the fact that the IRS Forms 8872 filed by both the FSS and the DGA record two contributions totaling \$1,475,000 by the FSS to the DGA in May 2022, the 2021 IRS Form 990 tax return filed by the FSS reports that the only expenditures made by the FSS between September 1, 2021, and August 31, 2022, were “grants” to “Put Pennsylvania First” (PPF) in the amount of \$1,475,000.⁴⁷

PPF was a short-lived political fund which operated only from April through December 2022 — the duration of Pennsylvania’s 2022 gubernatorial general election campaign. PPF was registered with the IRS as a “political organization” under 26 U.S.C. § 527⁴⁸ and with the Pennsylvania Department of State as an independent expenditure committee.⁴⁹ Its self-described purpose was “to make independent expenditures in support of Democratic Candidates for Governor and against Republican candidates for Governor.”⁵⁰

Contrary to the FSS Form 990, the only campaign finance report filed by PPF with the Pennsylvania Department of State disclosing contributions it received attributed none to the FSS or, for that matter, any other PSEA-connected entity.⁵¹

Given that: (1) the FSS Forms 8872, signed under penalty of perjury, reported contributing \$1,475,000 directly to the DGA; (2) the DGA reported receiving \$1,475,000 from the FSS on its Forms 8872, signed under penalty of perjury; and (3) PPF did not report receiving any contributions from the FSS in its sworn campaign finance reports to the Pennsylvania Department of State, the most likely explanation is that the FSS Form 990 — also completed under penalty of perjury — falsely indicated that the \$1,475,000 went to PPF.⁵²

The FSS would have reason for such a deception since, unlike the DGA which contributes directly to candidates, PPF was an independent expenditure committee operating, ostensibly,

⁴⁷ Fund for Student Success. Internal Revenue Service Form 990, 2021. <https://www.freedomfoundation.com/wp-content/uploads/2024/04/PSEA-Fund-for-Student-Success-IRS-Form-990-2021.pdf>

⁴⁸ Put Pennsylvania First. Internal Revenue Service Form 8871, December 13, 2022.

<https://forms.irs.gov/app/pod/basicSearch/downloadFile?formId=118613&formType=e8871>

⁴⁹ Committee ID no. 20220272. Pennsylvania Department of State. “Committee Information - PUT PENNSYLVANIA FIRST.” <https://www.pavoterservices.pa.gov/ElectionInfo/CommitteeInfo.aspx?ID=20582>

⁵⁰ Put Pennsylvania First. Internal Revenue Service Form 8871, December 13, 2022.

<https://forms.irs.gov/app/pod/basicSearch/downloadFile?formId=118613&formType=e8871>

⁵¹ Put Pennsylvania First. Pennsylvania Department of State. Campaign finance report, June 16, 2022.

<https://www.campaignfinanceonline.pa.gov/Pages/ShowReport.aspx?ReportID=374348&isStatement=0&is24Hour=0>

⁵² A separate complaint has been filed with the Internal Revenue Service alleging that PSEA/Fund for Student Success officials failed to file an accurate tax return and committed perjury in violation of 26 U.S.C. §§ 6033, 6065, and 7206.

independent of any candidate’s campaign — a distinction with potentially important legal ramifications, as will be explained further below.

6. Josh Shapiro

During his gubernatorial campaign, while consistently advocating for increased taxpayer funding for public schools, Shapiro endorsed a proposal to create state-funded “lifeline scholarships” to allow students in the poorest-performing public schools to instead attend private or alternative schools of their choice.

As of November 5, 2022, Shapiro’s campaign website noted, “Josh favors adding choices for parents and educational opportunity for students and funding lifeline scholarships like those approved in other states and introduced in Pennsylvania.”⁵³ Shapiro’s support for lifeline scholarships was repeated on the campaign trail and noted in the media.⁵⁴

Following his election in November 2022, the Republican-controlled Senate proposed allocating \$100 million in funding for a new lifeline scholarship program, a proposal they allege Gov. Shapiro agreed to in negotiations over the state budget.⁵⁵

However, on June 22, 2023, PSEA led a coalition of unions in writing a letter to Gov. Shapiro and other state officials decrying the lifeline scholarship proposal as “unacceptable,” “distressing,” “insulting” and “hypocritical,” and concluding that, “It is irresponsible to vote for any tuition voucher program or include a tuition voucher program in any state budget agreement.”⁵⁶

The following day, then-PSEA president Rich Askey released an independent statement (1) further attacking the lifeline scholarship proposal as “irresponsible,” “unacceptable,” and “terrible”; (2) stating that “PSEA is absolutely opposed to” and would not “tolerate” “lifeline scholarships’ or any other tuition voucher scheme”; and (3) expressing his “incredible disappointment” with the possibility that “Gov. Shapiro could be the first governor in Pennsylvania history to sign a school voucher bill.”⁵⁷

On July 5, 2023, Gov. Shapiro announced he would “line-item veto the full \$100 million

⁵³ Shapiro for Pennsylvania. “Education.”

<https://web.archive.org/web/20221105124310/https://joshshapiro.org/policy-education/>

⁵⁴ Charles Thompson. “Josh Shapiro supports ‘lifeline scholarships’ championed by school-choice proponents.” *The Patriot-News*. September 17, 2022. <https://www.pennlive.com/news/2022/09/josh-shapiro-voices-support-saturday-for-lifeline-scholarships-championed-by-school-choice-proponents.html>

⁵⁵ Linda Stein. “Republicans Denounce Shapiro’s ‘Broken Promise’ on Scholarship Program.” *Delaware Valley Journal*. July 7, 2023. <https://delawarevalleyjournal.com/shapiro-and-republican-senate-point-fingers-at-each-other-over-failed-scholarship-proposal/>

Steve Ulrich. “Did Shapiro Make A Budget Deal With Senate Republicans?” *Politics PA*. July 7, 2023.

<https://www.politicspa.com/did-shapiro-make-a-budget-deal-with-senate-republicans/123312/>

⁵⁶ Pennsylvania State Education Association. “Joint Letter on Tuition Voucher Plans.” June 22, 2023.

<https://www.psea.org/issues-action/action-center/voucher-letter/>

⁵⁷ Pennsylvania State Education Association. “PSEA president speaks out against push for private school tuition vouchers.” June 23, 2023. <https://www.psea.org/VouchersRelease06232023>

appropriation” for lifeline scholarships in the budget proposal.⁵⁸ And on August 3, 2023, Gov. Shapiro signed the budget, but line-item vetoed the funding for lifeline scholarships.⁵⁹

The governor’s decision to change positions on the issue was widely criticized⁶⁰ and viewed by many observers as a concession to PSEA.⁶¹

7. The PSEA Officers

Given their roles within the union, the PSEA Officers were likely involved in the approval and/or execution of PSEA’s contribution of nearly \$1.5 million in general treasury funds to the DGA, through the unregistered political committee Fund for Student Success, for the purpose of aiding Josh Shapiro’s gubernatorial campaign in 2022:

- a. **Richard Askey:** President of PSEA from 2019-2023; current affiliation unknown.⁶² As president at the time of PSEA’s contributions to the FSS, Askey had the “power and

⁵⁸ Gov. Josh Shapiro. “Statement from Governor Shapiro on Budget Negotiations.” Office of the Governor. July 5, 2023. <https://www.governor.pa.gov/newsroom/statement-from-governor-shapiro-on-budget-negotiations/>

⁵⁹ Gov. Josh Shapiro. 2023 budget line-item veto message to the Pennsylvania House of Representatives. August 3, 2023. <https://www.governor.pa.gov/wp-content/uploads/2023/08/Governor-Shapiro-2023-Budget-Line-Item-Veto-Message.pdf>

⁶⁰ Commonwealth Foundation. “What They Are Saying: Brutal Headlines for Shapiro, Strong Support for Scholarships.” July 28, 2023. <https://www.commonwealthfoundation.org/2023/07/28/shapiro-lifeline-scholarships-headlines/>

⁶¹ Charles Mitchell. “Josh Shapiro Chooses Teachers Unions Over Students.” *Wall Street Journal*. July 7, 2023. <https://www.wsj.com/articles/josh-shapiro-chooses-teachers-unions-over-students-pennsylvania-lifeline-veto-79a6f93d>

Ginny Gentles. “PA Governor Caves to Teachers Unions With Plans to Veto School Choice.” Independent Women’s Forum. July 11, 2023. <https://www.iwf.org/2023/07/11/pa-governor-caves-to-teachers-unions-with-plans-to-veto-school-choice/>

Ben Wilson. “Pennsylvania Governor Drops School Choice Agenda Under Pressure From Teachers’ Unions.” *Washington Free Beacon*. July 6, 2023. <https://freebeacon.com/latest-news/pennsylvania-governor-drops-school-choice-agenda-under-pressure-from-teachers-unions/>

Michael Whittaker. “Pennsylvania Governor Caves To Teachers Union On School Choice.” *Daily Wire*. July 5, 2023. <https://www.dailywire.com/news/pennsylvania-governor-caves-to-teachers-union-on-school-choice>

Jonathan Tobin. “Pennsylvania’s School Choice Sellout Shows Teachers Unions Still Own The Democrats.” *The Federalist*. July 12, 2023. <https://thefederalist.com/2023/07/12/pennsylvanias-school-choice-sellout-shows-teachers-unions-still-own-the-democrats/>

Rabbi A. D. Motzen. “Governor Shapiro – Complete the Task!” *RealClearPolicy*. September 14, 2023. https://www.realclearpolicy.com/articles/2023/09/14/governor_shapiro__complete_the_task_979624.html

National Review. “Josh Shapiro’s Shameful Betrayal on School Choice.” July 7, 2023. <https://www.nationalreview.com/2023/07/josh-shapiros-shameful-betrayal-on-school-choice/>

⁶² PSEA’s 2019 LM-2 was the first to identify Askey as the union’s president, and subsequent reports confirm he retained that position through August of 2023.

PSEA’s 2019 Form LM-2: <https://olmsapps.dol.gov/query/orgReport.do?rptId=711939&rptForm=LM2Form>

PSEA’s 2020 Form LM-2: <https://olmsapps.dol.gov/query/orgReport.do?rptId=737881&rptForm=LM2Form>

PSEA’s 2021 Form LM-2: <https://olmsapps.dol.gov/query/orgReport.do?rptId=788496&rptForm=LM2Form>

PSEA’s 2022 Form LM-2: <https://olmsapps.dol.gov/query/orgReport.do?rptId=849155&rptForm=LM2Form>

PSEA’s 2023 Form LM-2: <https://olmsapps.dol.gov/query/orgReport.do?rptId=875205&rptForm=LM2Form>

duty” under Article V(A)(7) of PSEA’s constitution and bylaws to “sign jointly with the executive director for disbursements from the general fund.”⁶³

- b. **Aaron Chapin:** Vice president of PSEA in 2022;⁶⁴ assumed role of president in September 2023.⁶⁵ As vice president in 2022, Chapin was empowered by Article V(B) of PSEA’s constitution and bylaws to assume the powers and duties of the president in his absence as well as to exercise any authority delegated to him by the president.⁶⁶
- c. **Jeffrey Ney:** Treasurer of PSEA in 2022;⁶⁷ assumed role of vice president in September 2023.⁶⁸ As treasurer in 2022, Ney was required by Article V(C) of the PSEA constitution and bylaws to “receive all monies of the Association and to pay out the same upon order of the board of directors” and to “report to the board of directors at its monthly meetings all Association receipts and disbursements.”⁶⁹
- d. **James Vaughn:** Executive director of PSEA since 2015.⁷⁰ Pursuant to Article VI of the PSEA constitution and bylaws, it was Vaughn’s duty to “prepare vouchers signed by the president” and to “carry out those administrative functions which are assigned by the board of directors or which are customarily performed by the chief administrator of an association.”⁷¹ Vaughn’s biography on PSEA’s website notes that he has long “been involved in all aspects of the organization’s policy and operational decision-making,” had experience managing “the association’s lobbying, advocacy, and political operations,” and had “led PSEA’s successful lobbying and campaign initiatives... to elect pro-public education candidates for the General Assembly, judiciary, statewide row offices, and the governor’s office.”⁷²
- e. **Joseph Howlett:** Assistant executive director of PSEA since 2022.⁷³ Howlett was the “authorized official” who signed the FSS IRS Form 8872 disclosing receipt of the \$550,000 contribution from the PSEA and the FSS’ two contributions to the DGA in May

⁶³ Pennsylvania State Education Association. “Constitution and Bylaws as amended May 2018.”

<https://www.freedomfoundation.com/wp-content/uploads/2024/04/PSEA-Constitution-and-Bylaws-as-amended-May-2018.pdf>

⁶⁴ PSEA’s 2022 Form LM-2: <https://olmsapps.dol.gov/query/orgReport.do?rptId=849155&rptForm=LM2Form>

⁶⁵ Pennsylvania State Education Association. “PSEA President Aaron Chapin.” <https://www.psea.org/about-psea/leadership/psea-officers/psea-president2/>

⁶⁶ Pennsylvania State Education Association. “Constitution and Bylaws as amended May 2018.”

<https://www.freedomfoundation.com/wp-content/uploads/2024/04/PSEA-Constitution-and-Bylaws-as-amended-May-2018.pdf>

⁶⁷ PSEA’s 2022 Form LM-2: <https://olmsapps.dol.gov/query/orgReport.do?rptId=849155&rptForm=LM2Form>

⁶⁸ Pennsylvania State Education Association. “PSEA Vice President Jeff Ney.” <https://www.psea.org/about-psea/leadership/psea-officers/psea-vice-president/>

⁶⁹ Pennsylvania State Education Association. “Constitution and Bylaws as amended May 2018.”

<https://www.freedomfoundation.com/wp-content/uploads/2024/04/PSEA-Constitution-and-Bylaws-as-amended-May-2018.pdf>

⁷⁰ Pennsylvania State Education Association. “PSEA Executive Director Jim Vaughan.”

<https://www.psea.org/about-psea/leadership/psea-officers/psea-executive-director-jim-vaughan/>

⁷¹ Pennsylvania State Education Association. “Constitution and Bylaws as amended May 2018.”

<https://www.freedomfoundation.com/wp-content/uploads/2024/04/PSEA-Constitution-and-Bylaws-as-amended-May-2018.pdf>

⁷² Pennsylvania State Education Association. “PSEA Executive Director Jim Vaughan.”

<https://www.psea.org/about-psea/leadership/psea-officers/psea-executive-director-jim-vaughan/>

⁷³ PSEA’s 2022 Form LM-2: <https://olmsapps.dol.gov/query/orgReport.do?rptId=849155&rptForm=LM2Form>

PSEA’s 2023 Form LM-2: <https://olmsapps.dol.gov/query/orgReport.do?rptId=875205&rptForm=LM2Form>

of 2022.⁷⁴ He was also listed as the “treasurer” of the FSS on its Form 990 tax return for 2021-22.⁷⁵

- f. **Lahrson Harper:** PSEA’s assistant director of administrative services since at least 2021.⁷⁶ Harper was the “authorized official” who signed the FSS IRS Form 8872 disclosing receipt of the \$925,000 contribution from PSEA in June of 2021.⁷⁷
- g. **David Taylor:** A member of PSEA’s board of directors during the period in which the FSS made the two contributions to the DGA in May 2022, a position he retained through at least August 31, 2023, the end of the reporting period covered by PSEA’s most recent Form LM-2.⁷⁸ Taylor was also the chair of the FSS board — serving alongside Howlett as the Fund’s only two officers — during the period in which it made the two contributions to the DGA in May 2022.⁷⁹

II. Allegations and Arguments: The Fund for Student Success

1. The Fund for Student Success violated 25 P.S. §§ 3244, 3246, and 3247 by failing to register and report as a political committee.

a. *Political committees must register with the appropriate authorities and periodically disclose their contributions and expenditures.*

As the Commonwealth Court has explained,

“The Legislature enacted the Election Code to regulate the electoral process so that it is both orderly and fair. *Commonwealth v. Wadzinski*, 492 Pa. 35, 422 A.2d 124 (1980). Campaign reporting requirements exist to ensure a fair election and to advise the electorate of the manner in which campaign money is spent. *Id.*... The importance of campaign reporting requirements is obvious: by preserving public access to the manner in which campaign money is received and spent, public confidence in the election process is maintained.”

Com. v. Beck, 810 A.2d 736, 746 (Pa.Cmwlt. 2002), as amended (Nov. 21, 2002).

To that end, the Election Code requires political committees, of which there are several varieties, to register with the Department of State or appropriate local officials by filing a Form DSEB-500

⁷⁴ Fund for Student Success. Internal Revenue Service Form 8872, July 14, 2022.

<https://forms.irs.gov/app/pod/basicSearch/downloadFile?formId=132981&formType=e8872>

⁷⁵ Fund for Student Success. Internal Revenue Service Form 990, 2021. <https://www.freedomfoundation.com/wp-content/uploads/2024/04/PSEA-Fund-for-Student-Success-IRS-Form-990-2021.pdf>

⁷⁶ PSEA’s 2021 Form LM-2: <https://olmsapps.dol.gov/query/orgReport.do?rptId=788496&rptForm=LM2Form>

PSEA’s 2022 Form LM-2: <https://olmsapps.dol.gov/query/orgReport.do?rptId=849155&rptForm=LM2Form>

PSEA’s 2023 Form LM-2: <https://olmsapps.dol.gov/query/orgReport.do?rptId=875205&rptForm=LM2Form>

⁷⁷ Fund for Student Success. Internal Revenue Service Form 8872, July 26, 2021.

<https://forms.irs.gov/app/pod/basicSearch/downloadFile?formId=125219&formType=e8872>

⁷⁸ PSEA’s 2022 Form LM-2: <https://olmsapps.dol.gov/query/orgReport.do?rptId=849155&rptForm=LM2Form>

PSEA’s 2023 Form LM-2: <https://olmsapps.dol.gov/query/orgReport.do?rptId=875205&rptForm=LM2Form>

⁷⁹ Fund for Student Success. Internal Revenue Service Form 990, 2021. <https://www.freedomfoundation.com/wp-content/uploads/2024/04/PSEA-Fund-for-Student-Success-IRS-Form-990-2021.pdf>

and to timely disclose their contributions and expenditures on publicly available Forms DSEB-502.

25 P.S. § 3244 provides, in relevant part:

“(a) Any political committee which receives contributions in an aggregate amount of two hundred fifty dollars (\$250) or more shall file a registration statement, designed by the Secretary of the Commonwealth, with the appropriate supervisor within twenty (20) days after the date on which it receives such amount...

(d) No political committee which receives an aggregate amount of contributions of two hundred fifty dollars (\$250) or more may make a contribution to any candidate or political committee unless it has registered with the appropriate supervisor.”

See also 4 Pa. Code §§ 176.14, 176.2, and 177.9.

After registration, a political committee must periodically file “reports of receipts and expenditures” for amounts greater than \$250. 25 P.S. § 3246(a). Among other things, the filing political committee must disclose the identity of its contributors and the amount and date of their contributions. 25 P.S. § 3246(b)(1)-(3). Similarly, the political committee must disclose “[e]ach and every expenditure, the date made, the full name and address of the person to whom made and the purpose for which such expenditure was made.” 25 P.S. § 3246(b)(4). *See also* 4 Pa. Code § 177.2.

In addition to the periodic reports required under 25 P.S. § 3246, a political committee must,

“...file a report on January 31 of each year which shall be complete as of December 31 of the prior year. Such reports shall be filed annually at this time until there is no balance or debt in the report of the candidate or political committee.”

25 P.S. § 3247.

Political committees file required reports with either the Department of State or the appropriate board(s) of elections, as specified by 25 P.S. § 3251. If a political committee’s contributions or expenditures concern “any candidate,” then the required statement(s) must be filed with “the office of the supervisor with whom the candidate filed a nomination paper, nomination certificate, [or] nomination petitions [sic].” *Id.*

In the case of “candidates for party nominations” for offices like President of the United States or governor, nomination petitions are submitted to the Department of State. *See* 25 P.S. § 2867 and 25 P.S. § 2876.

b. Political committees are defined by accepting contributions or making expenditures.

The Election Code defines “political committee” as “any committee, club, association or other group of persons which receives contributions or makes expenditures.” 25 P.S. § 3241(h). While the term is not defined in the Election Code, the Statutory Construction Act defines “person” as,

“...a corporation, partnership, limited liability company, business trust, other association, government entity (other than the Commonwealth), estate, trust, foundation or natural person.” 1 Pa.C.S.A. § 1991.

In turn, “contribution” is defined by 25 P.S. § 3241(b) as,

“...any payment, gift, subscription, assessment, contract, payment for services, dues, loan, forbearance, advance or deposit of money or any valuable thing, to a candidate or political committee made for the purpose of influencing any election in this Commonwealth or for paying debts incurred by or for a candidate or committee before or after any election. ‘Contribution’ shall also include the purchase of tickets for events such as dinners, luncheons, rallies and all other fund-raising events; the granting of discounts or rebates not available to the general public; or the granting of discounts or rebates by television and radio stations and newspapers not extended on an equal basis to all candidates for the same office; and any payments provided for the benefit of any candidate, including any payments for the services of any person serving as an agent of a candidate or committee by a person other than the candidate or committee or a person whose expenditures the candidate or committee must report under this act. The word ‘contribution’ includes any receipt or use of anything of value received by a political committee from another political committee and also includes any return on investments by a political committee.”

(Emphasis added).

The corresponding regulatory definition of “contribution,” found in 4 Pa. Code § 172.1, is substantively identical to the statutory definition.⁸⁰

Additionally, “expenditure” is statutorily defined by the Election Code as:

“(1) the payment, distribution, loan or advancement of money or any valuable thing by a candidate, political committee or other person for the purpose of influencing the outcome of an election;
(2) the payment, distribution, loan, advance or transfer of money or other valuable thing between or among political committees;

⁸⁰ “Contribution--A payment, gift, subscription, assessment, contract, payment for services, dues, loan, forbearance, advance or deposit of money, or any valuable thing to a candidate or political committee made for the purpose of influencing any election in this Commonwealth or for paying debts incurred by or for a candidate or committee before or after any election. The term includes the purchase of tickets for events such as dinners, luncheons, rallies, and all other fund raising events--including but not limited to, advertising space in publications promoting the candidacy of certain individuals, such as “Ad-Books”; the granting of discounts or rebates not available to the general public or the granting of discounts or rebates by television and radio stations and newspapers not extended on an equal basis to all candidates for the same office; and payments provided for the benefit of a candidate, including payments for the services of a person serving as an agent of a candidate or committee by a person other than the candidate or committee or a person whose expenditures the candidate or committee must report under the Pennsylvania Election Code (25 P. S. §§ 2600--3591). The term includes any receipt or use of anything of value received by a political committee from another political committee and any return on investments by a political committee.”

- (3) the providing of a service or other valuable thing for the purpose of influencing the outcome of a nomination or election of any person to any public office to be voted for in this Commonwealth; or
- (4) the payment or providing of money or other valuable thing by any person other than a candidate or political committee, to compensate any person for services rendered to a candidate or political committee.”

(Emphasis added). 25 P.S. § 3241(d).

Lastly, the Election Code defines “candidate” as, “any individual who seeks nomination or election to public office,” and “election” as, “any retention, primary, special, municipal or general election at which candidates appear on the ballot for nomination or election or at which questions are to be voted on by the electors of this Commonwealth.” 25 P.S. § 3241(a) and (c).

While corporations such as PSEA face statutory limitations on their ability to make contributions or expenditures, pursuant to 25 P.S. § 3253, they may establish and administer separate, segregated funds to which others may contribute and which may, in turn, make expenditures, *provided the fund registers as a political committee.*

4 Pa. Code § 178.4 provides:

“Corporations and unincorporated associations may expend their own funds to establish and administer funds for political purposes.

(1) Each political fund shall be separate and segregated from any other account of the corporation or unincorporated association.

(2) Each political fund shall be created by voluntary individual contributions including those solicited by the corporation or unincorporated association.

(3) Each political fund shall be deemed to be a political committee and subject to the same requirements as political committees.”

(Emphasis added).

PSEA-PACE is an example just such a separate, segregated fund and has appropriately registered with the Department of State.

c. The Fund for Student Success is a political committee but has failed to register as one.

As a “political organization” under 26 U.S.C. § 527, the FSS, by definition, exists to “influence the selection, nomination, election, or appointment” of persons to “Federal, State, or local public office.” The FSS’ Form 8871 filed with the IRS describes its “purpose” as “work[ing] with like-minded organizations to educate the public about the need to elect pro-public education officials.”⁸¹ It is operated by PSEA as a “related entity”⁸² and the only persons associated with

⁸¹ Fund for Student Success. Internal Revenue Service Form 8871, December 6, 2022.

<https://forms.irs.gov/app/pod/basicSearch/downloadFile?formId=118538&formType=e8871>

⁸² *Id.*

the FSS in an official capacity are PSEA officials.⁸³

As noted above, the LM-2 reports filed by PSEA with the U.S. Department of Labor and the Forms 8872 filed by the FSS with the IRS indicate the FSS has received 11 contributions from PSEA since the Fund's creation in 2018, totaling \$4,325,000. In turn, the FSS Forms 8872 filed with the IRS disclose nine expenditures to three different Pennsylvania political committees totaling \$3.3 million.

Nevertheless, the FSS has failed to register with the Department of State as a political committee and to disclose any of these transactions as required by the Election Code. Not only does the Department of State maintain no record of the FSS registering as a political committee or filing required campaign finance reports, but the FSS indicated on its IRS Form 8871 that it did not file reports of its contributions and expenditures with any state authority.⁸⁴

4. Penalties

The failure of the PSEA/FSS to register the FSS as a political committee and file applicable reports of contributions and expenditures in violation of the Election Code undermines “the importance of campaign reporting requirements” in maintaining “public confidence in the election process” by providing “public access to the manner in which campaign money is received and spent.” *Com. v. Beck*, 810 A.2d 736, 746 (Pa.Cmwlth. 2002), as amended (Nov. 21, 2002).

There are several applicable penalties for failure to register a political committee.

a. Misdemeanor

While the Election Code does not prescribe any particular penalty for failing to register a political committee, 25 P.S. § 3550 provides,

“Any person who shall violate any of the provisions of this act, for which a penalty is not herein specifically provided, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be sentenced to pay a fine not exceeding one thousand (\$1,000) dollars, or to undergo an imprisonment of not more than one (1) year, or both, in the discretion of the court.”

This statute has previously been applied by Commonwealth Courts when assessing penalties for

⁸³ The FSS' most recent Form 8871 identifies Phyllis Heverly Flesher as “treasurer,” “custodian of records,” and the “authorized official” who signed and submitted the document. David Taylor is listed as the FSS' “chair,” and Lahrson Harper is identified as the “contact person.”

<https://forms.irs.gov/app/pod/basicSearch/downloadFile?formId=118538&formType=e8871>

PSEA's most recent Form LM-2 identifies Flesher as the union's assistant executive director, Taylor as a member of the PSEA board of directors, and Harper as assistant director of administration.

<https://olmsapps.dol.gov/query/orgReport.do?rptId=875205&rptForm=LM2Form>

⁸⁴ *Id.* If, pursuant to “State law,” a “political organization” under 26 U.S.C. § 527 reports its contributions and expenditures to a state authority, it may claim exemption from reporting its contributions and expenditures to the IRS on Forms 8872 as a “qualified State or local political organization.” *See* 26 U.S.C. § 527(e)(5) and (J)(5)(c).

failure to register a political committee. *See Com. v. Beck*, 810 A.2d 736, 743–45 (Pa.Cmwlth. 2002), as amended (Nov. 21, 2002).

While 25 P.S. § 3550 prescribes criminal penalties, it does not specify a *mens rea* requirement. Accordingly, in applying § 3550 in another case alleging a failure to register a political committee, Commonwealth Courts turned to Pennsylvania’s Criminal Code for guidance regarding culpability. *Id.*

Specifically, 18 Pa.C.S.A. § 302 provides that “a person is not guilty of an offense unless he acted intentionally, knowingly, recklessly or negligently, as the law may require, with respect to each material element of the offense” and that when, as in the case of 25 P.S. § 3550, “the culpability sufficient to establish a material element of an offense is not prescribed by law, such element is established if a person acts intentionally, knowingly or recklessly with respect thereto.”

These applicable types of culpability are defined by 18 Pa.C.S.A. § 302(b):

- “(1) A person acts intentionally with respect to a material element of an offense when:
 - (i) if the element involves the nature of his conduct or a result thereof, it is his conscious object to engage in conduct of that nature or to cause such a result; and
 - (ii) if the element involves the attendant circumstances, he is aware of the existence of such circumstances or he believes or hopes that they exist.
- (2) A person acts knowingly with respect to a material element of an offense when:
 - (i) if the element involves the nature of his conduct or the attendant circumstances, he is aware that his conduct is of that nature or that such circumstances exist; and
 - (ii) if the element involves a result of his conduct, he is aware that it is practically certain that his conduct will cause such a result.
- (3) A person acts recklessly with respect to a material element of an offense when he consciously disregards a substantial and unjustifiable risk that the material element exists or will result from his conduct. The risk must be of such a nature and degree that, considering the nature and intent of the actor's conduct and the circumstances known to him, its disregard involves a gross deviation from the standard of conduct that a reasonable person would observe in the actor's situation.”

Further, 18 Pa.C.S.A. § 302(g) establishes that, “[a] requirement that an offense be committed willfully is satisfied if a person acts knowingly with respect to the material elements of the offense...”

In *Commonwealth v. Beck*, the Court held the defendant “willfully” failed to register a political committee and file the required reports because “the failure to file was not done innocently or inadvertently” (citing *United States v. Curran*, 20 F.3d 560, 567 (3d Cir.1994)).

In this case, the evidence strongly suggests the failure of the PSEA officers to register the FSS as a political committee with the Department of State was neither inadvertent nor innocent. At the very least, the PSEA Officers acted recklessly, given their knowledge of the Election Code’s campaign finance reporting and disclosure requirements. After all, the PSEA has operated a

registered political committee — PSEA-PACE — since 1968.

In fact, the very day PSEA officials registered the FSS with the IRS as a political organization through the filing of a Form 8871 on July 24, 2018,⁸⁵ PSEA-PACE filed an amended Form 8871.⁸⁶ Both documents indicated that the “custodian of records” for the respective political organizations was Joseph Howlett and both listed Wendy Rulapaugh⁸⁷ as the “contact person.” If the PSEA Officers were sufficiently conversant with the Election Code to file the necessary campaign finance reports for PSEA-PACE, they have no excuse for failing to do the same for the FSS. Prosecution under 25 P.S. § 3550 is therefore justified and appropriate.

b. Late filing fees

The Election Code establishes certain minimum financial penalties for political committees that file late campaign finance reports. 25 P.S. § 3252(a) provides,

“A late filing fee for each report or statement of expenditures and contributions which is not filed within the prescribed period shall be imposed as follows. Such fee shall be ten dollars (\$10) for each day or part of a day excluding Saturdays, Sundays and holidays that a report is overdue. An additional fee of ten dollars (\$10) is due for each of the first six (6) days that a report is overdue. The maximum fee payable with respect to a single report is two hundred fifty dollars (\$250).”

See also 4 Pa. Code § 177.6.

Generally, political committees involved in statewide elections must file at least seven reports per year: Two pre-election and one post-election report for both the primary and general elections and one cumulative annual report. *See* 4 Pa. Code § 177.3.

Since the FSS received its first contribution in excess of \$250 on August 29, 2018, its initial registration was due 20 days later, or no later than September 18, 2018. Consequently, as the FSS became a political committee after the primary but before the general election, it should have filed four reports for 2018: the two pre-general election reports, one post-general election report, and the 2018 annual report.

As the FSS continued to receive contributions and/or make expenditures during every succeeding year — 2019-2023 — the FSS should have filed a total of roughly 32 campaign finance reports, all of which are now sufficiently late to warrant the \$250 maximum statutory penalty.

Pursuant to 25 P.S. § 3252, these approximately \$8,000 in late filing fees are “the personal

⁸⁵ Fund for Student Success. IRS Form 8871, July 24, 2018.

<https://forms.irs.gov/app/pod/basicSearch/downloadFile?formId=97014&formType=e8871>

⁸⁶ PSEA-PACE. IRS Form 8871, July 24, 2018.

<https://forms.irs.gov/app/pod/basicSearch/downloadFile?formId=97013&formType=e8871>

⁸⁷ According to PSEA’s Forms LM-2, Rulapaugh served as the union’s director of administrative services from 2013 through 2022, though she does not appear to be currently employed by PSEA.

liability” of the FSS treasurer(s) “and cannot be paid from contributions to the... committee, nor may such fee be considered an expenditure.”

III. Allegations and Arguments: The Democratic Governors Association

1. The Democratic Governors Association violated 25 P.S. § 3246 by failing to report contributions it received from the Fund for Student Success.

Though, unlike the FSS, the DGA *is* registered with the Department of State as a political committee and does file reports of its contributions and expenditures,⁸⁸ the Form DSEB-502 reports filed by the DGA with the Department of State failed to disclose the two contributions it received from the FSS in May 2022: The \$925,000 contribution on May 17 and the \$550,000 contribution on May 31.

There is little doubt the transactions occurred. In their respective IRS Form 8872 filings, the FSS disclosed making the two expenditures to the DGA⁸⁹ and the DGA disclosed receiving them as contributions.⁹⁰ Both entities, however, failed to disclose the transactions to the Department of State, the source interested observers of Pennsylvania politics would be most likely to consult for campaign finance information related to Commonwealth elections.

The DGA’s failure to disclose receipt of the two contributions from the FSS violated 25 P.S. § 3246, which requires, in relevant part, that:

- (a) Each treasurer of a political committee and each candidate for election to public office shall file with the appropriate supervisor reports of receipts and expenditures on forms, designed by the Secretary of the Commonwealth, if the amount received or expended or liabilities incurred shall exceed the sum of two hundred fifty dollars (\$250). Should such an amount not exceed two hundred fifty dollars (\$250), then the candidate or the treasurer of the committee shall file a sworn statement to that effect with the appropriate supervisor rather than the report required by this section.
- (b) Each report shall include the following information:
 - (1) The full name, mailing address, occupation and name of employer, if any, or the principal place of business, if self-employed, of each person who has made one or more contributions to or for such committee or candidate within the reporting period in an aggregate amount or value in excess of two hundred fifty dollars (\$250), together with the amount and date of such contributions. The accuracy of the information furnished to the candidate or committee shall be the responsibility of the contributor.”

(Emphasis added). *See also* 4 Pa. Code § 177.2.

⁸⁸ Committee ID no. 2002268. Pennsylvania Department of State. “Committee Information - DEM GOVERNORS' ASSOC – PA.” <https://www.pavoterservices.pa.gov/ElectionInfo/CommitteeInfo.aspx?ID=1541>

⁸⁹ Fund for Student Success. IRS Form 8872, August 14, 2022.
<https://forms.irs.gov/app/pod/basicSearch/downloadFile?formId=132981&formType=e8872>

⁹⁰ Democratic Governors Association. IRS Form 8872, July 15, 2022.
<https://forms.irs.gov/app/pod/basicSearch/downloadFile?formId=133368&formType=e8872>

2. The Democratic Governors Association violated 25 P.S. § 3254 by serving as a conduit for the FSS’ contributions to Shapiro for Pennsylvania, thereby concealing the true source of the funds.

25 P.S. § 3254(a) provides, “It shall be unlawful for any person to make any contribution with funds designated or given to him for the purpose by any other person, firm or corporation. Each person making a contribution shall do so only in his own name.”

There is strong circumstantial — and potentially documentary — evidence indicating the DGA violated this statute by using the contributions provided to it by the PSEA/FSS to in turn make expenditures to Shapiro for Pennsylvania, thereby shielding the PSEA/FSS from being identified as the actual contributor to the candidate’s committee.

First, as noted above, the DGA made its first expenditure to Shapiro for Pennsylvania, in the amount of \$500,000, just one day after receiving a \$550,000 contribution from the PSEA/FSS.

Second, as a Pennsylvania-specific corporation and labor union, there’s no indication that the PSEA/FSS had any interest in gubernatorial elections occurring in other states in 2022. It made no gubernatorial endorsements outside the Commonwealth and there’s no evidence that PSEA-PACE or the FSS contributed to gubernatorial campaigns beyond Pennsylvania. Contributing nearly \$1.5 million to the DGA for use in gubernatorial elections in which the PSEA/FSS had no interest would be spectacularly generous. On the other hand, PSEA’s strong support for Josh Shapiro in the union’s home-state gubernatorial election that year is extremely well-documented. It beggars belief that the PSEA/FSS would covertly — and, as will be discussed in more detail below, illegally — contribute such a sum to the DGA absent an understanding that the funds would be put to use backing the union’s favored candidate in the upcoming Pennsylvania gubernatorial election.

Finally, there is reason to believe a paper trail exists regarding the two PSEA/FSS contributions to the DGA in May 2022. Schedule I, Part IV of the FSS Form 990 for 2021 outlines the FSS’ purported “procedures for monitoring the use of grant funds,” explaining:

“The Fund for Student Success (FSS) provides grants and other forms of assistance to various non-profit organizations and section 527 [political] organizations. Potential organizations submit requests for funding to PSEA’s government relations division. The requests are then submitted to the FSS board and a determination is made regarding the grant amount. Each grant is paid via check or electronic funds transfer and is accompanied by a communication from PSEA indicating the purpose of the grant and the use of the funds. The grantee is responsible for maintaining adequate records of the grant expenditures and activities and must allow PSEA access to such records for verification purposes, if deemed necessary.”⁹¹

If this process — described under penalty of perjury — was followed in this case, then either: (1) Shapiro for Pennsylvania approached the PSEA/FSS with a funding proposal which the FSS

⁹¹ Fund for Student Success. Internal Revenue Service Form 990, 2021. <https://www.freedomfoundation.com/wp-content/uploads/2024/04/PSEA-Fund-for-Student-Success-IRS-Form-990-2021.pdf>

granted but routed through the DGA; or (2) the DGA approached the PSEA/FSS with a funding proposal that, presumably, involved assurance that the funds would be contributed to or used for the purpose of supporting the Shapiro campaign, whether directly or indirectly.

Determining authoritatively whether the parties involved — PSEA/FSS, the DGA, and the Shapiro campaign — understood the PSEA/FSS contributions to be intended for Shapiro for Pennsylvania may require additional investigation.

3. Penalties

The DGA’s failure to disclose contributions from the FSS and making expenditures to Shapiro for Pennsylvania on behalf of the PSEA/FSS in violation of the Election Code undermines “the importance of campaign reporting requirements” in maintaining “public confidence in the election process” by providing “public access to the manner in which campaign money is received and spent.” *Com. v. Beck*, 810 A.2d 736, 746 (Pa.Cmwlth. 2002), as amended (Nov. 21, 2002).

a. Misdemeanor and/or felony

Because the Election Code does not establish a specific penalty for failing to file complete or accurate campaign finance reports or to make contributions on behalf of another, the law’s catch-all provision, 25 P.S. § 3550, governs, establishing that such violations constitute misdemeanors punishable by imposition of “a fine not exceeding one thousand (\$1,000) dollars” and/or “imprisonment of not more than one (1) year.”

As noted above, because 25 P.S. § 3550 prescribes criminal penalties but no *mens rea* requirement, guidance regarding culpability should be taken from the Criminal Code, which establishes that a person is guilty of criminal violations of the Election Code if they acted “intentionally, knowingly or recklessly” — as those terms are defined by 18 Pa.C.S.A. § 302(b) — “with respect to each material element of the offense.” *See Com. v. Beck*, 810 A.2d 736, 746 (Pa.Cmwlth. 2002), as amended (Nov. 21, 2002); and 18 Pa.C.S.A. § 302. Pursuant to 18 Pa.C.S.A. § 302(g), a person may be found to have violated a law “willfully” if they act “knowingly with respect to the material elements of the offense.” And lastly, a person may be found to have violated the Election Code “willfully” if the failure to file required campaign finance reports “was not done innocently or inadvertently.” *Com. v. Beck*, 810 A.2d 736, 746 (Pa.Cmwlth. 2002), as amended (Nov. 21, 2002), citing *United States v. Curran*, 20 F.3d 560, 567 (3d Cir.1994).

In addition to the penalties prescribed by 25 P.S. § 3550, if the DGA’s failure to disclose the contributions was a willful attempt to obscure the flow of funds from the PSEA to Shapiro for Pennsylvania, prosecution for the crime of perjury would be appropriate.

25 P.S. § 3249 requires that,

“(a) Each [campaign finance] report shall be subscribed and sworn to by the individual submitting the report...

(b) Any wilfully [sic] false, fraudulent or misleading statement or entry made by any candidate or treasurer in any statement or report under oath as required by this article, shall constitute the crime of perjury, and be punishable as such according to the laws of this Commonwealth.”

Perjury is a third-degree felony under 18 Pa.C.S.A. § 4902.

Additionally, 18 Pa.C.S.A. § 4904(a) establishes that it is a second-degree misdemeanor for a person to make “any written false statement which he does not believe to be true” with “intent to mislead a public servant in performing his official function” — the public servant in this case being the Secretary of State and/or his designee(s) and the official function being the Secretary’s obligation under 25 P.S. § 3259 to receive and make “available for public inspection and copying” accurate campaign finance reports submitted by political candidates and committees — while § 4904(b) provides that it is a third-degree misdemeanor for a person to “make a written false statement which he does not believe to be true, on or pursuant to a form bearing notice, authorized by law, to the effect that false statements made therein are punishable.”

In this case, the same DGA representative appears to have submitted both (1) the IRS Form 8872 *disclosing* receipt of the two contributions received from the FSS *and* (2) the Department of State Form DSEB-502 *failing to disclose* receipt of the two contributions. The DGA’s Form 8872 covering the reporting period from April 1, 2022, through June 30, 2022, was signed under penalty of perjury by Stephen Hill on July 15, 2022.⁹² While the publicly available electronic copy of the DGA’s Form DSEB-502 filed on June 16, 2022, and covering the reporting period from May 3, 2022, through June 6, 2022, does not indicate the “person submitting report,”⁹³ Department of State records indicate that Stephen Hill of Amalgamated Bank⁹⁴ is currently the DGA’s “treasurer” and has been since October 13, 2015.⁹⁵

Since both reports cannot be correct, further investigation should be undertaken to determine whether the DGA’s failure to disclose receipt of nearly \$1.5 million from the PSEA, through the FSS, was willful.

b. Late filing fees

Finally, the DGA’s failure to timely file a complete report demands imposition of the \$250 statutory maximum late filing fee pursuant to 25 P.S. § 3252.

⁹² Democratic Governors Association. Internal Revenue Service Form 8872, July 15, 2022.

<https://forms.irs.gov/app/pod/basicSearch/downloadFile?formId=133368&formType=e8872>

⁹³ Democratic Governors Association – PA. Form DSEB-502, June 16, 2022.

<https://www.campaignfinanceonline.pa.gov/Pages/ShowReport.aspx?ReportID=373264&isStatement=0&is24Hour=0>

⁹⁴ As an employee of the Boston-headquartered Amalgamated Bank, which has no physical locations in Pennsylvania, it is possible or even likely that Stephen Hill has “has no reasonably ascertainable place of abode or work” in Pennsylvania and that, therefore, the tolling of any limitations period regarding any alleged violations of Commonwealth criminal statutes by Mr. Hill has not yet begun. *See* 42 Pa.C.S.A. § 5554(1); *see also* Amalgamated Bank, “Find a Branch or ATM, <https://amalgamatedbank.com/find-a-branch-or-atm>

⁹⁵ Committee ID no. 2002268. Pennsylvania Department of State. “Committee Information - DEM GOVERNORS’ ASSOC – PA.” <https://www.pavoterservices.pa.gov/ElectionInfo/CommitteeInfo.aspx?ID=1541>

IV. Allegations and Arguments: The PSEA

1. PSEA's contributions to the Fund for Student Success/Democratic Governors Association/Shapiro for Pennsylvania violated 25 P.S. § 3253.

Like a number of states,⁹⁶ Pennsylvania law prohibits corporations from making political contributions to or related to candidates for office, though contributions related to ballot measures are statutorily permitted. 25 P.S. § 3253 provides:

“(a) It is unlawful for any National or State bank, or any corporation, incorporated under the laws of this or any other state or any foreign country or any unincorporated association, except those corporations formed primarily for political purposes or as a political committee, to make a contribution or expenditure in connection with the election of any candidate or for any political purpose whatever except in connection with any question to be voted on by the electors of this Commonwealth. Furthermore, it shall be unlawful for any candidate, political committee, or other person to knowingly accept or receive any contribution prohibited by this section, or for any officer or any director of any corporation, bank, or any unincorporated association to consent to any contribution or expenditure by the corporation, bank or unincorporated association, as the case may be, prohibited by this section.”

(Emphasis added). *See also Gen. Majority Pac v. Aichele*, 1:14-CV-332, 2014 WL 3955079, at *3 (M.D. Pa. Aug. 13, 2014) (“Pennsylvania’s Election Code prohibits entities such as banks, corporations, and unincorporated associations from making political contributions or expenditures. *Nutter v. Dougherty*, 921 A.2d 44, 51 (Pa.Comm.w.Ct.2007) (citing 25 P.S. § 3253); *Ctr. for Individual Freedom v. Corbett*, No. 07–2792, 2008 U.S. Dist. LEXIS 45236, *1, 2008 WL 2190957 (E.D.Pa. May 5, 2008) (stating that “Pennsylvania campaign finance law prohibits corporations and unions from making any ‘expenditure in connection with the election of any candidate or for any political purpose whatever’”) (quoting § 3253(a)).”

The corresponding regulation adopted by the Department of State, 4 Pa. Code § 178.1, essentially restates the statutory limitations.⁹⁷

⁹⁶ “At least since the latter part of the 19th century, the laws of some States and of the United States imposed a ban on corporate direct contributions to candidates.” *Citizens United v. Fed. Election Comm’n*, 558 U.S. 310, 343, 130 S.Ct. 876, 900, 175 L.Ed.2d 753 (2010).

⁹⁷ (a) Only corporations formed primarily for political purposes or as political committees may make contributions or expenditures in connection with the election of a candidate or for any political purpose.

(b) No National or State bank or an unincorporated association may make contributions or expenditures in connection with the election of a candidate or for a political purpose; except that National and State banks, corporations and unincorporated associations can make expenditures relating to questions to be voted on by the electors of the Commonwealth.

(c) No candidate or political committee or other person may knowingly receive or accept a contribution prohibited by this chapter.

(d) No officer or director of any corporation, National or State bank, or any unincorporated association shall consent to any contribution or expenditure by the corporation, National or State bank, or unincorporated association prohibited by this chapter.”

Since PSEA is a nonprofit corporation under Pennsylvania law,⁹⁸ it is clearly governed by the limitations of 25 P.S. § 3253 and 4 Pa. Code § 178.1.⁹⁹ The next question, then, is whether PSEA’s contributions to the FSS/DGA/Shapiro for Pennsylvania constituted any prohibited “contributions” or “expenditures.”

As previously noted, the Election Code defines “contribution,” in relevant part, as, “...any payment... or deposit of money... to a candidate or political committee made for the purpose of influencing any election in this Commonwealth...” 25 P.S. § 3241(b).

And again, “expenditure” is statutorily defined by the Elections Code, in relevant part, as, “the payment... of money... by a... person for the purpose of influencing the outcome of an election.” 25 P.S. § 3241(d).

Further, to be subject to the corporate giving prohibition in 25 P.S. § 3253, a contribution or expenditure must be “in connection with the election of any candidate.”

“Candidate” is defined by 25 P.S. § 3241(a) as “any individual who seeks nomination or election to public office,” while § 3241(c) defines “election” as “any retention, primary, special, municipal or general election at which candidates appear on the ballot for nomination or election or at which questions are to be voted on by the electors of this Commonwealth.”

Accordingly, 25 P.S. § 3253 prohibits corporations from making any payment to or in connection with any candidate or political committee for the purpose of influencing the outcome of an election involving candidates for office in the Commonwealth.

In this case, the FSS is a political committee (the fact that it has failed to register as one is immaterial to its legal status as one), the DGA is a political committee, and Shapiro for Pennsylvania is a candidate political committee.¹⁰⁰ Therefore, PSEA’s transfers of general treasury funds to the FSS, DGA, and/or Shapiro for Pennsylvania constitute both prohibited “contributions” and “expenditures” pursuant to 25 P.S. § 3253.

a. *25 P.S. § 3253 is constitutional and enforceable against PSEA’s contributions to the Fund for Student Success, Democratic Governors Association, and/or Shapiro for Pennsylvania since the contributions and expenditures at issue were not independent expenditures.*

Since 25 P.S. § 3253 was last amended by the Pennsylvania Legislature in 2006, federal courts have narrowed its broad ban on corporate contributions and expenditures, carving out “independent expenditures” from the statute’s prohibition.

⁹⁸ See footnote no. 1.

⁹⁹ Additionally, references to “person” elsewhere in the Election Code encompass corporations. While the term is not defined in the election code, the Statutory Construction Act defines “person” as, “...a corporation, partnership, limited liability company, business trust, other association, government entity (other than the Commonwealth), estate, trust, foundation or natural person.” 1 Pa.C.S.A. § 1991.

¹⁰⁰ “The words ‘Candidate’s Political Committee’ shall mean any political committee formed on behalf of a specified candidate and authorized by said candidate.” 25 P.S. § 3241.

The Election Code offers a typical definition of the term “independent expenditure”:

“...an expenditure by a person made for the purpose of influencing an election without cooperation or consultation with any candidate or any political committee authorized by that candidate and which is not made in concert with or at the request or suggestion of any candidate or political committee or agent thereof.”

25 P.S. § 3241.

In 2010, the U.S. Supreme Court struck down a federal campaign finance law prohibiting corporate independent expenditures in certain circumstances. The Court explained that, while “contribution limits... have been an accepted means to prevent quid pro quo corruption... independent expenditures, including those made by corporations, do not give rise to corruption or the appearance of corruption” and “restrictions on corporate independent expenditures are therefore invalid” under the First Amendment. *Citizens United v. Fed. Election Comm'n*, 558 U.S. 310, 357, 130 S.Ct. 876, 909, 175 L.Ed.2d 753 (2010).

Responding to *Citizens United*, the Pennsylvania Department of State stated,

“That part of section 1633(a) of the Election Code [25 P.S. § 3253] that prohibits banks, corporations and unincorporated associations (including labor unions) from making ‘contributions’ **remains in full force and effect**. The term ‘contribution’ is defined at section 1621(b) of the Election Code as including, among other things, ‘any payment, gift, subscription, assessment, contract, payment for services, dues, loan, forbearance, advance or deposit of money or any valuable thing, to a candidate or political committee for the purpose of influencing any election in this Commonwealth....’ 25 P.S. § 3241(b).”¹⁰¹

(Emphasis original).

Several years later, federal courts resolved a direct challenge to 25 P.S. § 3253’s prohibition on corporate independent expenditures, concluding:

“Pennsylvania's Election Code prohibits corporations and unincorporated associations from contributing to independent expenditure-only groups, and these groups are similarly prohibited from accepting such contributions. 25 P.S. § 3253(a). In the wake of *Citizens United*, however, this prohibition on political spending that is neither prearranged nor coordinated with a candidate amounts to an impermissible restriction of protected First Amendment activity. Thus, we must strike down as unconstitutional the contribution prohibition as applied to groups that make only independent expenditures.”

¹⁰¹ Pennsylvania Department of State. “Statement Regarding the Effect of the U.S. Supreme Court’s Decision in *Citizens United v. FEC* on Pennsylvania Law.” March 4, 2010. <https://www.dos.pa.gov/VotingElections/CandidatesCommittees/CampaignFinance/Documents/Statement%20of%20citizens%20united%20vs.%20fec/DOS%20Statement%20on%20Citizens%20United%20Case%202003-10.pdf>

(Emphasis added). *Gen. Majority Pac v. Aichele*, 1:14-CV-332, 2014 WL 3955079, at *4 (M.D. Pa. Aug. 13, 2014).

The Department of State responded to *General Majority* by: (1) confirming that, except for ending the statutory prohibition on corporate independent expenditures, the rest of the Commonwealth’s campaign finance requirements were unaffected and; (2) creating a reporting process for independent expenditure committees:

- “The [*General Majority* permanent injunction] order allows a political committee that is properly registered with the Department of State (as required by the Pennsylvania Election Code) to accept contributions from corporations, unincorporated associations and/or labor unions, so long as that registered political committee does not make contributions to, or coordinate expenditures on behalf of, candidates or political committees controlled by political parties.”¹⁰² (Emphasis added)
- “In addition, a political committee operating under the order cannot make contributions or expend its resources in a manner that would cause its resources (a) to be donated to a candidate’s political committee or a political party’s political committee; or (b) to be expended in a way that is coordinated with a candidate’s political committee or a political party committee.

Consistent with the order, the Department of State has established a procedure under which a political committee desiring to accept contributions from corporations, unincorporated associations and/or labor unions under the terms of the order must file a statement with the Department of State declaring its commitment not to make contributions to, or to coordinate expenditures on behalf of, any candidate’s political committee or political committee controlled by a political party. This type of political committee will be referred to as an Independent Expenditure Committee.”¹⁰³ (Emphasis added)

As recently as May 13, 2024, Commonwealth authorities continue to actively enforce 25 P.S. § 3253 against labor unions’ use of general treasury funds/members’ dues to make contributions to candidates or non-independent expenditure political committees.¹⁰⁴

In this case, the FSS — even had it registered as a political committee as required by the Election

¹⁰² Pennsylvania Department of State. “Statement Regarding the Effect of the Permanent Injunction Order in *General Majority PAC v. Carol Aichele, et al.*, on Pennsylvania Law.” <https://www.dos.pa.gov/VotingElections/CandidatesCommittees/CampaignFinance/Pages/Statement-on-General-Majority-PAC-V.-Aichele.aspx>

¹⁰³ *Id.*

¹⁰⁴ Pennsylvania Attorney General. “Two Philadelphia Men Charged with Defrauding Healthcare Workers’ Union with Sham Bids and Inflating Renovation Costs to Unlawfully Fund Political Work.” May 13, 2024. <https://www.attorneygeneral.gov/taking-action/two-philadelphia-men-charged-with-defrauding-healthcare-workers-union-with-sham-bids-and-inflating-renovation-costs-to-unlawfully-fund-political-work/> *Commonwealth of Pennsylvania v. Christen Woods*, police criminal complaint, May 9, 2024. <https://www.freedomfoundation.com/wp-content/uploads/2024/06/732512899-District-1199C-NUHHE-Charges-For-Theft.pdf>

Code — could not have been considered an *independent expenditure* committee because of its two contributions in May 2022 of nearly \$1.5 million to the DGA, which is registered as a regular political committee by virtue of the fact that it contributes funds directly to, and coordinates expenditures with, candidate committees like Shapiro for Pennsylvania.¹⁰⁵

b. Penalties

25 P.S. § 3543 provides:

“Any corporation or unincorporated association, which shall pay, give or lend or agree to pay, give or lend any money belonging to such corporation or unincorporated association or in its custody or control, in violation of the provisions of section 1633 [25 P.S. § 3253], shall be guilty of a misdemeanor, and, upon conviction thereof, shall be sentenced to pay a fine of not less than one thousand dollars (\$1,000) nor more than ten thousand dollars (\$10,000). Any director, officer, agent or employe of any corporation or unincorporated association who shall on behalf of such corporation or unincorporated association pay, give or lend or authorize to be paid, given or lent any money belonging to such corporation or unincorporated association or in its custody or control in violation of the provisions of section 1633 [25 P.S. § 3253] shall be guilty of a misdemeanor, and, upon conviction thereof, shall be sentenced to pay a fine not exceeding ten thousand dollars (\$10,000), or to undergo an imprisonment of not less than one (1) month nor more than two (2) years, or both, in the discretion of the court.”

(Emphasis added).

While the statute prescribes criminal penalties, it does not specify a *mens rea* requirement. Accordingly, in another case involving violations of the Elections Code, Commonwealth Courts turned to Pennsylvania’s Criminal Code for guidance regarding culpability. *See Com. v. Beck*, 810 A.2d 736, 746 (Pa.Cmwlt. 2002), as amended (Nov. 21, 2002).

Specifically, 18 Pa.C.S.A. § 302 provides that “a person is not guilty of an offense unless he acted intentionally, knowingly, recklessly or negligently, as the law may require, with respect to each material element of the offense” and that when, as in the case of 25 P.S. § 3543, “the culpability sufficient to establish a material element of an offense is not prescribed by law, such element is established if a person acts intentionally, knowingly or recklessly with respect thereto.”

These applicable types of culpability are defined by 18 Pa.C.S.A. § 302(b):

“(1) A person acts intentionally with respect to a material element of an offense when:
(i) if the element involves the nature of his conduct or a result thereof, it is his conscious object to engage in conduct of that nature or to cause such a result; and
(ii) if the element involves the attendant circumstances, he is aware of the existence of such circumstances or he believes or hopes that they exist.

¹⁰⁵ Committee ID no. 2002268. Pennsylvania Department of State. “Committee Information - DEM GOVERNORS' ASSOC – PA.” <https://www.pavoterservices.pa.gov/ElectionInfo/CommitteeInfo.aspx?ID=1541>

- (2) A person acts knowingly with respect to a material element of an offense when:
- (i) if the element involves the nature of his conduct or the attendant circumstances, he is aware that his conduct is of that nature or that such circumstances exist; and
 - (ii) if the element involves a result of his conduct, he is aware that it is practically certain that his conduct will cause such a result.
- (3) A person acts recklessly with respect to a material element of an offense when he consciously disregards a substantial and unjustifiable risk that the material element exists or will result from his conduct. The risk must be of such a nature and degree that, considering the nature and intent of the actor's conduct and the circumstances known to him, its disregard involves a gross deviation from the standard of conduct that a reasonable person would observe in the actor's situation.”

Further, 18 Pa.C.S.A. § 302(g) establishes that, “[a] requirement that an offense be committed willfully is satisfied if a person acts knowingly with respect to the material elements of the offense...”

In *Commonwealth v. Beck*, the Court held the defendant “willfully” failed to register a political committee and file the required reports because “the failure to file was not done innocently or inadvertently” (citing *United States v. Curran*, 20 F.3d 560, 567 (3d Cir.1994)).

In this case, ample evidence demonstrates that the PSEA and the PSEA Officers were aware of the applicable Election Code requirements and that their illegal use of the corporation’s general treasury funds to make contributions “in connection with the election of any candidate” was not an innocent or inadvertent mistake.

First, the PSEA has operated and regularly filed campaign finance reports on behalf of PSEA-PACE, a registered political committee, since 1968, demonstrating awareness of Election Code requirements. This alone suffices to prove the PSEA recklessly violated 25 P.S. § 3253.

Second, PSEA has repeatedly, publicly, and accurately described the statutory prohibition on corporate contributions with statements like: “PSEA cannot use dues dollars for direct or in-kind contributions to any candidates or political parties”¹⁰⁶; “No dues dollars can be given to political candidates”¹⁰⁷; and “no members’ dues are used to fund political candidates.”¹⁰⁸

Third, PSEA defended itself — successfully — against a prior complaint alleging certain of its activities undertaken in support of Tom Wolf’s gubernatorial campaign in 2014 violated a separate provision in the Public Employee Relations Act (PERA) also prohibiting unions’ use of

¹⁰⁶ Pennsylvania State Education Association. “Questions & Answers About Organizing.” <https://www.psea.org/globalassets/regions/westernregion/organizingqa.pdf>

¹⁰⁷ Pennsylvania State Education Association. “Contribute to PSEA-PACE.” <https://www.psea.org/give>
<https://www.psea.org/issues-action/action-center/psea-pace/>

¹⁰⁸ Pennsylvania State Education Association. “Electoral politics: ‘Party affiliation is secondary’” *PSEA Voice*. March 2018. <https://www.psea.org/news--events/Publications/voice-march-2018/electoral-politics-party-affiliation-is-secondary/>

general treasury funds to make political contributions.¹⁰⁹

The crux of PSEA’s defense in that matter was that its activities amounted to constitutionally protected internal communications to its members and independent expenditures, not *contributions* of the kind prohibited by the PERA.

But none other than PSEA’s own in-house counsel acknowledged that,

“...states like Pennsylvania can, and sometimes do, permissibly prohibit unions from using general treasury funds to make contributions to candidates or political parties in connection with elections. See, e.g., 25 P.S. § 3253(a) & 43 P.S. § 1101.1701.”

(Emphasis added). *Mary Trometter v. Pennsylvania State Education Association and National Education Association*, PLRB Case No. PERA-M-14-366-E, respondents combined post-hearing brief.¹¹⁰

This is, of course, precisely what PSEA/FSS did when it contributed \$1,475,000 in members’ dues to the DGA and/or Shapiro for Pennsylvania.¹¹¹ And while the Pennsylvania Labor Relations Board in *Trometter* ultimately found that the PSEA’s political endorsements in communications targeted internally to its members and support for political candidates via independent expenditures were constitutionally protected, it concluded that contributions of general treasury funds to external political entities *would* violate the PERA:

“...the distinction between a contribution to a political candidate, committee or campaign on the one hand and an independent expenditure on the other is not only significant, but also determinative. Contributions can be prohibited and regulated by the government, but independent expenditures to voice support for candidates constitute protected First Amendment speech. With this understanding, the prohibited contribution language in Section 1701 constitutes permissible government regulation, and it is consistent with First Amendment law.”

¹⁰⁹ The statute at issue, 43 P.S. § 1101.1701, provides: “No employe [sic] organization shall make any contribution out of the funds of the employe [sic] organization either directly or indirectly to any political party or organization or in support of any political candidate for public office.” A separate complaint has been filed with the Pennsylvania Labor Relations Board alleging the PSEA/FSS’ May 2022 contributions to the DGA/Shapiro for Pennsylvania also violated this statute.

¹¹⁰ Available online at: <https://www.fairnesscenter.org/wp-content/uploads/2020/08/Trometter-PSEA-NEAs-Post-Hearing-Brief-PLRB-Proceeding.pdf>

¹¹¹ Should further investigation show that the DGA served as an “indirect” conduit for the PSEA/FSS contributions to Shapiro for Pennsylvania, the PSEA previously acknowledged this behavior would violate the law, too:

“Both federal and Pennsylvania law explicitly ban such indirect contributions because they can be used as means for evading contribution limits or requirements for disclosing a contribution’s source. See 52 U.S.C. § 30122; 25 P.S. § 3254. There is no allegation or evidence here that the Unions made such an ‘indirect’ contribution by donating funds to Wolf through a straw or intermediary.”

Mary Trometter v. Pennsylvania State Education Association and National Education Association, PLRB Case No. PERA-M-14-366-E, respondents combined post-hearing brief. Available online at: <https://www.fairnesscenter.org/wp-content/uploads/2020/08/Trometter-PSEA-NEAs-Post-Hearing-Brief-PLRB-Proceeding.pdf>

Mary Trometter v. Pennsylvania State Education Association and National Education Association, 50 PPER ¶ 22. (Emphasis added).

In short, there is every reason to believe that the PSEA and PSEA Officers identified above — experienced in financial matters and applicable laws governing employee organizations and campaign finance, and in positions of authority regarding the two contributions at issue — knowingly if not intentionally violated 25 P.S. § 3253 when they authorized and/or orchestrated the transfer of \$1,475,000 in general treasury funds to the DGA and/or Shapiro for Pennsylvania.

2. Some or all the PSEA Officers committed theft in violation of Chapter 39, Title 18 Pa.C.S.A.

a. *Some or all the PSEA Officers committed theft by deception in violation of 18 Pa.C.S.A. § 3922(a).*

Under 18 Pa.C.S.A. § 3922(a),

“A person is guilty of theft if he intentionally obtains or withholds property of another by deception. A person deceives if he intentionally:

(1) creates or reinforces a false impression, including false impressions as to law, value, intention or other state of mind; but deception as to a person's intention to perform a promise shall not be inferred from the fact alone that he did not subsequently perform the promise;

...

(3) fails to correct a false impression which the deceiver previously created or reinforced, or which the deceiver knows to be influencing another to whom he stands in a fiduciary or confidential relationship.”

Pursuant to 18 Pa.C.S.A. § 3901, “property” is “anything of value,” including money. Further, “It is well established that a union acts as a trustee for the rights of its members and employees in the bargaining unit. *Falsetti v. Local Union No.2026, United Mine Workers of America*, 400 Pa. 145, 161 A.2d 882 (1960). In return, the members and employees are beneficiaries of a fiduciary obligation owed to them by the union. *Id.*” *Case v. Hazelton Area Educ. Support Pers. Ass'n (PSEA/NEA)*, 928 A.2d 1154, 1158 (Pa.Cmwlth. 2007).

By soliciting membership dues and PSEA-PACE contributions from Pennsylvania teachers in bargaining units it represents, and to whom it owes a fiduciary duty, while repeatedly and falsely claiming that their monies would not be contributed to political candidates or parties, some or all the PSEA Officers committed theft by deception.

b. *Some or all the PSEA Officers committed theft by receipt of stolen property in violation of 18 Pa.C.S.A. § 3925(a).*

18 Pa.C.S.A. § 3925(a) provides that,

“A person is guilty of theft if he intentionally receives, retains, or disposes of movable

property of another knowing that it has been stolen, or believing that it has probably been stolen, unless the property is received, retained, or disposed with intent to restore it to the owner.”

By intentionally receiving money property that was stolen by deception from PSEA-represented school employees and illegally disposing of that money by contributing it to the DGA/Shapiro for Pennsylvania by moving it through the FSS, some or all the PSEA Officers, including those operating the FSS, committed theft by receipt of stolen property.

c. Some or all the PSEA Officers committed theft by failure to make the required disposition of funds received in violation of 18 Pa.C.S.A. § 3927(a).

Under 18 Pa.C.S.A. § 3927(a),

“...A person who obtains property upon agreement, or subject to a known legal obligation, to make specified payments or other disposition, whether from such property or its proceeds or from his own property to be reserved in equivalent amount, is guilty of theft if he intentionally deals with the property obtained as his own and fails to make the required payment or disposition. The foregoing applies notwithstanding that it may be impossible to identify particular property as belonging to the victim at the time of the failure of the actor to make the required payment or disposition.”

When the PSEA receives dues from members, to whom it owes a fiduciary duty, the PSEA Officers have an obligation to use the funds for lawful purposes. Some or all the PSEA Officers violated this trust when they used \$1,475,000 of PSEA’s general funds as their own, disposing of the funds by unlawfully contributing to the DGA/Shapiro for Pennsylvania, thus committing theft by failing to make the required disposition of the funds.

d. At least some of the PSEA Officers’ violations of Chapter 39, Title 18 Pa.C.S.A. constitute first degree misdemeanors.

Under Chapter 39, Title 18 Pa.C.S.A., theft constitutes:

- a felony in the first degree if “the amount involved is \$500,000 or more,” 18 Pa.C.S.A. § 3903(a.2)(2);
- a felony in the second degree if “[t]he amount involved is \$100,000 or more but less than \$500,000,” 18 Pa.C.S.A. § 3903(a)(5);
- a felony in the third degree “if the amount involved exceeds \$2,000” but is less than \$100,000, 18 Pa.C.S.A. § 3903(a.1);
- a misdemeanor of the first degree if the amount involved is between \$200 and \$2,000, 18 Pa.C.S.A. § 3903(b); or
- a misdemeanor of the second degree if the amount involved “was \$50 or more but less than \$200,” 18 Pa.C.S.A. § 3903(b)(1).

The cost of an annual PSEA membership ranged from at least \$67.23 for an education support

professional joining the union after April 1 of the 2020-21 school year¹¹² to at least \$777 for a full-time teacher during the 2022-23 school year.¹¹³

Further, PSEA’s total revenue from “dues and agency fees” collected from members was:

- \$64,884,280 in the 2020-21 school year;¹¹⁴
- \$65,402,915 in the 2021-22 school year;¹¹⁵ and,
- \$65,964,776 in the 2022-23 school year.¹¹⁶

3. Some or all the PSEA Officers engaged in fraudulent and deceptive business practices in violation of 18 Pa.C.S.A. § 4107.

18 Pa.C.S.A. § 4107(a) establishes that,

“...A person commits an offense if, in the course of business, the person...
(5) makes a false or misleading statement in any advertisement addressed to the public or to a substantial segment thereof for the purpose of promoting the purchase or sale of property or services; [or]
(6) makes or induces others to rely on a false or misleading written statement for the purpose of obtaining property...”

By repeatedly providing written statements and membership solicitations to both existing and prospective PSEA members accurately noting that PSEA cannot legally use members’ dues/general treasury funds to contribute to political candidates or parties, while ignoring those laws and transferring \$1,475,000 in members’ dues to make just such contributions, some or all the PSEA Officers engaged in fraudulent and deceptive business practices.

Such conduct constitutes “a misdemeanor of the first degree if the amount involved is \$200 or more but \$2,000 or less.” 18 Pa.C.S.A. § 4107(a.1)(1)(ii). The cost of an annual PSEA membership ranged from at least \$67.23 for an education support professional joining the union after April 1 of the 2020-21 school year¹¹⁷ to at least \$777 for a full-time teacher during the 2022-23 school year.¹¹⁸

¹¹² PSEA 2020-2021 ESP Enrollment Form: <https://www.psea.org/globalassets/about-psea/join-psea/psea---2020-esp-enrollment-form.pdf>

¹¹³ PSEA 2022-2023 EA Enrollment Form: <https://www.psea.org/globalassets/about-psea/files/psea---2022-2023-ea-enrollment-form.pdf>

¹¹⁴ PSEA’s 2021 Form LM-2: <https://olmsapps.dol.gov/query/orgReport.do?rptId=788496&rptForm=LM2Form>

¹¹⁵ PSEA’s 2022 Form LM-2: <https://olmsapps.dol.gov/query/orgReport.do?rptId=849155&rptForm=LM2Form>

¹¹⁶ PSEA’s 2023 Form LM-2: <https://olmsapps.dol.gov/query/orgReport.do?rptId=875205&rptForm=LM2Form>

¹¹⁷ PSEA 2020-2021 ESP Enrollment Form: <https://www.psea.org/globalassets/about-psea/join-psea/psea---2020-esp-enrollment-form.pdf>

¹¹⁸ PSEA 2022-2023 EA Enrollment Form: <https://www.psea.org/globalassets/about-psea/files/psea---2022-2023-ea-enrollment-form.pdf>

4. Some or all the PSEA Officers dealt in proceeds of unlawful activities in violation of 18 Pa.C.S.A. § 5111.

18 Pa.C.S.A. § 5111(a) provides that,

“A person commits a felony of the first degree if the person conducts a financial transaction under any of the following circumstances:

(1) With knowledge that the property involved, including stolen or illegally obtained property, represents the proceeds of unlawful activity, the person acts with the intent to promote the carrying on of the unlawful activity.

(2) With knowledge that the property involved, including stolen or illegally obtained property, represents the proceeds of unlawful activity and that the transaction is designed in whole or in part to conceal or disguise the nature, location, source, ownership or control of the proceeds of unlawful activity.

(3) To avoid a transaction reporting requirement under State or Federal law.”

“Unlawful activity” for the purposes of (1) and (2) is defined as “[a]ny activity graded a misdemeanor of the first degree or higher under Federal or State law.” 18 Pa.C.S.A. § 5111(f). As alleged above, the violations by some or all the PSEA Officers of Chapter 39, Title 18 Pa.C.S.A. likely constitute at least first-degree misdemeanors.

Given PSEA’s repeated statements to this effect and experience with past litigation, some or all the PSEA Officers must have known (1) that PSEA could not use its general treasury funds, derived from members’ dues, to contribute to political candidates, parties, or organizations, and (2) that PSEA had assured its current and prospective members that their dues would not be used in this way, but (3) nonetheless carried out the illegal transfers and contributions to the DGA/Shapiro for Pennsylvania, § 5111(a) is satisfied.

Further, the fact that the transactions were made through the FSS strongly indicates an intent to “conceal or disguise the nature, location, source, ownership or control of the proceeds of unlawful activity” and/or “[t]o avoid a transaction reporting requirement under State or Federal law.”

Had PSEA contributed the \$1,475,000 in question directly to the DGA and/or Shapiro for Pennsylvania, it would have been obligated to publicly disclose the transactions to the U.S. Department of Labor on its Forms LM-2 and the recipient political committee would have been obligated to disclose receipt of the funds to the Pennsylvania Department of State, thus revealing the fact that PSEA used its general funds to make the contributions in violation of Pennsylvania law.¹¹⁹ Similarly, had PSEA contributed the funds to PSEA-PACE, its long-registered registered political committee, PSEA-PACE would have been obligated to publicly disclose the transactions on its campaign finance reports to the Pennsylvania Department of State.

However, by routing the funds through the FSS, which the PSEA failed to register with the Department of State as a political committee, and then through the DGA, PSEA avoided filing any disclosures under Pennsylvania’s Election Code which would have identified PSEA’s dues-

¹¹⁹ See footnote 32.

funded general treasury as the source of the unlawful contributions, thus violating 18 Pa.C.S.A. § 5111(a)(2) and (3).

5. Some or all the PSEA Officers engaged in corrupt organization racketeering in violation of 18 Pa.C.S.A. § 911.

Under, 18 Pa.C.S.A. § 911(b)(3), it is “unlawful for any person employed by or associated with any enterprise to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity.”

“Enterprise” is defined broadly as “any individual, partnership, corporation, association or other legal entity, and any union or group of individuals associated in fact although not a legal entity, engaged in commerce...” (Emphasis added). 18 Pa.C.S.A. § 911(h)(3).

Further, “racketeering activity” is defined in relevant part as an act “which is indictable” under Chapter 39 (relating to theft and related offenses) or § 5111 (relating to dealing in proceeds of unlawful activities) of Title 18 Pa.C.S.A. 18 Pa.C.S.A. § 911(h)(1)(i).

Finally, the phrase “pattern of racketeering activity” is defined as “a course of conduct requiring two or more acts of racketeering activity...” 18 Pa.C.S.A. § 911(h)(4).

Accordingly, when some or all the PSEA Officers unlawfully made two separate transfers of PSEA general funds — which were accumulated by fraudulent and deceptive business practices — to the DGA/Shapiro for Pennsylvania via the FSS, committing theft and dealing with proceeds of unlawful activity in the process, they also engaged in unlawful racketeering activity.

V. Enforcement

1. Pennsylvania Department of State

As the applicable “supervisor” for the purposes of the above campaign finance reports and regulations, it is the “duty” of the Department of State, pursuant to 25 P.S. § 3259, to,

“(6) Make from time to time inquiries and field investigations with respect to reports and statements filed under the provisions of this article and with respect to alleged failures to file any report or statement required under provisions of this article.

(7) Report apparent violations of this article to the appropriate law enforcement authorities.”

2. Dauphin County District Attorney and Pennsylvania Attorney General

a. Election Code violations

While the Department of State may investigate and refer violations of the Election Code to “appropriate authorities,” any such violations of the Election Code’s campaign finance regulations are subject to the “prosecutorial jurisdiction” of the Attorney General and/or the

“district attorney of any county in which a violation occurred,” which can also initiate prosecutions unilaterally absent referral by the Secretary of State. 25 P.S. § 3260b. The Attorney The PSEA, FSS, and Department of State — with which the applicable campaign finance reports were or should have been filed — are all based in Harrisburg. Accordingly, the above violations of the Election Code by the PSEA, FSS and DGA can and should be prosecuted by the Dauphin County District Attorney and/or the Attorney General.

b. Criminal Code violations

16 P.S. § 4402(a) provides that county district attorneys,

“...shall sign all bills of indictment and conduct in court all criminal and other prosecutions, in the name of the Commonwealth, or, when the Commonwealth is a party, which arise in the county, and perform all the duties which now by law are to be performed by deputy attorneys general, and receive the same fees or emoluments of office.”

Additionally, 71 P.S. § 732-205 grants the Attorney General,

“...the power to prosecute in any county criminal court the following cases...

(2) Criminal charges involving corrupt organizations as provided for in 18 Pa.C.S. § 911 (relating to corrupt organizations).

(3) Upon the request of a district attorney who lacks the resources to conduct an adequate investigation or the prosecution of the criminal case or matter or who represents that there is the potential for an actual or apparent conflict of interest on the part of the district attorney or his office...

(6) Criminal charges investigated by and referred to him by a Commonwealth agency arising out of enforcement provisions of the statute charging the agency with a duty to enforce its provision.

(7) Indictments returned by an investigating grand jury obtained by the Attorney General...

(b) Concurrent jurisdiction to prosecute.--The Attorney General shall have the concurrent prosecutorial jurisdiction with the district attorney for cases arising under subsection (a)(1), (2) and (6) and may refer to the district attorney with his consent any violation or alleged violation of the criminal laws of the Commonwealth which may come to his notice.”

VI. Conclusion

Pennsylvania law is clear. A labor union incorporated in the Commonwealth may not make a contribution or expenditure (other than an independent expenditure) from its general treasury funds, derived from membership dues, in relation to the election of a political candidate without violating the Election Code. As the largest public-sector union in the state, PSEA has the resources, sophistication, and past experience to understand applicable state laws governing its conduct. And, indeed, all available evidence indicates that PSEA was keenly aware of the law.

Across all relevant periods, PSEA correctly and repeatedly articulated the Election Code's restriction on its use of members' dues for political contributions via written communications to its members. Further, as party to prior legal proceedings regarding allegations that it violated the PERA, the PSEA admitted — and the PLRB concluded — that, while the PERA and Election Code do not prohibit independent expenditures or internal membership communications of a political nature, they *do* bar incorporated labor unions like PSEA from contributing general treasury funds, directly or through intermediaries, to political candidates.

Despite this knowledge, the PSEA and its officers decided to violate 25 P.S. § 3253 by sending nearly \$1.5 million in members' dues to the Democratic Governors Association, a non-independent expenditure political committee, for the purpose of supporting Josh Shapiro's 2022 gubernatorial candidacy.

Making matters worse, the PSEA and DGA executed this scheme by engaging in additional lawbreaking designed to obscure the illegal contributions from detection: PSEA routed the contributions through the FSS, which failed to register as a political committee, the DGA failed to disclose receipt of the contributions to the Pennsylvania Department of State, and the FSS falsely claimed on its federal tax return that the funds were sent to an independent expenditure committee. In so doing, some or all the PSEA Officers appear to have violated multiple criminal statutes involving theft, fraudulent and deceptive business practices, dealing in proceeds of unlawful activities, and corrupt organization racketeering.

The parties' behavior — paired with Gov. Shapiro's prompt reversal once in office of a key campaign promise the union staunchly opposed — certainly raises at least the appearance of *quid pro quo* corruption.

Accordingly, we respectfully request that, pursuant to 25 P.S. § 3259, your respective offices review and/or investigate these alleged violations and take appropriate action to enforce the law. We stand ready to provide any additional information, original documentation, or other assistance that may enable you to more expeditiously address these serious allegations.

Respectfully,



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