

Via Email RA-stcampaignfinance@pa.gov

September 6, 2024

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RE: Freedom Foundation Complaint against PSEA, Fund for Student Success, and Democratic Governors Association

Dear Ms. Robinson:

This letter is in response to the August 7, 2024, email from your office to Shanna Danielson, Treasurer of PSEA-PACE for State Elections (“PSEA-PACE”), requesting that PSEA-PACE respond to a complaint filed with your office by the Freedom Foundation against the Pennsylvania State Education Association (“PSEA”), PSEA’s Fund for Student Success (“FSS”), and the Democratic Governors Association (“DGA”).

PSEA is responding on behalf of PSEA-PACE and its FSS. In this letter, PSEA provides background information as to PSEA, PSEA-PACE, and PSEA’s FSS, and then responds to each allegation raised in the complaint.

In sum, the complaint:

1. Does not allege any violation of state election law by PSEA-PACE;
2. Alleges that PSEA’s FSS purportedly violated state election law by failing to register and report as a political committee; and
3. Alleges that PSEA purportedly violated state election law in 2022 by making contributions from its FSS to the DGA, which were allegedly sent by the DGA to “Shapiro for Pennsylvania,” the political committee of then-gubernatorial candidate Josh Shapiro.

As explained below, neither PSEA nor PSEA’s FSS violated any state laws. PSEA’s FSS does not engage in any activities that would necessitate registration and reporting as a Pennsylvania political committee. Additionally, the PSEA’s FSS contributions to DGA in 2022 were made to an account that was permitted to accept union contributions. Such funds were not contributed to any candidate in Pennsylvania. It is clear that neither PSEA nor PSEA’s FSS violated state election law and the allegations of the Freedom Foundation in that regard are without any merit whatsoever. Therefore, PSEA respectfully requests that the Department of State (“Department”) dismiss the complaint for lack of legal sufficiency pursuant to the General Rules of

Administrative Practice and Procedure, 1 Pa. Code § 35.54, and for failure to state “apparent violations” of the Pennsylvania Election Code, 25 P.S. § 3259(6) and (7).

I. Background Information

PSEA is a nonprofit corporation registered under the Nonprofit Corporation Law of 1988, 15 Pa.C.S.A. §§ 5101 – 6162, whose mission, as set forth in PSEA’s Constitution and Bylaws, is to support public education in Pennsylvania and to advocate for the interests of its members. PSEA is also a statewide labor organization as defined by the federal Labor Management Reporting and Disclosure Act, 29 U.S.C. §§ 401 - 531. PSEA has 177,676 dues-paying members, the great majority of whom work in the public schools of the Commonwealth. PSEA’s members also include persons employed in private schools or by private entities providing services to public schools. PSEA also has a retired membership category for formerly active members, and a student membership category for students in institutions of higher education intending to become teachers. PSEA has a governance structure which consists of a Board of Directors, whose members are elected by PSEA members, and executive officers (President, Vice President, and Treasurer) who are elected by delegates attending PSEA House of Delegates conventions. PSEA regularly recommends to its members the election of state and federal candidates for political office who will promote public education and the interests of its members. Such communications to members are lawfully paid for by dues dollars. See 25 P.S. § 3253(c).

PSEA is the sponsor of PSEA-PACE, which is a political action committee as defined in 25 P.S. § 3241(l) and is registered with the Department as required by 25 P.S. § 3244. As a political action committee registered and reporting in Pennsylvania, PSEA-PACE receives voluntary contributions from individuals and makes expenditures to, or in support of, candidates in Pennsylvania. PSEA-PACE annually files Form 990 and timely files campaign finance reports under 25 P.S. § 3246.¹

PSEA’s FSS is a separate segregated fund of PSEA, established under Section 527 of the Internal Revenue Code (“IRC”). As a 527 organization, the FSS receives lawful transfers of funds from PSEA’s treasury. The FSS annually files Form 990 and timely files Form 8872 with the Internal Revenue Service (“IRS”).²

¹ See IRS search results for PSEA-PACE at <https://forms.irs.gov/app/pod/basicSearch/details?searchOrgName=PSEA-PACE%20for%20State%20Elections&searchFormType=%20Form%20990&ein=&pacId=3986&pacInfoId=3986&fromDate=&toDate=>; see also Campaign Finance Online Reporting at <https://www.campaignfinanceonline.pa.gov/pages/CFReportSearch.aspx?QsResultAction=GoBackSearch> (enter “PSEA-PACE for State Elections” in search bar).

² See IRS search results for Fund for Student Success at <https://forms.irs.gov/app/pod/basicSearch/details?searchOrgName=Fund%20for%20Student%20Success&searchFormType=Form%208871,%20Form%208872,%20Form%20990&ein=&pacId=63200&pacInfoId=63200&fromDate=&toDate=>.

The DGA is “an independent voluntary political organization organized to support Democratic governors and candidates” throughout the United States. See <https://democraticgovernors.org/about/>. The DGA is registered with the IRS and files Form 990 annually and Form 8872 regularly with the IRS. We understand that the DGA maintains several different accounts, one of which may accept contributions from labor unions (the “DGA Labor Account”).

II. Allegations of the Freedom Foundation

1. The Complaint does not allege any violations of state law by PSEA-PACE.

The Freedom Foundation does not make any direct allegations against PSEA-PACE. All of those PSEA-PACE activities and communications described in the complaint are permissible under state law.

2. PSEA’s FSS is not a political committee required to register and report under state election law.

Section II.1. of the complaint alleges that PSEA’s FSS violated 25 P.S. §§ 3244, 3246, and 3247 by failing to register and report as a political committee.

The Pennsylvania Election Code, 25 P.S. § 3241(h), defines “political committee” to mean “any committee, club, association or other group of persons which receives contributions or makes expenditures.”

As described above, PSEA’s FSS is a separate segregated fund of PSEA, organized under Section 527 of the IRC. The FSS was created in the wake of Citizens United,³ to allow PSEA to use dues, in a tax compliant manner, for contributions to independent expenditure committees and for other legally permissible “exempt function”⁴ activities under Section 527. At the time of its creation, PSEA sought and received advice from experienced campaign finance counsel regarding whether the FSS must register and report as a Pennsylvania political committee. PSEA was advised that the FSS’s activities did not qualify as that of a political committee under state law.

PSEA’s FSS is funded solely by PSEA’s treasury and does not accept any outside contributions. Additionally, the FSS does not make direct expenditures for the purpose of influencing any

³ Citizens United v. Federal Election Commission, 558 U.S. 1 (2010), found that limiting independent political spending from corporations and other groups, including labor unions, violated their First Amendment right to free speech.

⁴ As a political organization organized under Section 527 of the IRC, the FSS must ensure that its activities further an “exempt function” under the IRC, defined as influencing or attempting to influence the selection, nomination, election, or appointment of an individual to a federal, state or local public office or office in a political organization. I.R.C. § 527(e)(2).

Pennsylvania elections. The only activities of the FSS are making contributions to organizations for the purpose of furthering exempt function activities. Moreover, the Department has not provided any clear guidance on whether entities such as PSEA's FSS must register and report as a Pennsylvania political committee and as such, PSEA has continued to rely on the above advice from counsel.

Despite the Freedom Foundation's assertion that PSEA willfully failed to register the FSS as a Pennsylvania political committee, PSEA has acted in good faith to abide by the law. The FSS is registered with and files regular reports with the IRS. There was clearly no intent by PSEA to evade any registration or reporting requirements, given that all the FSS's activities are publicly reported, albeit to the IRS. Indeed, if the Department believes that PSEA's FSS does qualify as a Pennsylvania political committee, then the FSS will immediately register and report as such.

Because PSEA believed in good faith that the FSS did not meet the definition of a "political committee," it was not required to register and report under Section 3244, 3246, or 3247 of the Pennsylvania Election Code, 25 P.S. §§ 3244, 3246 and 3247.⁵

3. Neither PSEA nor PSEA's FSS made a contribution, either directly or through the DGA, to Shapiro for Pennsylvania.

Section IV.1. of the complaint alleges that PSEA's contributions to the FSS/DGA/Shapiro for Pennsylvania violated Section 3253 of the Pennsylvania Election Code, 25 P.S. § 3253, which prohibits a labor union from making direct contributions of dues dollars to political candidates or committees. However, the complaint provides no evidence that either PSEA or PSEA's FSS made contributions to Shapiro for Pennsylvania or to any other Pennsylvania candidate.

PSEA's FSS contributed to the DGA Labor Account on May 16, 2022 and May 31, 2022.⁶ The DGA Labor Account is not registered in Pennsylvania, so that contribution was not disclosed on Pennsylvania reports. A separate DGA entity, Democratic Governors Association—PA ("DGA-

⁵ Several sections of the Pennsylvania Election Code require a "political committee" to register and report with the Department, as follows: (a) Section 3244, 25 P.S. § 3244, requires any political committee that receives contributions in excess of \$250 to file a statement with the Department; (b) Section 3246, 25 P.S. § 3246, requires each treasurer of a political committee to file reports of receipts and expenditures with the Department if the amount received or expended, or liabilities incurred, exceeds \$250; and (c) Section 3247, 24 P.S. § 3247, requires all political committees and candidates to file a report with the Department by January 31 of each year.

⁶ See the DGA Labor Account's IRS Form 8872 for the period 4/1/22 – 6/30/22, at <https://forms.irs.gov/app/pod/basicSearch/downloadFile?formId=133368&formType=e8872>, pages 292 and 785. Section I.5. of the complaint notes that the IRS Form 8872 filed by PSEA's FSS in 2021 indicates a contribution to the DGA, while the FSS's Form 990 for that same time period indicates a contribution to Put Pennsylvania First. The complaint's reference to the FSS's 2021 IRS Form 990 was in error, as the May 2022 contributions to DGA were actually reportable in 2022. Notwithstanding the Freedom Foundation's mistake, PSEA acknowledges an administrative error in the completion of the FSS's Form 990 for 2022, as the Form 990 should have indicated the contribution was sent to the DGA and not Put Pennsylvania First. PSEA is in the process of filing an amended 990 with the IRS and is implementing internal procedures to avoid such administrative errors in the future.

PA”), *is* registered as a political committee in Pennsylvania, but PSEA’s FSS did not contribute to that account.⁷

Put even more simply: the DGA Labor Account and DGA-PA are two separate accounts; PSEA’s FSS *did* contribute to one (the DGA Labor Account) but never contributed to the other (DGA-PA). Any contributions made by DGA to the Shapiro campaign or to the campaign of any other Pennsylvania candidate were made through DGA-PA, and not the DGA Labor Account to which PSEA’s FSS contributed. Accordingly, PSEA and PSEA’s FSS did not violate Section 3253 of the Election Code and the complaint provides no evidence to the contrary.⁸

III. Conclusion

The Freedom Foundation complaint fails to substantiate any allegations and is wholly without merit. The complaint mischaracterizes the nature of lawfully permissible activities and leaps to conclusions without evidence to support such claims.

As is clear from the very IRS filings cited by the Freedom Foundation in its complaint, PSEA’s FSS is funded solely by transfers from PSEA’s own treasury and does not make any direct expenditures for the purpose of influencing Pennsylvania elections. Additionally, there was clearly no intent by PSEA to evade registration or reporting, as all the FSS’s activities were publicly reported with the IRS.

While the Freedom Foundation complaint incorrectly conflates the DGA Labor Account and DGA-PA, IRS filings establish that PSEA’s FSS made contributions to DGA Labor Account, and not to DGA-PA. Campaign finance filings by DGA-PA make it clear that any contributions made by DGA-PA to the Shapiro campaign or other Pennsylvania candidates were made without funding from PSEA or PSEA’s FSS.⁹ No contributions were made by the DGA Labor Account to the Shapiro campaign or to any other Pennsylvania candidate.¹⁰

⁷ See DGA-PA reports: Committee ID 2002268, Pa. Dept. of State, “Committee Information – DEM GOVERNORS’ ASSOC – PA,” available at <https://www.pavoterservices.pa.gov/ElectionInfo/CommitteeInfo.aspx?ID=1541>.

⁸ Section IV.2. and 3. of the complaint alleges that PSEA’s officers committed theft and engaged in fraudulent and deceptive business practices. These allegations are false. Because PSEA’s contribution to the FSS, and FSS’s contribution to the DGA, were legally permissible as explained in detail in this response, PSEA’s officers did not engage in theft, fraudulent and deceptive business practices, or any other crime.

⁹ See DGA-PA reports: Committee ID 2002268, Pa. Dept. of State, “Committee Information – DEM GOVERNORS’ ASSOC – PA,” available at <https://www.pavoterservices.pa.gov/ElectionInfo/CommitteeInfo.aspx?ID=1541>.

¹⁰ See generally, Pa. Dept. of State Campaign Finance Online Database, available at <https://www.campaignfinanceonline.pa.gov/Pages/CFReportSearch.aspx>.

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For the reasons explained above, the complaint lacks legal sufficiency and fails to state apparent violations of the Pennsylvania Election Code. It is clear from publicly available documents that the allegations lack merit. PSEA respectfully requests that the Department dismiss the Freedom Foundation's complaint.

Sincerely,



Lynne Wilson
General Counsel

cc: Sarah Berkowitz, Chief of Compliance, Bureau of Campaign Finance & Lobbying Disclosure
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