



# **RETHINKING THE NATIONAL EDUCATION ASSOCIATION'S FEDERAL CHARTER**

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*July 2023*

## INTRODUCTION AND SUMMARY

The National Education Association (NEA) is the largest teachers' union in the country, with nearly 2.5 million working members nationwide in the 2021-22 academic year.<sup>1</sup> The number of public school employees whose working conditions are determined by union contracts negotiated and administered by NEA affiliates is even greater, since not all NEA-represented employees choose to become members. That same year, the NEA headquarters in Washington, D.C., alone reported total revenue of more than \$600 million, not counting the revenue retained by the NEA's hundreds, if not thousands, of state and local affiliates.<sup>2</sup> A political powerhouse, NEA undoubtedly exerts more influence over the policies and operations of American public schools than any other private special interest group.

Though the largest labor union in the country today, the NEA was originally incorporated in the District of Columbia in 1886<sup>3</sup> and functioned more as a professional association than a labor union until collective bargaining in government became widespread in the 1960s and '70s.<sup>4</sup>

In 1906, the NEA was granted a federal charter by an act of Congress.<sup>5</sup> Today, a total of 95 "patriotic and national organizations" have received federal charters codified in Title 36 U.S. Code Part B. Many are household names, such as the Boy Scouts, the U.S. Olympic Committee, the United Service Organization (USO), Little League Baseball, and the Veterans of Foreign Wars.

Among such storied American institutions, the NEA stands out both as the only labor union with a federal charter and as a lightning rod for controversy given its partisan political advocacy and willingness to bring its ponderous weight to bear on nearly every significant subject dividing the country.

Further, unlike many federal corporate charters, the NEA's charter is quite short and cedes to the union the ability to determine all substantive questions of its governance and operation through its own constitution and bylaws. The average length of a Title 36 charter is 1,010 words, while NEA's charter is only 517 words, much of which deals with the granting and subsequent revocation of NEA's D.C. real property tax exemption.<sup>6</sup> In effect, the NEA enjoys the recognition a charter confers without having to abide by the limitations and regulations of many other federally chartered corporations.

In the 117<sup>th</sup> Congress, legislation was introduced in both the House and Senate to repeal the NEA's federal charter.<sup>7</sup> However, federal charters generally confer few practical benefits. As the Congressional Research Service has explained:

"Although the tangible benefits of a congressional charter are few, some national nonprofit groups have perceived that the prestige associated with this distinction might improve their standing, expand their membership rolls, and increase their fundraising."<sup>8</sup>

Additionally, revocation of the NEA's federal charter would not strip the union of its corporate existence or meaningfully require it to alter its operations because its incorporation in the District of Columbia

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<sup>1</sup> National Education Association Form LM-2 for FY 2022. <https://olmsapps.dol.gov/query/orgReport.do?rptId=849363&rptForm=LM2Form>

<sup>2</sup> Ibid.

<sup>3</sup> <https://www.freedomfoundation.com/wp-content/uploads/2022/11/NEA-DC-corporate-registration.pdf>

<sup>4</sup> Charles W. Baird. "The NEA and Its Federal Charter." Public Service Research Foundation. Government Union Review, Volume 17, No. 3. June 1997. <https://psrf.org/government-union-review-1/2016/11/13/the-nea-and-its-federal-charter-by-charles-w-baird>

<sup>5</sup> Act of June 30, 1906, ch. 3929, § 4, 34 Stat. 805 (codified as amended at 36 U.S.C. §§ 151101-151108).

<sup>6</sup> See Appendix A: <https://www.freedomfoundation.com/wp-content/uploads/2023/05/Renovating-the-NEA-Federal-Charter-Appendices.xlsx>

<sup>7</sup> H.R.7510. <https://www.congress.gov/bill/117th-congress/house-bill/7510>

S.4854. <https://www.congress.gov/bill/117th-congress/senate-bill/4854>

<sup>8</sup> Henry Hogue. "Title 36 Charters: The History and Evolution of Congressional Practices." Congressional Research Service. Sept. 8, 2022. R47236. <https://crsreports.congress.gov/product/pdf/R/R47236>



preceded, and exists concurrently with, its federal charter. Consequently, repealing the NEA's charter would do little more than signal congressional disapproval of the organization.

Rather than repeal the NEA's federal charter, Congress should amend the NEA's charter to make the union less focused on partisan politics and more accountable to its members and the public.

Congress is well within its rights to revise or repeal a congressional charter, and it would not be unprecedented. Regarding corporations chartered under Title 36, the Congressional Research Service has noted:

- “[C]hartered organizations might face greater future oversight risks if congressional committees were to conduct more active Title 36 charter oversight than they have in the past. A Title 36 charter does not, per se, require a corporation to be more responsive to congressional oversight. Should the committees find such a group to be unresponsive, however, they might elect to review its charter for potential amendment or repeal.”
- “By providing a perceived seal of approval to certain organizations without advance investigation and ongoing oversight, Congress and individual Members face a reputational risk in the event of a scandal.”
- “As public laws, charters may be changed through enactment of other public laws. At least one existing charter has been repealed through this process. The 1907 congressional charter of the National German-American Alliance of the United States of America was repealed in 1918 following extensive Senate Judiciary Committee hearings.”<sup>9</sup>

If nothing else, there's little dispute that the NEA of today bears little resemblance to the organization Congress chartered in 1906, much less other corporate entities with federal charters. The congressionally established purpose of the NEA, as expressed in its charter, is simply to “elevate the character and advance the interests of the profession of teaching” and to “promote the cause of education in the United States.”<sup>10</sup>

By contrast, the NEA's “goals” as stated in its governing documents and official filings are somewhat more expansive and include, among other things: Promoting “the health and welfare of children,” “defend[ing] public employees' right to collective bargaining,” and promoting “human and civil rights”;<sup>11</sup> providing “leadership in solving social problems” and supporting “its members as employees in disputes with employers”;<sup>12</sup> and promoting “racial justice for our students, our communities, and our nation.”<sup>13</sup> To achieve its expansive goals, the NEA has committed to using “all available means, including organizing, legal, legislative, electoral, and collective action.”<sup>14</sup>

From supporting unrestricted increases to the U.S. debt ceiling,<sup>15</sup> to opposing policies seeking to preserve and protect women's sports,<sup>16</sup> picking sides in the Israeli-Palestinian conflict,<sup>17</sup> backing abortion without

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<sup>9</sup> Ibid.

<sup>10</sup> 36 U.S.C. § 151102

<sup>11</sup> National Education Association. “Constitution of the National Education Association of the United States.” 2022-2023.

<https://www.nea.org/sites/default/files/2022-07/NEA%20Constitution%20--%202022-2023.pdf>

<sup>12</sup> National Education Association. “Bylaws of the National Education Association of the United States.” 2022-2023.

<https://www.nea.org/sites/default/files/2022-07/NEA%20Bylaws%20--%202022-2023.pdf>

<sup>13</sup> NEA's Internal Revenue Service Form 990 tax return for 2020.

[https://apps.irs.gov/pub/epostcard/cor/530115260\\_202108\\_9900\\_2022080220262399.pdf](https://apps.irs.gov/pub/epostcard/cor/530115260_202108_9900_2022080220262399.pdf)

<sup>14</sup> Ibid.

<sup>15</sup> Marc Egan. “VOTE NO on the Limit, Save, Grow, Act of 2023.” National Education Association. April 25, 2023.

<https://www.nea.org/advocating-for-change/action-center/letters-testimony/vote-no-limit-save-grow-act-2023>

<sup>16</sup> National Education Association. “What You Need to Know About State Laws Attacking Transgender Youth.”

<https://www.nea.org/sites/default/files/2022-03/2022.2.10%20Memo%20on%20State%20Anti-trans%20Laws.pdf>

<sup>17</sup> Carole Greenfield, Gail Hammerman and Karen Bloom. “The National Education Association has no business platforming hate.” *Jewish News Syndicate*. July 1, 2022. <https://www.jns.org/the-national-education-association-has-no-business-platforming-hate/>

limit,<sup>18</sup> and supporting gun confiscation,<sup>19</sup> there is essentially no major policy debate in which the NEA does not seek to exert its considerable influence.

Given that the NEA has strayed from, or at least exceeded, the purposes established by its current federal charter, Congress should adopt the following package of reforms to the NEA charter that both incorporate provisions and regulations found often in other Title 36 charters and that are specifically tailored to NEA's unique status as the only federally chartered labor union:

- I.** Prohibit the NEA from engaging in electoral politics and lobbying.
- II.** Prohibit the NEA from engaging in discrimination or employing quotas based on protected characteristics like race.
- III.** Establish requirements for the maintenance and inspection of NEA's corporate records.
- IV.** Require the NEA to submit an annual report to Congress.
- V.** Fully repeal the NEA's D.C. property tax exemption.
- VI.** Require NEA officers to be U.S. citizens.
- VII.** Require the NEA to maintain tax-exempt status.
- VIII.** Require the NEA's governance structure to be representative of its membership.
- IX.** Clarify the liability of NEA's corporate officers.
- X.** Establish the service of process upon the NEA.
- XI.** Prohibit the NEA from collecting dues from a public employee unless the employee has been notified of their right to refuse, and has affirmatively consented, and require the NEA to collect dues without the use of government payroll systems.
- XII.** Prohibit taxpayer-funded release time for NEA officers.
- XIII.** Bar the NEA from incorporating the core tenets of Critical Race Theory into its governance, operations, and advocacy.
- XIV.** Subject the NEA and its affiliates to the Labor-Management Reporting and Disclosure Act.
- XV.** Require the NEA to refrain from initiating, and to actively intervene to prevent, any strikes or work stoppages by its affiliates.
- XVI.** Provide a mechanism to enforce the requirements of NEA's charter.
- XVII.** Specify the distribution of the NEA's assets in the event of its dissolution.

Together, these reforms would help ensure the NEA lives up to the high ideals expected of federally chartered "national and patriotic organizations" and again becomes an institution Americans of all stripes can support with pride instead of the controversial and divisive political combatant it has become today.

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<sup>18</sup> Eric Jotkoff. "NEA President's Statement on Dobbs v. Jackson Women's Health Organization." National Education Association. June 24, 2022. <https://www.nea.org/about-nea/media-center/press-releases/nea-presidents-statement-dobbs-v-jackson-womens-health-organization>

<sup>19</sup> National Education Association. "Responding to Gun Violence." Accessed May 24, 2023. <https://www.nea.org/gunviolence>



## RECOMMENDED NEA CHARTER REFORMS

### I. PROHIBIT THE NEA FROM ENGAGING IN ELECTORAL POLITICS AND LOBBYING.

Of the 95 organizations chartered under Title 36, 57 (60%) have some restriction on their ability to engage in electoral political activity.<sup>20</sup> Of these, 25 (26%) also face some restriction on lobbying or attempting to influence legislation. Given the overwhelmingly civic and patriotic nature of corporations chartered under Title 36, Congress has wisely restricted such organizations from undermining their unifying roles with the controversy that comes along with electoral politics.<sup>21</sup> The NEA charter, however, currently contains no such limitations.

As a result, the NEA has developed into not just the most politically active entity with a Title 36 federal charter, but ranks among the nation's most consequential political advocacy groups. During the 2019-20 election cycle alone, three political funds operated by the NEA (not counting the political committees and funds operated by the NEA's thousands of state and local affiliates) raised \$31.7 million.<sup>22</sup> The only other corporation with a Title 36 charter that maintains a federal political action committee (PAC) is the Society of American Florists and Ornamental Horticulturalists. According to Federal Election Commission records, its PAC raised a grand total of just over \$23,000 in the 2019-20 election cycle.<sup>23</sup>

It comes as no surprise the NEA is also a lobbying powerhouse. In 2020-2021, the NEA national headquarters alone spent more than \$8 million lobbying Congress, not including state legislatures.<sup>24</sup>

The most recent federal charter to include a prohibition on political activity was granted to the Korean War Veterans Association, Inc.<sup>25</sup> Though sponsored primarily by Democrats—including many currently serving in federal office<sup>26</sup>—the legislation was not controversial, passing the Senate via unanimous consent and the House via voice vote.

A new section should be added to the NEA charter incorporating the same political activities limitation included in the Korean War Veterans Association charter, which provides:

*“The corporation, or a director or officer of the corporation as such, may not contribute to, support, or participate in any political activity or in any manner attempt to influence legislation.”<sup>27</sup>*

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<sup>20</sup> See Appendix B: <https://www.freedomfoundation.com/wp-content/uploads/2023/05/Renovating-the-NEA-Federal-Charter-Appendices.xlsx>

<sup>21</sup> The Veterans of Foreign Wars of the United States is federally chartered under Title 36 but faces no restriction on engaging in political activity. Though it used to operate a federal PAC, the VFW voluntarily disbanded it after the PAC's governing board made controversial congressional endorsements in 2010 that stirred a national outcry. Richard Eubank, VFW national commander. “Statement From VFW National Commander on the PAC Situation.” Veterans of Foreign Wars. October 22, 2010. <https://www.vfw.org/media-and-events/latest-releases/archives/2010/10/statement-from-vfw-national-commander-on-the-pac-situation>

<sup>22</sup> NEA Fund for Children and Public Education (Federal Election Commission ID C00003251): \$4.3m  
NEA Fund for Children and Public Education (non-federal) (Internal Revenue Service EIN 52-1140991): \$2.1m  
NEA Advocacy Fund (Internal Revenue Service EIN 27-2152012): \$25.3m

<sup>23</sup> <https://www.fec.gov/data/committee/C00111302/?cycle=2020>

<sup>24</sup> Author's analysis of the quarterly lobbying reports filed by the NEA and its contract lobbyists with the Secretary of the Senate.

<sup>25</sup> S.1692 (2008). <https://www.congress.gov/bill/110th-congress/senate-bill/1692>

H.R.2852 (2008). <https://www.congress.gov/bill/110th-congress/house-bill/2852>

<sup>26</sup> The Senate version was sponsored by Sen. Ben Cardin (D-MD) and notably co-sponsored by, among others, then-Sens. Joe Biden (D-DE) and Hillary Clinton (D-NY). The House companion legislation was sponsored by Rep. Steny Hoyer (D-MD) and co-sponsored by, among others: Rep. Betty McCollum (D-MN); Rep. Adam Schiff (D-CA); Rep. C. A. Dutch Ruppersberger (D-MD); Rep. John P. Sarbanes (D-MD); and then-Rep. (now Sen.) Mazie Hirono (D-HI). H.R.2852 (2008). <https://www.congress.gov/bill/110th-congress/house-bill/2852>

<sup>27</sup> 36 U.S.C. § 120106(b)

## II. PROHIBIT THE NEA FROM ENGAGING IN DISCRIMINATION OR EMPLOYING QUOTAS BASED ON PROTECTED CHARACTERISTICS LIKE RACE.

Fifteen of the federal charters in Title 36 prohibit the corporation from implementing requirements for serving on the corporation's governing body that discriminate on the basis of characteristics like race, color, religion, sex, disability, age or national origin.<sup>28</sup> However, the NEA's charter contains no such requirements.

In fact, the NEA's governing documents repeatedly require that it employ discriminatory practices or quotas to ensure "ethnic minorities"<sup>29</sup> comprise certain minimum percentages of its personnel, governing committees and other entities within the corporation.<sup>30</sup> For instance, the NEA's constitution requires that at least 20 percent of the members of its board of directors be "ethnic minorities."<sup>31</sup> In the event an "ethnic minority" does not serve as the elected NEA president for 11 consecutive years, the corporation will "take such steps as may be legally permissible to elect a member of an ethnic-minority group."<sup>32</sup> Similar requirements are also imposed on the NEA's affiliates.

To prevent the use of such quotas and discriminatory practices, a new section should be added to the NEA charter providing:

*The corporation and its subordinate affiliates shall not discriminate against individuals on the basis of race, color, religion, sex, disability, age, or national origin. The corporation and its subordinate affiliates shall not establish or observe any quota based on race, color, religion, sex, disability, age, or national origin in matters concerning membership, corporate governance, or personnel.*

## III. ESTABLISH REQUIREMENTS FOR THE MAINTENANCE AND INSPECTION OF NEA'S CORPORATE RECORDS.

Sixty-four (67%) of the 95 federal charters in Title 36 require the corporation to maintain certain corporate records and make them available for inspection to either the corporation's members or the public under certain circumstances.<sup>33</sup> Again, the NEA's charter does not contain any similar requirement.

To ensure the NEA remains transparent and accountable to its members, a new section should be added to the NEA charter providing:

*(a) Records.—The corporation shall keep—*  
*(1) correct and complete records of account;*  
*(2) minutes of the proceedings of the members, board of directors, and committees of the corporation having any of the authority of the board of directors of the corporation; and*  
*(3) at the principal office of the corporation, a record of the names and addresses of the members of the corporation entitled to vote on matters relating to the corporation.*

<sup>28</sup> See Appendix C: <https://www.freedomfoundation.com/wp-content/uploads/2023/05/Renovating-the-NEA-Federal-Charter-Appendices.xlsx>

<sup>29</sup> NEA bylaw 12-1(h) defines "ethnic minority" as, "...those persons designated as ethnic minority by statistics published by the United States Bureau of the Census. This designation shall specifically include American Indian/Alaska Native, Asian, Native Hawaiian or other Pacific Islander, Black, and Hispanic." <https://www.nea.org/sites/default/files/2022-07/NEA%20Bylaws%20--%202022-2023.pdf>

<sup>30</sup> See, for instance, Article III, Sec. 2(d), Article IV, Sec. 4, Article V, Sec. 1, Article VI, Sec. 1(c), and Article VIII, Sec. 2 of the NEA constitution. <https://www.nea.org/sites/default/files/2022-07/NEA%20Constitution%20--%202022-2023.pdf>

See also NEA bylaws 3-1(g), 10.5(c), and 12-1(h). <https://www.nea.org/sites/default/files/2022-07/NEA%20Bylaws%20--%202022-2023.pdf>

<sup>31</sup> National Education Association Constitution 2022-2023, Art. IV, Sec. 4. <https://www.nea.org/sites/default/files/2022-07/NEA%20Constitution%20--%202022-2023.pdf>

<sup>32</sup> *Ibid.*, Art. V, Sec. 1(c).

<sup>33</sup> See Appendix D: <https://www.freedomfoundation.com/wp-content/uploads/2023/05/Renovating-the-NEA-Federal-Charter-Appendices.xlsx>



*(b) Inspection.—A member entitled to vote on any matter relating to the corporation, or an agent or attorney of the member, may inspect the records of the corporation for any proper purpose at any reasonable time.<sup>34</sup>*

#### **IV. REQUIRE THE NEA TO SUBMIT AN ANNUAL REPORT TO CONGRESS.**

Fifty-nine (62%) of the 95 federal charters in Title 36 require the corporation to provide an annual report of its expenditures and/or activities to Congress or a federal agency, but the NEA’s charter includes no such requirements.<sup>35</sup>

Given the NEA’s significant influence over public education—a matter of great national concern and a focus of federal policy—it is especially appropriate that NEA keep Congress apprised of its activities through submission of an annual report.

Accordingly, a new section should be added to the NEA charter providing:

*The corporation shall submit to Congress an annual report on the activities of the corporation during the preceding fiscal year.<sup>36</sup>*

#### **V. FULLY REPEAL THE NEA’S D.C. PROPERTY TAX EXEMPTION.**

The NEA’s charter requires that its principal office be located in the District of Columbia. For 92 years, the charter exempted the NEA from paying D.C. real and personal property taxes,<sup>37</sup> an exemption eventually worth \$1-2 million per year.<sup>38</sup> The exemption was significantly narrowed by the passage of H.R. 2607 in 1998, which required the NEA’s real property to “be subject to taxation by the District of Columbia in the same manner as any similar organization,” though the original language of the tax exemption remains in the NEA’s charter.<sup>39</sup>

Further, the NEA’s personal property tax exemption remains in effect. While the NEA’s existing charter requires it to submit an annual report to the Secretary of Education detailing “(1) the real and personal property held by the corporation; (2) the income from the property; and (3) the expenditure or other use or disposition of the property and income from the property,” it appears to be ignoring the directive. When the Freedom Foundation submitted a Freedom of Information Act request to the Department of Education for the NEA’s most recent annual report, the department replied that it was “unable to locate any documents that were responsive to your request.”<sup>40</sup>

Because the NEA’s is the only Title 36 federal charter to grant a tax exemption—without justification—and since the NEA is failing to abide by the conditions of the exemption under its current charter, the language in the NEA’s charter exempting it from D.C. property taxes—codified as 36 U.S.C. § 151106—should be repealed in full.

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<sup>34</sup> This is the language most recently and commonly used for such provisions in other federal charters.

<sup>35</sup> See Appendix E: <https://www.freedomfoundation.com/wp-content/uploads/2023/05/Renovating-the-NEA-Federal-Charter-Appendices.xlsx>

<sup>36</sup> This is common language for such provisions in other federal charters.

<sup>37</sup> 36 U.S.C. §§ 151106-151107 and DC Code § 47-1036.

<sup>38</sup> Charles W. Baird. “The NEA and Its Federal Charter.” Public Service Research Foundation. Government Union Review, Volume 17, No. 3. June 1997. <https://psrf.org/government-union-review-1/2016/11/13/the-nea-and-its-federal-charter-by-charles-w-baird>

<sup>39</sup> 36 U.S.C. § 151106 and DC Code § 47-1036.01.

<sup>40</sup> Michael Tobias, government information specialist in the Office of the Secretary of Education. Letter to Maxford Nelsen, director of labor policy, Freedom Foundation, RE: FOIA Request No. 23-00504-F. May 4, 2023. <https://www.freedomfoundation.com/wp-content/uploads/2023/05/DOE-FOIA-Request-No.-23-00504-F.pdf>

## **VI. REQUIRE NEA OFFICERS TO BE U.S. CITIZENS.**

Five of the federal charters in Title 36—including the charters of both the Boy Scouts and Girl Scouts—require that members of the corporation's governing board be U.S. citizens, but the NEA's charter contains no such requirement.<sup>41</sup>

As a patriotic, national organization under Title 36, it is entirely appropriate that the NEA's officers be comprised solely of U.S. citizens. From the president and the Secretary of Education to governors, state lawmakers and local school boards, elected officials with authority over the public education system must be U.S. citizens. Given NEA's outsized influence on education policy and public school administration, it is only right that NEA officers should be selected only from the ranks of U.S. citizens.

Accordingly, the NEA's charter should be amended to include a provision that reads:

*Each officer of the corporation must be a United States citizen.*

## **VII. REQUIRE THE NEA TO MAINTAIN TAX-EXEMPT STATUS.**

Thirty-three (35%) of the 95 federally chartered corporations under Title 36 have an obligation written into their charter to obtain and/or maintain federal tax-exempt status.<sup>42</sup> The NEA's charter includes no such requirement (possibly because the NEA was granted its federal charter seven years before the ratification of the 16<sup>th</sup> Amendment in 1913), though the NEA is currently exempt from federal income tax under 26 U.S.C. § 501(c)(5).<sup>43</sup>

Title 36 charters are not generally issued to private companies as it would be difficult to consider a for-profit enterprise to be a patriotic, national organization. As the same reasoning would apply to the NEA should it choose to restructure itself, a new section should be added to the NEA charter providing:

*The corporation shall maintain its status as an organization exempt from taxation under the Internal Revenue Code of 1986 (26 U.S.C. 1 et seq.).<sup>44</sup>*

## **VIII. REQUIRE THE NEA'S GOVERNANCE STRUCTURE TO BE REPRESENTATIVE OF ITS MEMBERSHIP.**

Unions elect their officers using various mechanisms. Most unions operate under a form of representative democracy, in which members of subordinate affiliates elect delegates to represent them at the national union convention. The delegates then elect the national union officers, vote on bylaws amendments, and determine similar questions of governance. Some unions use more purely democratic methods and conduct nationwide membership votes for national union officers.

For instance, as part of the fallout from the years-long corruption scandal plaguing the United Auto Workers (UAW), which has seen more than a dozen high-ranking UAW officials convicted of federal crimes, a federal judge directed the union to end its insider-friendly process of electing union leadership

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<sup>41</sup> See Appendix F: <https://www.freedomfoundation.com/wp-content/uploads/2023/05/Renovating-the-NEA-Federal-Charter-Appendices.xlsx>

<sup>42</sup> See Appendix G: <https://www.freedomfoundation.com/wp-content/uploads/2023/05/Renovating-the-NEA-Federal-Charter-Appendices.xlsx>

<sup>43</sup> See NEA's Internal Revenue Service Form 990 tax return for 2020.

[https://apps.irs.gov/pub/epostcard/cor/530115260\\_202108\\_9900\\_2022080220262399.pdf](https://apps.irs.gov/pub/epostcard/cor/530115260_202108_9900_2022080220262399.pdf)

26 U.S.C. § 501(c)(5) exempts "[l]abor, agricultural, or horticultural organizations" from federal income tax.

<sup>44</sup> This is the language most commonly used in the 33 existing federal charters with such a requirement.





and move to a system of nationwide membership elections.<sup>45</sup>

At present, the NEA operates under a representative democracy model, conducting an annual “representative assembly,” which it touts as “the world’s largest democratic deliberative assembly.”<sup>46</sup> While the NEA is not currently plagued by the kinds of corruption scandals that shook the UAW and are not uncommon in the labor movement, the possibility that NEA leadership may become overly entrenched or unaccountable in the future — or that any existing entrenchment may eventually bear fruit — justifies preventative measures.

Accordingly, Congress should adopt a standard found in the Title 36 federal charters of five other membership organizations requiring that any governing structure the corporation adopts be broadly representative of the membership and not just particular insider groups.<sup>47</sup> It could do so by adding a provision to NEA’s charter reading:

*The form of government of the corporation must be representative of the membership at large and may not permit concentration of control in a limited number of members or in a self-perpetuating group not representative of the membership at large.*<sup>48</sup>

## **IX. CLARIFY THE LIABILITY OF THE NEA’S CORPORATE OFFICERS.**

Sixty-three (66%) of the 95 federal charters in Title 36 specify the liability of the corporation’s officers and agents in generally standardized terms.<sup>49</sup> The NEA’s charter is silent on the topic.

As a best practice from an administrative and legal standpoint, a new section should be added to the NEA charter clarifying that:

*The corporation is liable for any act of any officer or agent of the corporation acting within the scope of the authority of the corporation.*<sup>50</sup>

## **X. ESTABLISH THE SERVICE OF PROCESS UPON THE NEA.**

Seventy-five (79%) of the 95 federal charters in Title 36 specify requirements governing the service of process upon the corporation for the purposes of delivering notice of litigation, summons, subpoena, etc., but the NEA’s charter does not address the matter.<sup>51</sup>

For clarity, a new section should be added to the NEA charter providing:

*The corporation shall comply with the law on service of process in the District of Columbia, each State in which it is incorporated, and each State in which it carries on activities.*

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<sup>45</sup> Ed White. “Federal judge signs off on historic change in UAW elections.” Associated Press. February 1, 2022.

<https://apnews.com/article/elections-detroit-constitutions-referendums-united-auto-workers-359bf6f944876cf2a3ba9fea7db6a665>

<sup>46</sup> National Education Association. “RA At a Glance.” <https://www.nea.org/professional-excellence/conferences-events/annual-meeting-and-representative-assembly/about-ra/ra-at-a-glance>

<sup>47</sup> See Appendix H: <https://www.freedomfoundation.com/wp-content/uploads/2023/05/Renovating-the-NEA-Federal-Charter-Appendices.xlsx>

<sup>48</sup> This is the language used in each of the five Title 36 charters addressing the subject.

<sup>49</sup> See Appendix I: <https://www.freedomfoundation.com/wp-content/uploads/2023/05/Renovating-the-NEA-Federal-Charter-Appendices.xlsx>

<sup>50</sup> This is the most recently used language on the subject and is included in the federal charters for the Military Officers Association of America (2009, 36 U.S.C. § 140410) and the Korean War Veterans Association, Incorporated (2008, 36 U.S.C. § 120110).

<sup>51</sup> See Appendix J: <https://www.freedomfoundation.com/wp-content/uploads/2023/05/Renovating-the-NEA-Federal-Charter-Appendices.xlsx>

**XI. PROHIBIT THE NEA FROM COLLECTING DUES FROM A PUBLIC EMPLOYEE UNLESS THE EMPLOYEE HAS BEEN NOTIFIED OF THEIR RIGHT TO REFUSE, AND HAS AFFIRMATIVELY CONSENTED, AND REQUIRE THE NEA TO COLLECT DUES WITHOUT THE USE OF GOVERNMENT PAYROLL SYSTEMS.**

In some states, the law either requires or permits government employers to deduct union dues from the paychecks of public employees, including teachers. However, taxpayers should not be forced to subsidize teachers' union dues collection. Further, payroll deduction of dues enables a host of deceptive and coercive union practices,<sup>52</sup> up to and including allowing union organizers to trigger employer-administered dues deductions from an employee's paycheck by producing a fraudulent or forged union membership agreement.<sup>53</sup>

Such heavy-handed tactics implicate public employees' First Amendment right, as recognized by the U.S. Supreme Court, to refrain from financially supporting a public-sector union. In its 2018 decision in *Janus v. AFSCME*, the court held that,

“...States and public-sector unions may no longer extract agency fees from nonconsenting employees... Neither an agency fee nor any other payment to the union may be deducted from a nonmember's wages, nor may any other attempt be made to collect such a payment, unless the employee affirmatively consents to pay. By agreeing to pay, nonmembers are waiving their First Amendment rights, and such a waiver cannot be presumed. Rather, to be effective, the waiver must be freely given and shown by ‘clear and compelling’ evidence. Unless employees clearly and affirmatively consent before any money is taken from them, this standard cannot be met.”<sup>54</sup>

(Internal citations omitted).

Unsurprisingly, the NEA strongly advocates for employer-administered payroll deduction of dues and recommends its affiliates include a “maintenance of payment provision” in their membership forms “in which employees agree to pay their full annual dues even if they choose to resign from union membership.”<sup>55</sup>

Eleven (12%) of the federal charters in Title 36 authorize or regulate the corporation's membership and dues collection.<sup>56</sup> At present, the NEA's charter allows it to determine all aspects of membership via its bylaws.

To protect NEA's members from exploitative dues-collection practices and free taxpayers from the obligation to fund NEA dues collection, the following language should be added to the NEA's charter:

*(a) DUES COLLECTION.—The corporation and its subordinate affiliates may only accept payment of membership dues or fees from an employee of a state or local government, as defined by 5 U.S.C. § 3371, either directly from the employee or indirectly via per capita taxes or other fees paid by an affiliate, if:*

<sup>52</sup> Timothy Snowball. “Glenn Laird's Continuing Fight for First Amendment Rights.” Freedom Foundation. April 19, 2021. <https://www.freedomfoundation.com/labor/glenn-lairds-continuing-fight-for-first-amendment-rights/>

<sup>53</sup> Freedom Foundation. “Federal Lawsuits Against Government Unions for Forging Signatures on Membership Forms.” February 2022. <https://www.freedomfoundation.com/wp-content/uploads/2022/04/Union-forgery-handout.pdf>

<sup>54</sup> *Janus v. AFSCME*, 585 U.S. \_\_\_ (2018). [https://www.supremecourt.gov/opinions/17pdf/16-1466\\_2b3j.pdf](https://www.supremecourt.gov/opinions/17pdf/16-1466_2b3j.pdf)

<sup>55</sup> National Education Association. “The Benefits of Collective Bargaining in Public Education.” January 2022.

<https://www.nea.org/sites/default/files/2022-01/28263%20Benefits%20of%20Bargaining%20in%20Education%20v5.pdf>

<sup>56</sup> See Appendix K: <https://www.freedomfoundation.com/wp-content/uploads/2023/05/Renovating-the-NEA-Federal-Charter-Appendices.xlsx>



(1) the employee has been notified by the corporation or its applicable subordinate affiliate of their First Amendment right to refrain from membership and payment of associated dues or fees; (2) the employee has freely waived their First Amendment right to refrain from, and clearly and affirmatively consented to, membership and the payment of associated dues or fees; and (3) the employee has authorized the transmittal of their membership dues or fees to the corporation or its applicable subordinate affiliate without the use, directly or indirectly, of payroll deduction. (b) MEMBERSHIP CANCELLATION.—The corporation and its subordinate affiliates shall process and honor membership and dues payment cancellation requests as soon as practicable following receipt.

## **XII. PROHIBIT TAXPAYER-FUNDED RELEASE TIME FOR NEA OFFICERS.**

Collective bargaining agreements negotiated by teachers' unions with school districts and other public employers often include provisions for what is commonly referred to as "release time."<sup>57</sup> Such provisions can take a variety of forms, but all provide that public employees who are also union officers may be "released" from their duties to engage in union work while on-the-clock without loss of pay, benefits or seniority. In the most extreme cases, teachers' union officers are permitted to work full-time on union business while continuing to receive their full, taxpayer-funded salary and benefits package from the school district.<sup>58</sup>

While the NEA specifically encourages its affiliates to bargain for release time provisions, listing release time as one of "8 essentials to a strong union contract,"<sup>59</sup> taxpayers should not have to subsidize union activity or pay the salaries of union officers; this is ostensibly what unions collect dues to pay for.

Accordingly, a provision should be added to the NEA's charter providing:

*No part of the compensation received for work performed on behalf of the corporation, or any of its subordinate affiliates, by any officer or representative of the corporation, or any of its subordinate affiliates, who is an employee of a state or local government, as defined by 5 U.S.C. § 3371, may be derived from payments made by the state or local government to the corporation or its officers or representatives.*

## **XIII. BAR THE NEA FROM INCORPORATING THE CORE TENETS OF CRITICAL RACE THEORY INTO ITS GOVERNANCE, OPERATIONS, AND ADVOCACY.**

The NEA repeatedly and extensively advocates for Critical Race Theory and its promotion in American public schools, believing, for instance, that color-blindness is racist and that, by definition, only whites can be racist.<sup>60</sup>

To prevent the NEA from further injecting this harmful, divisive and un-American ideology into public school classrooms, a new section should be added to the NEA charter providing:

*(a) REQUIRED AFFIRMATIONS OF BELIEF.—The corporation and its subordinate affiliates shall not require or encourage staff, officers, affiliates, or members to affirm, adopt, or adhere to any belief or concept that:*

<sup>57</sup> Release time is essentially the non-federal equivalent of the "official time" provided to federal employees' unions by 5 U.S.C. § 7131.

<sup>58</sup> Goldwater Institute. "When Government Employees are Paid NOT to Work." <https://www.goldwaterinstitute.org/releasetime/>

<sup>59</sup> National Education Association. "8 essentials to a strong union contract without fair-share fees."

<https://www.freedomfoundation.com/wp-content/uploads/2018/03/NEA-8Essentials.pdf>

<sup>60</sup> Maxford Nelsen. "NEA 'racial justice' guide backs left-wing priorities like defunding police, banning voter ID." Freedom Foundation. August 24, 2021. <https://www.freedomfoundation.com/labor/nea-racial-justice-guide-backs-left-wing-priorities-like-defunding-police-banning-voter-id/>

- (1) *The United States is fundamentally or irredeemably racist or sexist;*
  - (2) *An individual, by virtue of sex, race, ethnicity, religion, color, or national origin, is inherently racist, sexist, or oppressive, whether consciously or unconsciously;*
  - (3) *An individual, by virtue of sex, race, ethnicity, religion, color, or national origin, should be blamed for actions committed in the past by other members of the same sex, race, ethnicity, religion, color, or national origin; or*
  - (4) *An individual's moral character is necessarily determined, in whole or in part, by his or her sex, race, ethnicity, religion, color, or national origin.*
- (b) *PROMOTION OF REQUIRED AFFIRMATIONS OF BELIEF.—The corporation and its subordinate affiliates shall not advocate for or encourage any school district, public school, or governmental entity responsible for the oversight of public secondary or elementary schools, including public charter schools, to require students to affirm, adopt or adhere to any of the beliefs or concepts listed in (a) of this section.*<sup>61</sup>

#### **XIV. SUBJECT THE NEA AND ITS AFFILIATES TO THE LABOR-MANAGEMENT REPORTING AND DISCLOSURE ACT.**

To help deter corruption within unions and hold them accountable to their membership, the Labor-Management Reporting and Disclosure Act (LMRDA), 29 U.S.C. Chapter 11, applies to any labor organization “engaged in an industry affecting commerce... in which employees participate and which exists for the purpose... of dealing with employers concerning... terms or conditions of employment.” The LMRDA establishes:

- “[A] Bill of Rights for union members
- Reporting requirements for labor organizations, union officers and employees, employers, labor-relations consultants, and surety companies
- Standards for the regular election of union officers
- Safeguards for protecting labor organization funds and assets”<sup>62</sup>

Unions representing federal employees are also subject to the LMRDA.<sup>63</sup> However, unions representing only non-federal public employees are not subject to the LMRDA and face no similar financial reporting requirements or democratic safeguards.<sup>64</sup>

While the NEA is currently subject to the LMRDA and files Form LM-2 financial disclosures with the Office of Labor-Management Standards because some of its subordinate affiliates represent private-sector workers in “industries affecting commerce,” most NEA affiliates — such as the California Teachers Association or the Seattle Education Association — represent only non-federal public employees and are not subject to the LMRDA, leaving their members without LMRDA financial transparency insights and democratic protections.<sup>65</sup>

Congress has also expressed concern over the financial transparency of federally chartered corporations. By default, corporations chartered under Title 36 must undergo an annual audit and submit a report of the

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<sup>61</sup> This language is adapted from model legislation proposed by James R. Copeland in, “How to Regulate Critical Race Theory in Schools: A Primer and Model Legislation,” published by the Manhattan Institute on August 26, 2021. <https://www.manhattan-institute.org/copland-critical-race-theory-model-legislation>

<sup>62</sup> U.S. Department of Labor, Office of Labor-Management Standards. “Labor Management Reporting and Disclosure Act.” November 29, 2017. <https://www.dol.gov/agencies/olms/compliance-assistance/fact-sheet/lmrda>

<sup>63</sup> See 5 U.S.C. § 7120, 29 CFR § 457.1, and 29 CFR § 458.3.

<sup>64</sup> U.S. Department of Labor, Office of Labor-Management Standards. “Frequently Asked Questions About Union Member Rights Under the LMRDA and CSRA.” August 5, 2022. <https://www.dol.gov/agencies/olms/compliance-assistance/faqs#quest4>

<sup>65</sup> Maxford Nelsen. “Freedom Foundation supports proposed Department of Labor union transparency regulation.” Freedom Foundation. February 21, 2020. <https://www.freedomfoundation.com/labor/freedom-foundation-supports-proposed-department-of-labor-union-transparency-regulation/>



audit to Congress.<sup>66</sup> However, seven of the 95 federal charters in Title 36—including the NEA’s<sup>67</sup>—waive this requirement, while six establish additional audit requirements.<sup>68</sup>

To ensure the NEA and its local affiliates abide by the same accountability and transparency mechanisms Congress has determined are appropriate for deterring corruption in private-sector unions, a new section should be added to the NEA charter providing:

*The corporation and its subordinate affiliates are “labor organizations” for the purposes of 29 U.S.C. Chapter 11 and shall abide by all provisions of that chapter applicable to labor organizations.*

## **XV. REQUIRE THE NEA TO REFRAIN FROM INITIATING, AND TO ACTIVELY INTERVENE TO PREVENT, ANY STRIKES OR WORK STOPPAGES BY ITS AFFILIATES.**

Teacher strikes have become increasingly common in recent years, even prior to the COVID-19 pandemic, and teachers’ unions are increasingly using coordinated strikes to advance their public relations and political goals.<sup>69</sup> During COVID-19, teachers unions used strikes and the threat of strikes to delay school reopening.<sup>70</sup>

Strikes disrupt student learning and families’ schedules, holding public education hostage to advance the agenda of a private special interest. As President Franklin Delano Roosevelt once explained,

“...[M]ilitant tactics have no place in the functions of any organization of Government employees. Upon employees in the Federal service rests the obligation to serve the whole people, whose interests and welfare require orderliness and continuity in the conduct of Government activities. This obligation is paramount. Since their own services have to do with the functioning of the Government, a strike of public employees manifests nothing less than an intent on their part to prevent or obstruct the operations of Government until their demands are satisfied. Such action, looking toward the paralysis of Government by those who have sworn to support it, is unthinkable and intolerable.”<sup>71</sup>

Unfortunately, due to insufficient or unenforced penalties, teacher strikes occur even in states in which strikes by public employees are technically illegal. Often, teachers do not even lose pay for striking.<sup>72</sup>

By contrast, federal employees—including those who are public school teachers serving the children of American diplomats and other personnel stationed abroad—are prohibited from striking and federal employees’ unions are prohibiting from promoting strikes or work stoppages.

To protect American students, families and taxpayers from the disruption that occurs when teachers’ unions hold public education hostage through a strike or work stoppage, a new section should be added to the NEA charter providing:

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<sup>66</sup> 36 U.S.C. § 10101.

<sup>67</sup> 36 U.S.C. § 151108.

<sup>68</sup> See Appendix L: <https://www.freedomfoundation.com/wp-content/uploads/2023/05/Renovating-the-NEA-Federal-Charter-Appendices.xlsx>

<sup>69</sup> Melissa Arnold Lyon. “In the Strike Zone: New Data to Contextualize the Recent Surge in Teacher Strikes.” Urban Institute. May 26, 2022. <https://www.urban.org/research/publication/strike-zone-new-data-contextualize-recent-surge-teacher-strikes>

<sup>70</sup> Kalyn Belsha. “Influential national teachers union backs strikes as tool in school reopening fight.” *Chalkbeat*. July 28, 2020.

<https://www.chalkbeat.org/2020/7/28/21345279/influential-national-teachers-union-backs-strikes-as-tool-in-school-reopening-fight>

<sup>71</sup> President Franklin Delano Roosevelt. Letter to Luther C. Steward, president of the National Federation of Federal Employees. August 16, 1937. <https://www.presidency.ucsb.edu/documents/letter-the-resolution-federation-federal-employees-against-strikes-federal-service>

<sup>72</sup> Maxford Nelsen. “If teacher strikes are illegal, why do they happen?” Freedom Foundation. September 14, 2018.

<https://www.freedomfoundation.com/labor/if-teacher-strikes-are-illegal-why-do-they-happen/>

*The corporation and its subordinate affiliates shall not:*

*(a) call, or participate in, a strike, work stoppage, or slowdown affecting a state or local government, as defined by 5 U.S.C. § 3371; or*

*(b) condone any activity described in subsection (a) of this section by failing to take action to prevent or stop such activity.<sup>73</sup>*

## **XVI. PROVIDE A MECHANISM TO ENFORCE THE NEA CHARTER'S REQUIREMENTS.**

Five of the existing federal charters in Title 36 permit the U.S. Attorney General to bring legal action against the corporation for charter violations. Another four provide for the automatic termination of the charter if tax-exempt status is not maintained.<sup>74</sup> The NEA charter, however, contains no enforcement mechanisms, without which the proposed reforms to the NEA's charter could be ignored without consequence.

A new section should be added to the NEA charter providing:

*The Attorney General of the United States may bring a civil action in the United States District Court for the District of Columbia for appropriate equitable relief if the corporation—(1) engages or threatens to engage in any act, practice, or policy that is inconsistent with its purposes set forth in 36 U.S.C. § 151102; or (2) refuses, fails, or neglects to carry out its obligations under this charter or threatens to do so.*

A more robust accountability mechanism would also allow the attorney general of any state in which the NEA or its affiliates conduct business to bring a similar action against the corporation to enforce the terms of its charter.

## **XVII. SPECIFY THE DISTRIBUTION OF THE NEA'S ASSETS IN THE EVENT OF ITS DISSOLUTION.**

Seventeen federal charters in Title 36 specify procedures for the distribution of the corporation's assets in the event of its dissolution.<sup>75</sup> The NEA charter, however, does not. Reforming the NEA's federal charter without providing a mechanism for the distribution of the corporation's assets upon dissolution could allow the NEA to evade the obligations of its revised federal charter by dissolving and reorganizing.

To prevent the NEA from circumventing the new charter requirements through a corporate restructuring, a new section should be added to the NEA charter providing:

*On dissolution or final liquidation of the corporation, any assets remaining after the discharge or satisfactory provision for the discharge of all liabilities shall be either deposited in the Treasury of the United States as a miscellaneous receipt or divided equally among employed individuals who are, at the time of dissolution or final liquidation, members of the corporation or any of its subordinate affiliates.<sup>76</sup>*

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<sup>73</sup> This language is largely based on the existing prohibition against unions representing federal employees from engaging in a strike. See 5 U.S.C. § 7116(b)(7).

<sup>74</sup> See Appendix M: <https://www.freedomfoundation.com/wp-content/uploads/2023/05/Renovating-the-NEA-Federal-Charter-Appendices.xlsx>

<sup>75</sup> See Appendix N: <https://www.freedomfoundation.com/wp-content/uploads/2023/05/Renovating-the-NEA-Federal-Charter-Appendices.xlsx>

<sup>76</sup> While this exact language does not exist in any other federal charter, it borrows heavily from the charters of the Reserve Officers Association of the United States (36 U.S.C. § 190112) and The Foundation of the Federal Bar Association (36 U.S.C. § 70512).



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