

July 24, 2024

Edward Killen, Commissioner
Tax-Exempt & Government Entities Division
Internal Revenue Service
U.S. Department of the Treasury
Mail Code 4910DAL
1100 Commerce Street
Dallas, TX 75242-1027

Via email to eoclass@irs.gov

Re: Report of violations of the Internal Revenue Code by the Fund for Student Success

Commissioner Killen,

It has come to our attention that the Fund for Student Success (FSS), a “political organization” under 26 U.S.C. § 527 operated by the Pennsylvania State Education Association (PSEA), has submitted false and fraudulent information on its Form 990 tax return for 2021. Specifically, the FSS falsely indicated on its return that all of its expenditures for the year — totaling \$1,475,000 — were granted to Put Pennsylvania First (PPF), a short-lived political committee which engaged exclusively in independent expenditures supporting Josh Shapiro and opposing Doug Mastriano in Pennsylvania’s 2022 gubernatorial general election.

As a qualified state or local political organization, PPF reported its contributions and expenditures to the Pennsylvania Department of State rather than the Internal Revenue Service (IRS). However, the campaign finance disclosures filed by PPF reflect no contributions received from the PSEA/FSS. On the contrary, the Forms 8872 filed by the FSS itself indicate that the \$1,475,000 in question was actually contributed to the Democratic Governors Association (DGA), a fact further confirmed by the DGA’s own Form 8872 filings.

Most likely, the FSS submitted the fraudulent return to obscure its violations of Pennsylvania labor and campaign finance laws prohibiting the use of the union’s general treasury funds to contribute to political candidates. As an independent expenditure committee, the PSEA/FSS could have legally contributed general treasury funds to PPF, whereas contributions to the DGA — which, in turn, contributes funds directly to candidates — are statutorily prohibited by at least two Pennsylvania laws.

I. Parties and Background

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 IRS as a nonprofit business 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 distributed frequent and extensive statements and materials to its members and their families enthusiastically supporting Josh Shapiro’s campaign for governor and, just as if not more emphatically, opposing Doug Mastriano’s gubernatorial bid.⁶ 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.⁷

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>

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/>

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

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

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

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

⁷ 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>

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.”⁸

PSEA-PACE is registered with the IRS as a “political organization” pursuant to 26 U.S.C. § 527,⁹ the purpose of which is to support and/or oppose candidates for office.¹⁰ On its Form 8871, PSEA-PACE claimed exemption from disclosing its contributions and expenditures to the IRS on Forms 8872 as a qualified state or local political organization. Instead, it discloses its financial transactions to the Pennsylvania Department of State.¹¹

According to its Pennsylvania campaign finance reports, PSEA-PACE made eight contributions to Shapiro for Pennsylvania¹² — the authorized political committee of Josh D. Shapiro, then a candidate for Pennsylvania governor¹³ — in 2021-22 totaling more than \$800,000.

Its campaign finance reports also indicate that PSEA-PACE is funded mostly or exclusively by contributions received from individuals.¹⁴ Indeed, PSEA regularly solicits its members for contributions to PSEA-PACE above and beyond their membership dues.¹⁵

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

⁸ Pennsylvania State Education Association. “What do elections have to do with your job & your school?”

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

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

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

⁹ 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>

¹⁰ 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.”

¹¹ 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>

¹² Committee ID no. 20160016. Pennsylvania Department of State. “Committee Information - SHAPIRO, JOSH FOR PENNSYLVANIA.” <https://www.pavoterservices.pa.gov/ElectionInfo/CommitteeInfo.aspx?ID=11696>

¹³ Candidate ID no. 2022C0206. Pennsylvania Department of State. “Candidate Information - SHAPIRO, JOSHUA D.” <https://www.pavoterservices.pa.gov/ElectionInfo/CandidateInfo.aspx?ID=19631>

¹⁴ 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>

¹⁵ Pennsylvania State Education Association. “Contribute to PSEA-PACE.” <https://www.psea.org/issues-action/action-center/psea-pace/>

In making its pitch to members for PACE contributions, PSEA regularly notes — correctly — that it cannot use its general treasury funds 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).¹⁶

- 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.”¹⁷
- 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.”¹⁸
- 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.”¹⁹
- 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:

“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

¹⁶ 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

¹⁷ 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>

¹⁸ Pennsylvania State Education Association. “Questions & Answers About Organizing.”

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

¹⁹ Pennsylvania State Education Association. “Contribute to PSEA-PACE.” <https://www.psea.org/give>

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

check bigger than what we can raise collectively.’ He emphasized that no members’ dues are used to fund political candidates.”²⁰

As will be explained in additional detail below, these statements are based on at least two Pennsylvania statutes found in the Public Employee Relations Act and the Election Code, respectively.

3. The Fund for Student Success

Despite PSEA’s knowledge of the fact that it cannot legally use its general treasury funds 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.”²¹

(Emphasis added).

Like PSEA-PACE, the FSS is registered with the IRS as a “political organization” under 26 U.S.C. § 527.²² 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 PSEA officers in consultation with the PSEA executive director.”²³ Its Form 8871 filings also indicate that the FSS is “connected” to the PSEA and that the only persons associated with the

²⁰ 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/>

²¹ 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

²² Fund for Student Success. Internal Revenue Service Form 8871, December 6, 2022. <https://forms.irs.gov/app/pod/basicSearch/downloadFile?formId=118538&formType=e8871>

²³ 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>

FSS in an official capacity are PSEA officials.²⁴

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 has not claimed exemption from disclosing its contributions and expenditures to the IRS on Forms 8872 as a qualified state or local political organization, because it is *not* registered as a political committee with the Pennsylvania Department of State.

Federal records show the FSS is funded by PSEA’s general treasury.

PSEA’s annual Forms LM-2 filed with the DOL 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.”²⁵

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.

²⁴ 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>

²⁵ 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-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

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 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 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 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 8872	https://forms.irs.gov/app/pod/basicSearch/downloadFile?formId=136342&formType=e8872
PSEA	Fund for Student Success	\$250,000	6/15/2023	PSEA LM-2	https://olmsapps.dol.gov/query/orgReport.do?rptId=875205&rptForm=LM2Form
				FSS 8872	https://forms.irs.gov/app/pod/basicSearch/downloadFile?formId=140503&formType=e8872
PSEA	Fund for Student Success	\$100,000	10/16/2023	FSS 8872	https://forms.irs.gov/app/pod/basicSearch/downloadFile?formId=143167&formType=e8872
PSEA	Fund for Student Success	\$400,000	10/24/2023	FSS 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).²⁶ 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 PAC²⁷
 - Casa in Action PAC²⁸
 - Conservation Voters of PA Victory Fund²⁹
 - Environment America Action Fund³⁰
 - Pennsylvania Fund for Change³¹
 - Pennsylvanians for Judicial Fairness³²
 - Put Pennsylvania First³³
- Two contributions to Pennsylvanians for Judicial Fairness, an independent expenditure committee,³⁴ totaling \$325,000.
- 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 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 8872	https://forms.irs.gov/app/pod/basicSearch/downloadFile?formId=119996&formType=e8872

²⁶ PA Alliance Action. Internal Revenue Service Form 990, 2021.

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

²⁷ Committee ID no. 20220464. Pennsylvania Department of State. “Committee Information - AGENDA PAC.”

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

²⁸ Committee ID no. 20180420. Pennsylvania Department of State. “Committee Information - CASA IN ACTION PAC.” <https://www.pavoterservices.pa.gov/ElectionInfo/CommitteeInfo.aspx?ID=15858>

²⁹ 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>

³⁰ Committee ID no. 20200249. Pennsylvania Department of State. “Committee Information - ENVIRONMENT AMERICA ACTION FUND.” <https://www.pavoterservices.pa.gov/ElectionInfo/CommitteeInfo.aspx?ID=19710>

³¹ Committee ID no. 20180167. Pennsylvania Department of State. “Committee Information - PENNSYLVANIA FUND FOR CHANGE.” <https://www.pavoterservices.pa.gov/ElectionInfo/CommitteeInfo.aspx?ID=14606>

³² Committee ID no. 20230157. Pennsylvania Department of State. “Committee Information - PENNSYLVANIANS FOR JUDICIAL FAIRNESS.” <https://www.pavoterservices.pa.gov/ElectionInfo/CommitteeInfo.aspx?ID=21120>

³³ Committee ID no. 20220272. Pennsylvania Department of State. “Committee Information - PUT PENNSYLVANIA FIRST.” <https://www.pavoterservices.pa.gov/ElectionInfo/CommitteeInfo.aspx?ID=20582>

³⁴ Committee ID no. 20230157. Pennsylvania Department of State. “Committee Information - PENNSYLVANIANS FOR JUDICIAL FAIRNESS.” <https://www.pavoterservices.pa.gov/ElectionInfo/CommitteeInfo.aspx?ID=21120>

Fund for Student Success	PA Alliance Action	\$200,000	10/14/2020	FSS 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 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 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 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 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 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 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...”³⁵ The DGA is both registered with the IRS as a “political organization” under 26 U.S.C. § 527³⁶ and with the Pennsylvania Department of State as a “political action committee” pursuant to 25 P.S. § 3241.³⁷

The DGA disclosed the two contributions it received from the FSS in May 2022 on the Forms 8872 it filed with the IRS.

³⁵ 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>

³⁶ Democrat Governors Association. Internal Revenue Service Form 8871, January 30, 2024.

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

³⁷ Committee ID no. 2002268. Pennsylvania Department of State. “Committee Information - DEM GOVERNORS' ASSOC – PA.” <https://www.pavoterservices.pa.gov/ElectionInfo/CommitteeInfo.aspx?ID=1541>

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 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 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.³⁸ 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.

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 PA CFR	https://www.campaignfinanceonline.pa.gov/Pages/ShowReport.aspx?ReportID=368922&isStatement=0&is24Hour=0
					DGA PA 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 PA CFR	https://www.campaignfinanceonline.pa.gov/Pages/ShowReport.aspx?ReportID=372436&isStatement=0&is24Hour=0
					DGA PA 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 PA CFR	https://www.campaignfinanceonline.pa.gov/Pages/ShowReport.aspx?ReportID=374675&isStatement=0&is24Hour=0

³⁸ 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 PA 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 PA CFR	https://www.campaignfinanceonline.pa.gov/Pages/ShowReport.aspx?ReportID=374675&isStatement=0&is24Hour=0
					DGA PA 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 PA CFR	https://www.campaignfinanceonline.pa.gov/Pages/ShowReport.aspx?ReportID=374675&isStatement=0&is24Hour=0
					DGA PA 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

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 qualified state or local political organization under 26 U.S.C. § 527³⁹ and with the Pennsylvania Department of State as an independent expenditure committee.⁴⁰ Its self-described purpose was, “to make independent expenditures in support of Democratic Candidates for Governor and against Republican candidates for Governor.”⁴¹

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” in the amount of \$1,475,000.⁴²

³⁹ Put Pennsylvania First. Internal Revenue Service Form 8871, December 13, 2022.

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

⁴⁰ Committee ID no. 20220272. Pennsylvania Department of State. “Committee Information - PUT PENNSYLVANIA FIRST.” <https://www.pavoterservices.pa.gov/ElectionInfo/CommitteeInfo.aspx?ID=20582>

⁴¹ Put Pennsylvania First. Internal Revenue Service Form 8871, December 13, 2022.

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

⁴² 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>

However, there are three reasons to believe this is incorrect.

First, the IRS Forms 8872 filed by the FSS, under penalty of perjury, disclose no expenditures to PPF.

Second, the only campaign finance report filed by PPF disclosing contributions it received attributed none to the FSS or, for that matter, any other PSEA-connected entity.⁴³

Third and finally, the Forms 8872 filed by both the FSS and the DGA record two expenditures totaling \$1,475,000 by the FSS to the DGA in May 2022.⁴⁴

Given the weight of evidence indicating the PSEA/FSS funds went to the DGA, the most likely explanation for the discrepancy is that the FSS Form 990 — also completed under penalty of perjury — was fraudulent.

The PSEA/FSS had a plausible motive for such deception. As an independent expenditure committee, the PSEA/FSS could contribute to PPF without running afoul of Pennsylvania law prohibiting corporations and/or unions from using general treasury funds to make political contributions to candidates. Because the DGA contributes directly to candidates, however, the nearly \$1.5 million in contributions from the PSEA general fund to the DGA, through the FSS, violated at least two Pennsylvania laws.

6. Pennsylvania law prohibits corporations and unions from using general treasury funds to contribute to political candidates.

a. *The Public Employee Relations Act*

First, 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.” *See also Trometter v. Pennsylvania Labor Relations Bd.*, 147 A.3d 601, 607 (Pa.Cmwlth. 2016) (“In enacting Section 1701 of PERA, the General Assembly appears to have had four primary objectives: (1) to prohibit certain payments from employee organizations to political parties or to candidates in a political election contest (Para. 1); (2) to require employee organizations that violate the prohibition contained in Section 1701[1] of PERA to file with the Board reports of or affidavits detailing the violations; (3) to require the Board to promulgate rules or regulations “as it may find necessary to prevent the circumvention or evasion of” both the contribution prohibition and reporting requirement; and (4) to provide civil fines against violating employee

⁴³ 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>

⁴⁴ Fund for Student Success. Internal Revenue Service Form 8872, July 14, 2022. <https://forms.irs.gov/app/pod/basicSearch/downloadFile?formId=132981&formType=e8872>
Democratic Governors Association. Internal Revenue Service Form 8872, July 15, 2022. <https://forms.irs.gov/app/pod/basicSearch/downloadFile?formId=133368&formType=e8872>

organizations and criminal consequences on individuals who ‘willfully violate[]’ Section 1701.”).

While defending itself — successfully — against a complaint alleging certain of its activities undertaken in support of Tom Wolf’s gubernatorial campaign in 2014 violated 43 P.S. § 1101.1701, 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.”

Mary Trometter v. Pennsylvania State Education Association and National Education Association, PLRB Case No. PERA-M-14-366-E, respondents combined post-hearing brief.⁴⁵

The crux of PSEA’s defense in that case, however, was that its activities amounted to constitutionally protected internal communications to its members and independent expenditures, not *contributions* of the kind prohibited by 43 P.S. § 1101.1701.

And while the Pennsylvania Labor Relations Board ultimately agreed 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.”

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

b. The Election Code

The second statute, 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

⁴⁵ Available online at: <https://www.fairnesscenter.org/wp-content/uploads/2020/08/Trometter-PSEA-NEAs-Post-Hearing-Brief-PLRB-Proceeding.pdf>

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. 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)).”

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.⁴⁶

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 explained,

“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).”⁴⁷

(Emphasis original).

⁴⁶ 25 P.S. § 3241 defines “independent expenditure” as, “...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.”

⁴⁷ 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%2003-10.pdf>

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.”

(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.”⁴⁸ (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.”⁴⁹
(Emphasis added)

⁴⁸ 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>

⁴⁹ *Id.*

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.⁵⁰

7. The PSEA/FSS Officers

The following PSEA officers and/or employees are connected to the filing of relevant FSS tax documents and may have been involved in the decision to submit the fraudulent 2021 tax return to the IRS.

- a. **Joseph Howlett:** Assistant executive director of PSEA since 2022.⁵¹ Howlett was the “authorized official” who signed the FSS IRS Form 8872 disclosing the FSS’ two contributions to the DGA in May of 2022.⁵² He was also listed as the “treasurer” of the FSS on its Form 990 tax return for 2021 which claimed the funds went to PPF.⁵³
- b. **Lahrsen Harper:** PSEA’s assistant director of administrative services since at least 2021.⁵⁴ Harper was the “contact person” listed on the FSS IRS Form 8872 disclosing the two expenditures to the DGA in May 2022.⁵⁵
- c. **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-2.⁵⁶ 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 2022.⁵⁷

⁵⁰ 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>

⁵¹ 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>

⁵² Fund for Student Success. Internal Revenue Service Form 8872, July 14, 2022.

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

⁵³ 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>

⁵⁴ 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>

⁵⁵ Fund for Student Success. Internal Revenue Service Form 8872, July 14, 2022.

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

⁵⁶ 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>

⁵⁷ 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>

- d. **Phyllis Heverly Fleisher:** Started working for PSEA as assistant executive director at some point after September 1, 2022.⁵⁸ Fleisher signed the fraudulent 2021 Form 990 on behalf of the FSS as “treasurer.”⁵⁹

While the following PSEA officials do not appear on any of the relevant FSS IRS filings, they may have been involved in the submission of the fraudulent 2021 tax return, given their prominent roles at PSEA:

- e. **Richard Askey:** President of PSEA from 2019-2023; current affiliation unknown.⁶⁰ As president at the time of PSEA’s contributions to the FSS, Askey had the “power and 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.”⁶¹
- f. **Aaron Chapin:** Vice president of PSEA in 2022;⁶² assumed role of president in September 2023.⁶³ 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.⁶⁴
- g. **Jeffrey Ney:** Treasurer of PSEA in 2022;⁶⁵ assumed role of vice president in September 2023.⁶⁶ 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.”⁶⁷
- h. **James Vaughn:** Executive director of PSEA since 2015.⁶⁸ Pursuant to Article VI of the PSEA constitution and bylaws, it was Vaughn’s duty to “prepare vouchers signed by the

⁵⁸ PSEA’s 2023 Form LM-2: <https://olmsapps.dol.gov/query/orgReport.do?rptId=875205&rptForm=LM2Form>

⁵⁹ 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>

⁶⁰ 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>

⁶¹ 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>

⁶² PSEA’s 2022 Form LM-2: <https://olmsapps.dol.gov/query/orgReport.do?rptId=849155&rptForm=LM2Form>

⁶³ Pennsylvania State Education Association. “PSEA President Aaron Chapin.” <https://www.psea.org/about-psea/leadership/psea-officers/psea-president2/>

⁶⁴ 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>

⁶⁵ PSEA’s 2022 Form LM-2: <https://olmsapps.dol.gov/query/orgReport.do?rptId=849155&rptForm=LM2Form>

⁶⁶ Pennsylvania State Education Association. “PSEA Vice President Jeff Ney.” <https://www.psea.org/about-psea/leadership/psea-officers/psea-vice-president/>

⁶⁷ 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>

⁶⁸ Pennsylvania State Education Association. “PSEA Executive Director Jim Vaughn.”

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

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.”⁶⁹ 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.”⁷⁰

II. Allegations and Arguments

1. The Fund for Student Success violated 26 U.S.C. § 6033 when it submitted a fraudulent 2021 Form 990 tax return to the IRS.

26 U.S.C. § 6033(a)(1) requires that organizations exempt from taxation,

“...file an annual return, stating specifically the items of gross income, receipts, and disbursements, and such other information for the purpose of carrying out the internal revenue laws as the Secretary may by forms or regulations prescribe...”

26 U.S.C. § 6033(g)(2) requires that political organizations under 26 U.S.C. § 527, such as the FSS, “file an annual return— (A) containing the information required, and complying with the other requirements, under subsection (a)(1) for organizations exempt from taxation under section 501(a)” along with any other information the Secretary of the Treasury deems appropriate.

26 CFR § 1.6033-1 prescribes in more detail the requirements associated with filing these returns on Form 990:

“(a) In general. (1) Except as provided in section 6033(a) and paragraph (g) of this section, every organization exempt from taxation under section 501(a) shall file an annual return of information specifically stating its items of gross income, receipts and disbursements, and such other information as may be prescribed in the instructions issued with respect to the return...

(2)(i) Except as otherwise provided in this subparagraph, every organization exempt from taxation under section 501(a), and required to file a return under section 6033 and this section, other than an organization described in section 401(a), 501(c)(3), or 501(d), shall file its annual return on Form 990...

(4)(i) Form 990–A shall consist of parts I and II. Part I shall contain, in addition to information required in part II, such information as may be prescribed in the return and instructions which is required to be furnished by section 6033(a) or which is necessary to show whether or not such organization is exempt from tax under section 501(a). Part II,

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

which shall be open to public inspection pursuant to section 6104 and other applicable sections and the regulations thereunder, shall contain principally the information required by section 6033(b) and the regulations thereunder. The information contained in part II, to be furnished by the organization in duplicate in the manner prescribed by the instructions issued with respect to the return, is as follows:

(a) Its gross income for the year. For this purpose, gross income includes tax-exempt income, but does not include contributions, gifts, grants, and similar amounts received. Whether or not an item constitutes a contribution, gift, grant, or similar amount, depends upon all the surrounding facts and circumstances.

(b) Its expenses attributable to such income and incurred within the year.

(c) Its disbursements out of income (including prior years' accumulations) made within the year for the purposes for which it is exempt. Information shall be included as to the class of activity with a separate total for each activity as well as the name, address, and amount received by each individual or organization receiving cash, other property, or services within the taxable year...

(f) Its disbursements out of principal in the current and prior years for the purposes for which it is exempt. In addition, the same type of information shall be required with respect to disbursements out of principal made in the current year as is prescribed by (c) of this subdivision with respect to disbursements out of income...

(i) In addition to the information required in (a) through (h) of this subdivision, the organization shall furnish such specific information and answer such specific questions as are required by the form or instructions."

(Emphasis added).

If applicable, a filing organization may need to append one or more schedules to its base Form 990 return, including Schedule I, "Grants and Other Assistance to Organizations, Governments, and Individuals in the United States."

The IRS directions for completing Schedule I explain its purpose is, "to provide information on grants and other assistance made by the filing organization during the tax year to domestic organizations, domestic governments, and domestic individuals."⁷¹ On Part II of Schedule I, the filing organization is to, "Enter information only for each recipient domestic organization or domestic government that received more than \$5,000 aggregate of grants or assistance from the organization during the tax year," including:

- "the full legal name and mailing address of each recipient organization";
- "the employer identification number (EIN) of the grant recipient";
- "the section of the Internal Revenue Code under which the organization receiving the assistance is tax exempt, if applicable...";
- "the total dollar amount of cash grants to each recipient organization or entity for the tax year"; and
- "the purpose or ultimate use of the grant funds or other assistance."⁷²

⁷¹ Internal Revenue Service Form 990, Schedule I. <https://www.irs.gov/pub/irs-pdf/f990si.pdf>

⁷² *Id.*

Pursuant to 26 U.S.C. § 6065, the information submitted on the FSS tax return and accompanying schedules contained “a written declaration that it is made under the penalties of perjury.”

By submitting a fraudulent tax return falsely indicating that 100 percent of its expenditures went towards grants to PPF — instead of identifying the actual recipient, the DGA — the FSS violated 26 U.S.C. § 6033 and 26 CFR § 1.6033-1 and committed perjury.

2. Penalties

26 CFR § 1.6033-1(f) notes that “criminal penalties for failure to file a return and filing a false or fraudulent return” are provided in §§ 7203, 7206, and 7207 of the Internal Revenue Code.

26 U.S.C. § 7203 provides,

“Any person required under this title to pay any estimated tax or tax, or required by this title or by regulations made under authority thereof to make a return, keep any records, or supply any information, who willfully fails to pay such estimated tax or tax, make such return, keep such records, or supply such information, at the time or times required by law or regulations, shall, in addition to other penalties provided by law, be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$25,000 (\$100,000 in the case of a corporation), or imprisoned not more than 1 year, or both, together with the costs of prosecution...”

Additionally, 26 U.S.C. § 7206 provides,

“Any person who--

(1) Declaration under penalties of perjury.--Willfully makes and subscribes any return, statement, or other document, which contains or is verified by a written declaration that it is made under the penalties of perjury, and which he does not believe to be true and correct as to every material matter; or

(2) Aid or assistance.--Willfully aids or assists in, or procures, counsels, or advises the preparation or presentation under, or in connection with any matter arising under, the internal revenue laws, of a return, affidavit, claim, or other document, which is fraudulent or is false as to any material matter, whether or not such falsity or fraud is with the knowledge or consent of the person authorized or required to present such return, affidavit, claim, or document...

shall be guilty of a felony and, upon conviction thereof, shall be fined not more than \$100,000 (\$500,000 in the case of a corporation), or imprisoned not more than 3 years, or both, together with the costs of prosecution.”

And, finally, 26 U.S.C. § 7207, establishes that,

“Any person who willfully delivers or discloses to the Secretary any list, return, account, statement, or other document, known by him to be fraudulent or to be false as to any material matter, shall be fined not more than \$10,000 (\$50,000 in the case of a

corporation), or imprisoned not more than 1 year, or both. Any person required pursuant to section 6047(b), section 6104(d), or subsection (i) or (j) of section 527 to furnish any information to the Secretary or any other person who willfully furnishes to the Secretary or such other person any information known by him to be fraudulent or to be false as to any material matter shall be fined not more than \$10,000 (\$50,000 in the case of a corporation), or imprisoned not more than 1 year, or both.”

For purposes of the Internal Revenue Code’s criminal penalties, “the term ‘person’... includes an officer or employee of a corporation... who as such officer, employee, or member is under a duty to perform the act in respect of which the violation occurs.” 26 U.S.C. § 7343.

III. Conclusion

The above documented violations of the Internal Revenue Code by the Pennsylvania State Education Association’s Fund for Student Success appear motivated primarily to obscure evidence of its violations of Pennsylvania law by using its general treasury funds to contribute to candidates for office. Even if its actions do not have federal tax implications, willfully submitting fraudulent information on a federal tax return is not to be taken lightly under any circumstances, much less when done to cover up other illegal activity.

Accordingly, we respectfully ask that the IRS undertake a thorough review of these allegations and, if appropriate, initiate or refer the matter for enforcement action. We stand ready to provide any additional information, original documentation, or assistance that may facilitate the expeditious resolution of these allegations.

Respectfully,



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