



## BACKGROUND (SEPTEMBER 2016)

*Mary Trometter v. National Education Association & Pennsylvania State Education Association*

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### THE EXECUTIVE SUMMARY

The Fairness Center represents Mary Trometter in her challenge to the Pennsylvania State Education Association's ("PSEA's") and National Education Association's ("NEA's") use of dues money to support a candidate for public office.

The PSEA's and NEA's use of membership dues to support political candidates for office is contrary to an existing statute prohibiting and requiring reports of such contributions. In November, Ms. Trometter and the Fairness Center filed a charge of illegal contributions in an effort to expose the unions' practice of supporting candidates using union dues and to prompt enforcement of the existing law against it.

In response to Ms. Trometter's charge, the PSEA and NEA both admitted to engaging in the conduct Ms. Trometter alleged, and the PSEA publicly apologized for the tone of a political piece it sent Ms. Trometter. But the PSEA's and NEA's legal reply to the charges defended its ability, using the United States Supreme Court decision in *Citizens United*, to spend unlimited amounts of dues money in support of political candidates.

### THE PROBLEM

Ms. Trometter, an assistant professor of Culinary Arts at the Pennsylvania College of Technology, has been a PSEA member for nearly 23 years. Over the years, she has seen a steady increase in the overtly political communication the PSEA directs toward members. Most notably, she has seen the PSEA's magazine, *The Voice for Education*, become more and more political in nature. The facts support Ms. Trometter.<sup>1</sup>

Days before Pennsylvania's gubernatorial election, Ms. Trometter's husband received a letter from the PSEA's Super PAC, which is funded using union membership dues. The letter urged him, as a "family member of an educator," to vote for Tom Wolf in the election. And it ended with a plea to her husband: "Please join Mary in voting for Tom Wolf for Governor on November 4<sup>th</sup>." The PSEA and NEA Presidents signed the letter.

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<sup>1</sup> Tom McGinty & Brody Mullins, *Political Spending by Unions Far Exceeds Direct Donations*, THE WALL STREET JOURNAL, (July 10, 2012), <http://online.wsj.com/articles/SB10001424052702304782404577488584031850026>; Free to Teach, *Where do your union dues go?* (2013), [http://freetoteach.org/wp-content/uploads/2013/05/CommonwealthFoundation\\_UnionDues\\_Handout\\_2013.pdf](http://freetoteach.org/wp-content/uploads/2013/05/CommonwealthFoundation_UnionDues_Handout_2013.pdf).

*The Voice*, which is also funded using membership dues, was equally overt in its support of Tom Wolf for governor. The November issue was replete with content and advertisements urging members to vote for Tom Wolf.

## **Union Dues to Support Political Candidates**

In filing charges against the PSEA and NEA, Ms. Trometter forced the PSEA to publicly admit to using dues money to support political candidates for office. In an affidavit filed in response to Ms. Trometter's charge, the NEA's Campaigns and Elections Department Manager admitted that its Super PAC, "[t]he NEA Advocacy Fund[,] receives all of its funding from dues paid by NEA members" and that "[t]he NEA Advocacy Fund paid for the production and distribution of the Letter." And the PSEA's Director of Communications filed an affidavit admitting that the "PSEA uses general treasury funds to pay the expenses for production and mailing of PSEA Voice," the November issue of which "contain[ed] a number of articles urging members to vote in the then-upcoming elections and, specifically, to vote for Tom Wolf for governor."

Yet, for years, the PSEA *publicly* denied using PSEA dues to support political candidates.<sup>2</sup>

Now, the PSEA and NEA are telling the state officials that *Citizens United v. Federal Election Commission*, 558 U.S. 310 (2010), protects their use of dues to support political candidates, even as they publicly criticize the case for "drowning out the voices of ordinary Americans" and "twist[ing] and distort[ing] the political system."<sup>3</sup> Of course, the PSEA and NEA were ignoring this provision of law long before *Citizens United*. Use of public-sector union dues even in *indirect* support of political candidates is prohibited by the Pennsylvania Public Employe Relations Act, 43 P.S. § 1101.1701.

The lack of enforcement in this area is alarming. Although the statute at issue was enacted 45 years ago, the Fairness Center was unable to locate any instances of enforcement by the authorities charged with enforcement of the statute. The PSEA has yet to file a single report of using dues money to support a candidate in 45 years.

## **THE LAW**

Under the Public Employe Relations Act, public-sector unions are prohibited from using membership dues to support candidates for political office, and they must report any such contributions to the Pennsylvania Labor Relations Board ("PLRB"). Pennsylvania law is clear:

No employe organization shall make any contribution out of the funds of the employe organization either directly or indirectly to any political party or organization or in support of any political candidate for public office...

If an employe organization has made contributions in violation of this section it shall file with the board a report or affidavit evidencing such

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<sup>2</sup> See, e.g., *PACE: The 2010 elections are crucial to your future*, PENNSYLVANIA STATE EDUCATION ASSOCIATION, <http://www.psea.org/general.aspx?id=6254>. ("No dues dollars are used to support political candidates.")

<sup>3</sup> Mary Kusler, NEA Director of Government Relations, *Letter to the House on Citizens United*, NATIONAL EDUCATION ASSOCIATION (Apr. 11, 2013), <http://www.nea.org/home/55230.htm>.

contributions within ninety days of the end of its fiscal year. Such report or affidavit shall be signed by its president and treasurer or corresponding principals.

Any employe organization which violates the provisions of this section or fails to file any required report or affidavit or files a false report or affidavit shall be subject to a fine of not more than two thousand dollars (\$2,000).

Any person who wilfully violates this section, or who makes a false statement knowing it to be false, or who knowingly fails to disclose a material fact shall be fined not more than one thousand dollars (\$1,000) or imprisoned for not more than thirty days or both. Each individual required to sign affidavits or reports under this section shall be personally responsible for filing such report or affidavit and for any statement contained therein he knows to be false.

Nothing herein shall be deemed to prohibit voluntary contributions by individuals to political parties or candidates.

43 P.S. § 1101.1701.

The PLRB's rules implementing section 1701 of the Pennsylvania Public Employe Relations Act permits any "individual who has knowledge of a political contribution or other activity by an employe organization thought to be in violation of section 1701...may file a report with the [PLRB]." 34 Pa. Code § 95.112(a).

## **THE CASE LOGISTICS**

### **Individual Charging Illegal Contributions**

Mary Trometter has been a member of the PSEA for more than 20 years. The first member of her immediate family to graduate from college, Ms. Trometter is currently an assistant professor of Culinary Arts at Pennsylvania College of Technology in Williamsport, Pennsylvania.

### **Enforcement Agencies**

- Pennsylvania Labor Relations Board
- Attorney General for the State of Pennsylvania

### **Relief Sought**

Enforcement of section 1701 of the Public Employe Relations Act

### **Date Filed**

November 18, 2014

## **THE LEGAL TEAM**

**David R. Osborne** is President and General Counsel at the Fairness Center, where he provides advice and counsel to clients, directs the Fairness Center's legal strategy, and oversees all litigation efforts. Before joining the Fairness Center, David litigated on behalf of healthcare providers and conducted organizational and lobbying efforts for a national trade association. He previously worked as a judicial clerk to a Florida Supreme Court justice and served as official staff to a member of Congress. David graduated from the Florida State University College of Law.

**Nathan R. Bohlander** is Assistant General Counsel at the Fairness Center, where he focuses on client interaction and litigation activities. Before joining the Fairness Center, Nathan clerked for a judge in the Philadelphia Court of Common Pleas and maintained a solo practice. He has also previously worked for a nonprofit school choice organization, a Pennsylvania State Senator, and a member of Congress. Nathan graduated from the Pennsylvania State University Dickinson School of Law.