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In the Commonwealth Court of Pennsylvania

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MARY TROMETTER,
Petitioner,

v.

PENNSYLVANIA LABOR RELATIONS BOARD,
Respondent,

NATIONAL EDUCATION ASSOCIATION; and
PENNSYLVANIA STATE EDUCATION ASSOCIATION,
Intervenors.

PETITIONER'S REPLY BRIEF

Appeal from a Final Determination of the Pennsylvania Labor Relations Board
(Case No. PERA-M-14-366-E)

David R. Osborne
PA Attorney ID# 318024
david@fairnesscenter.org

Karin M. Sweigart
PA Attorney ID# 317970
karin@fairnesscenter.org

THE FAIRNESS CENTER
225 State Street, Suite 303
Harrisburg, PA 17101
844-293-1001
Counsel for Petitioner

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TABLE OF CONTENTS

TABLE OF AUTHORITIES iii

SUMMARY OF ARGUMENT 1

ARGUMENT IN REPLY 2

I. THE NEA AND PSEA HAVE ADMITTED TO ENGAGING IN ACTIVITY IN VIOLATION OF SECTION 1701, AND THIS VIOLATION IS NOT EXCUSED UNDER THE PENNSYLVANIA ELECTION CODE, THE FIRST AMENDMENT, OR SUPREME COURT PRECEDENT 2

A. This Court should resolve the underlying constitutional questions 2

B. The NEA and PSEA admitted to the alleged conduct 3

C. The NEA and PSEA "contributed" for purposes of section 1701 4

D. Neither the PSEA Voice nor the letter Ms. Trometter received are protected by provisions of the Pennsylvania Election Code dealing with direct private communication..... 7

E. The Commonwealth is within its rights to regulate public-sector union political spending 9

II. THE PLRB IS CHARGED WITH INTERPRETING AND ENFORCING PERA, AND REFERRING THIS MATTER TO THE ATTORNEY GENERAL IS NOT PROPER 12

A. Logic and the rules of statutory construction dictate that the PLRB is the body to enforce section 1701..... 12

B. Referral to the Attorney General was unnecessary because no facts were disputed 15

C. The Commonwealth Attorneys Act in no way precludes the PLRB from enforcing section 1701..... 16

CONCLUSION 21

TABLE OF AUTHORITIES

CASES

Borough of Green Tree v. Bd. of Prop. Assessments, Appeals and Review of Allegheny Cnty, 328 A.2d 819 (Pa. 1974) 9
Brown v. Alexander, 718 F.2d 1417 (6th Cir. 1983) 9
Citizens United v. Federal Election Comm'n, 558 U.S. 310 (2010) 2
Commonwealth v. Farmer, 750 A.2d 925 (Pa. Cmwlth. 2000) 18, 19
Commonwealth v. Frey, 42 Pa. D. & C.3d 653, 1986 WL 15993 (Pa. Ct. Common Pleas 1986) 19
Kowenhoven v. Cnty. of Allegheny, 901 A.2d 1003 (Pa. 2006) 2
Wisconsin Educ. Ass'n Council v. Walker, 705 F.3d 640 (7th Cir. 2013) 11

STATUTES

1 P.S. § 1921 7
1 P.S. § 1921(a) 13
1 P.S. § 1922(1) 14
1 Pa.C.S. § 1903 5
1 Pa.C.S. § 1903(a) 4
2 Pa.C.S. § 703(a) 3
25 P.S. § 3241 5
25 P.S. § 3253(c) 7, 8, 9
25 P.S. §§ 2601-3591 5
35 P.S. § 6018.606 18
36 U.S.C. §§ 151101-151108 ..... 7, 8
43 P.S. § 1101.1701 ..... 1, 3, 14
43 P.S. § 1101.703 10
43 P.S. § 1101.705 11
43 P.S. §1101.101(3) 10
65 Pa.C.S. § 1109(a)-(b), (e) 18
65 Pa.C.S. §§ 1107, 1108, 1109(f) 17
71 P.S. § 732-204(c) 16
71 P.S. § 732-205(a) 18

71 P.S. § 732-403(a) 17
71 P.S. §§ 732-101 – 732-506..... 16

REGULATIONS

34 Pa. Code § 95.112 .....15, 21

OTHER AUTHORITIES

In re Campbell v. Pennsylvania State Education Association, No. AP 2009-0547, 2009 WL 6503810, at *1 (Pa. Off. Open Recs. Oct. 2, 2009)..... 7

SUMMARY OF ARGUMENT

Petitioner Mary Trometter ("Ms. Trometter") agrees with Intervenors the National Education Association ("NEA") and Pennsylvania State Education Association ("PSEA") that the constitutional questions underlying section 1701 of the Public Employe Relations Act ("PERA"), 43 P.S. § 1101.1701 ("section 1701"), should be resolved by this Court. But the NEA and PSEA are incorrect that a more fundamental assessment of section 1701 would result in its invalidation. Section 1701 is a valid law, and the NEA's and PSEA's violation of it cannot be excused by resort to the First Amendment or another statute.

Meanwhile, Respondent the Pennsylvania Labor Relations Board ("PLRB") offers meandering and conflicting explanations for its failure to treat seriously Ms. Trometter's charge of illegal contributions under section 1701. It attempts to explain that it lacks any power to investigate such charges under PERA, only to argue that it actually conducted an investigation as necessary precursor to its referral to the Attorney General. The truth remains that section 1701 tasks the PLRB with enforcement of the prohibition on illegal contributions, a job the PLRB cannot pass off to the Attorney General's Office.

ARGUMENT IN REPLY

I. THE NEA AND PSEA HAVE ADMITTED TO ENGAGING IN ACTIVITY IN VIOLATION OF SECTION 1701, AND THIS VIOLATION IS NOT EXCUSED UNDER THE PENNSYLVANIA ELECTION CODE, THE FIRST AMENDMENT, OR SUPREME COURT PRECEDENT

A. This Court should resolve the underlying constitutional questions

As an initial matter, Ms. Trometter agrees with the NEA and PSEA, Intervenor's Brief, at pp. 11-13, that this Court should resolve the underlying questions regarding the constitutionality of section 1701 before remanding for further proceedings. Ms. Trometter's position here and below[1] was that the PLRB should not be permitted to ignore its statutory duties—and that ignoring those duties because of Citizens United,[2] would be inappropriate.[3] See Kowenhoven v. Cnty. of Allegheny, 901 A.2d 1003, 1010 (Pa. 2006) ("[T]he determination of the constitutionality of enabling legislation is not a function of the administrative

1. Trometter's Rebuttal, at p. 6 (R. 71a) ("Because the holding in Citizens United is far more complex than the PSEA and NEA claim and would take the PLRB beyond the scope of its duties, the PLRB should decline to pass judgment on the constitutionality of section 1701. It should instead enforce the law with which it has been given the task of enforcing.").

2. Citizens United v. Federal Election Comm'n, 558 U.S. 310 (2010).

3. Yet, in declining to enforce section 1701 based on the PLRB's vague sense that constitutional questions may be involved, the PLRB did precisely what it set out not to do and rendered section 1701 meaningless.

agencies thus enabled." (quoting Borough of Green Tree v. Bd. of Prop. Assessments, Appeals and Review of Allegheny Cnty, 328 A.2d 819 (Pa. 1974)).

But this Court has the ability to settle the constitutional questions raised by enforcement of section 1701. See 2 Pa.C.S. § 703(a). And Ms. Trometter recognizes that it would accomplish little for this Court to remand with instructions to the PLRB to perform acts that will only then be appealed on constitutional grounds. Intervenor's Brief, at pp. 12-13. This Court should settle the matter of section 1701's constitutionality now.

B. The NEA and PSEA admitted to the alleged conduct

There can no longer be any question that the NEA and PSEA have made "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." 43 P.S. § 1101.1701. The NEA and PSEA admitted to those activities below, Intervenors' Brief, at p. 7. (R 20a-51a, 61a, 62a, and R. 3a, 63a-64a), and now state their agreement even more clearly:

> Trometter and the Unions agree that the petition presents a pure legal question concerning the interpretation and constitutionality of PERA § 1701.

Intervenors' Brief, at p. 9.

And despite the PLRB's conflicted arguments about the mechanics of enforcement, it too agrees that the facts are settled and that the ultimate question is legal in nature:

> At the core of every claim that could be made involving political contributions under section 1701 is the fundamental constitutional question and right of freedom of speech under the First Amendment to the United States Constitution and Article I, Section 7 of the Constitution of the Commonwealth of Pennsylvania.

PLRB's Brief, at p. 26 n.11.

C. The NEA and PSEA "contributed" for purposes of section 1701

Contrary to the NEA's and PSEA's assertions, the unions have made a "contribution" for purposes of section 1701. 1 Pa.C.S. § 1903(a) ("Words and phrases shall be construed according to rules of grammar and according to their common and approved usage . . . ."). Even the recipient of the NEA's funds, the NEA Advocacy Fund, has characterized them as such. (R. 6a) (labelling funds received from the NEA "[c]ontributions" in a Federal Election Commission filing).

Section 1701 reads, in part, "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." Because the term "contribution" is not defined in

PERA, and there is not a technical meaning attached to the word, it must be given its "common and approved" meaning. 1 Pa.C.S. § 1903. As stated in the NEA's and PSEA's joint brief, "contribution" is commonly defined as "giv[ing] (something, such as money, goods, or time) to help a person, group, cause, or organization."[4] Intervenors' Brief, at p. 15.

Here, in order to fund the letter paid for and sent by the NEA Advocacy Fund to Ms. Trometter's husband ("Letter"), the NEA gave general treasury funds to the NEA Advocacy Fund, an independent-expenditure only committee. (R. 63a-64a). Not only is this transfer of money from the NEA to the NEA Advocacy Fund called a "contribution" in FEC filings, (R. 6a), the NEA and PSEA themselves refer to it as a "contribution" in their brief for the purpose of invoking Citizens United. Intervenors' Brief, at p. 5. Likewise, the PSEA contributed money out of the funds of the employee organization to publish the PSEA Voice. The magazine contained

4. Even if this Court feels the need to import a definition of "contribution" from the Pennsylvania Election Code, 25 P.S. §§ 2601-3591, this Court should reach the same conclusion. The Pennsylvania Election Code defines contribution as "any payment, gift, subscription, assessment, contract, payment for services, dues, loan, forbearance, advance or deposit of money or any valuable thing, to a candidate or political committee made for the purpose of influencing any election in this Commonwealth." 25 P.S. § 3241. For example, in order to fund the Letter, the NEA deposited money into accounts of the NEA Advocacy Fund, identified as a "federally registered independent expenditure-only" political committee by the NEA and PSEA. Intervenor's Brief, at pp. 2, 8-10, 14, 25-29. This transfer of money is specifically referred to as a "contribution" in the FEC filings. (R. 6a).

highly favorable articles, pictures, advertising, and other indirect support for Wolf, publicity that normally would have to be paid for out of campaign dollars.

The NEA and PSEA argue that it cannot be a "contribution" for a union to simply communicate privately with members and their families. Intervenors' Brief, at p. 15. But the unions assume that the Letter and the PSEA Voice were private communications to members and their families. On the contrary, the NEA admitted below that it sent money from the NEA's general treasury to a federally registered independent expenditure-only political action committee by the NEA and PSEA, which in turn sent the letter.[5] (R. 64a); see also Intervenor's Brief, at pp. 2, 8-10, 14, 25-29. And with respect to the PSEA's magazine, Ms. Trometter has already established as a matter of fact that the PSEA's communication was not simply to members and their families; it was available to nonmembers by paid subscription and to the general public over the PSEA's website. (R. 21a, 88a-89a).

5. Despite its efforts to conflate the NEA and the NEA Advocacy Fund in their brief, the NEA and the NEA Advocacy Fund are not the same entity. The NEA Advocacy is an independent political committee funded by "contributions" from the NEA. The two entities are governed by different rules, have different members, different funding sources, different reporting requirements, and different purposes.

D. Neither the PSEA Voice nor the letter Ms. Trometter received are protected by provisions of the Pennsylvania Election Code dealing with direct private communication

Next, the NEA and PSEA argue that they are protected under the Pennsylvania Election Code's ("Election Code's") exemption for "direct private communications by a corporation to its stockholders and their families or by an unincorporated association to its members and their families." 25 P.S. § 3253(c).[6] But it takes a great deal of statutory misconstruction to support their argument.

First, the Election Code's exemption does not apply to the NEA or PSEA, let alone the NEA Advocacy Fund, because none of them are "unincorporated associations." The NEA is a federally chartered corporation, incorporated in the District of Columbia by Congress. 36 U.S.C. §§ 151101-151108. And the PSEA is an incorporated nonprofit registered with the Pennsylvania Department of State.[7] In re Campbell v. Pennsylvania State Education Association, No. AP 2009-0547, 2009

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6. The NEA and PSEA erroneously assert that the statute protects communications by "unions or other associations" to members and families. Intervenors' Brief, at pp. 18-21. Nowhere in the statute does the word "unions" appear. Regardless of whether the General Assembly intended 25 P.S. § 3253(c) to cover unions specifically, "[w]hen the words of a statute are clear and free from all ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit." 1 P.S. § 1921.

7. In her petition for review, Ms. Trometter stated the PSEA was an unincorporated association registered under the laws of Pennsylvania. However, the PSEA is actually an incorporated nonprofit registered with the Commonwealth.

WL 6503810, at *1 (Pa. Off. Open Recs. Oct. 2, 2009) ("PSEA advised that it is a 'private, membership association, registered with the Pennsylvania Department of State as a non-profit domestic corporation, and with the Internal Revenue Service as a 501(c)(6) non-profit organization.' "). The NEA Advocacy Fund, which funded and sent the Letter,[8] Intervenors' Brief, at p. 7, is an independent-expenditure only political action committee registered with the Federal Election Commission, (R. 6a), not a corporation with shareholders, and not an unincorporated association as protected under the Election Code, 25 P.S. § 3253(c).[9] The Election Code simply offers no protection for independent-expenditure only political action committees communicating to the members of a separate organization. And while it does offer protections for separate segregated fund political committees created by unincorporated associations, the statute states that these committees must be funded by "voluntary individual contributions," not general treasury dollars.

8. The Unions' Brief states several times in error that the NEA sent a letter to the household family members of NEA members. The letter was sent by the NEA Advocacy Fund, an independent expenditure only political action committee registered with the Federal Election Commission.

9. Even if the Letter had come directly from the NEA, it would still not fall under the protections of 25 P.S. § 3253(c) because the NEA is a federally chartered corporation, incorporated in the District of Columbia by act of Congress, 36 U.S.C. §§ 151101-151108, without shareholders, and not an unincorporated association.

Second, again, neither the Letter nor the PSEA Voice was a "direct private communication" between a union and union members or their families exempt under the Election Code. 25 P.S. § 3253(c). The Letter was sent not by a union but by an independent-expenditure only political action committee. And, as the PSEA admitted below by sworn affidavit, when the November 2014 edition of the magazine was published, it was publicly available on the PSEA's website, (R. 88a-89a), and it was also available to the public via paid subscription, (R. 21a). Since it could be accessed and was available for purchase by the public at large, it was not a "private" communication to PSEA members and their families.

E. The Commonwealth is within its rights to regulate public-sector union political spending

The NEA and the PSEA next claim that they are privileged under Citizens United to use dues dollars in support of political candidates.[10] However, Citizens United does not permit unfettered political spending of public-sector union dues.

Indeed, contrary to the NEA's and PSEA's assertions, such a limitation would not infringe on unions' First Amendment rights, for at least three reasons. First, the Commonwealth is free to, as it did here, place conditions on the ability of a public-sector union to represent public employees. See, e.g., Brown v. Alexander,

10. Of course, the NEA and PSEA were ignoring section 1701 long before Citizens United. (R. 67a, 81a).

718 F.2d 1417, 1423 (6th Cir. 1983) ("[T]he state may condition the privilege of union dues checkoff upon an organization's meeting certain requirements without violating the first amendment."). Section 1701 is just one of many other conditions imposed "for the protection of the rights of the public employe, the public employer and the public at large." 43 P.S. §1101.101(3); see also 43 P.S. § 1101.703 ("The parties to the collective bargaining process shall not effect or implement a provision in a collective bargaining agreement if the implementation of that provision would be in violation of, or inconsistent with, or in conflict with any statute or statutes enacted by the General Assembly . . . .").

Second, the NEA's and PSEA's use of government payroll deduction systems to collect union dues is a state subsidy, the receipt of which may be conditioned by the Commonwealth:[11]

> While publicly administered payroll deductions for political purposes can enhance the unions' exercise of First Amendment rights, [the state] is under no obligation to aid the unions in their political activities. And the State's decision not to do so is not an abridgment of the unions' speech; they are free to engage in such speech as they see fit. They simply are barred from enlisting the State in support of that endeavor.

11. Although the Idaho law in question in Ysursa, like the one at issue here, did not specifically tie the provision prohibiting political contributions to the state payroll deduction subsidy, the United States Supreme Court correctly inferred that the two were linked. See Ysursa, 555 U.S. at 359.

Ysursa v. Pocatello Educ. Ass'n, 555 U.S. 353, 359 (2009);[12] see also Wisconsin Educ. Ass'n Council v. Walker, 705 F.3d 640, 645 (7th Cir. 2013) ("[T]he Supreme Court [in Ysura] has settled the question: use of the state's payroll systems to collect union dues is a state subsidy of speech. . ."). PERA specifically allows for publicly subsidized payroll deductions for unions, and the NEA and PSEA have not indicated that they refrain from taking advantage. See 43 P.S. § 1101.705. As such, the General Assembly was free to condition its use on other provisions of the Act also being followed, including section 1701.

Of course, the NEA and PSEA are clearly free under Citizens United to contribute general treasury funds to a federally registered independent expenditure only committee. However, when the Union collects general treasury funds by way of the state subsidized payroll deduction system, and when, as here, the state has conditioned the use of that subsidy on those funds not being used to fund political speech, the state does not run afoul of Citizens United or the First Amendment to require that the only union funds that may go to support political speech are the union funds not collected through the payroll deduction system.

12. Ysursa was decided one year prior to Citizens United, with the exact same Justices voting in support of both decisions. Clearly, the Justices saw no conflict between the two cases, and there has been no assertion that Citizens United overruled Ysursa.

Finally, Citizens United did not delve into the potential state interests related to collective bargaining with public-sector unions or in the context of compulsory unionism, state interests clearly underlying section 1701. Here, Pennsylvania has an interest in ensuring that public sector unions are not beholden to public employers, who have an opportunity to demand ex ante political contributions in exchange for ex post favors during collective bargaining. Simply stated, the General Assembly has the right to protect unions and their members from turning into political machines.

Accordingly, this Court should decide the underlying constitutional question and should determine that section 1701 is a valid exercise of legislative authority. There is no statutory or constitutional barrier to the PLRB's enforcement of section 1701.

II. THE PLRB IS CHARGED WITH INTERPRETING AND ENFORCING PERA, AND REFERRING THIS MATTER TO THE ATTORNEY GENERAL IS NOT PROPER

A. Logic and the rules of statutory construction dictate that the PLRB is the body to enforce section 1701

In an effort to avoid taking any action of its own, the PLRB first argues that PERA does not "expressly provide" the PLRB with authority to determine whether

a violation of section 1701 occurred, to investigate,[13] or to impose sanctions for violations of section 1701. PLRB's Brief, at pp. 14-17. Instead, the PLRB contends that section 1701 gives them the authority to enact rules and regulations to prevent violation of the prohibition against political contributions just not to enforce them. Id. at p. 14.

Yet the actual statute makes plain that the General Assembly intended otherwise. See 1 P.S. § 1921(a) ("Every statute shall be construed, if possible, to give effect to all its provisions."). Contrary to the PLRB's assertions, PLRB Brief, at p. 14, the PLRB was granted broad powers of investigation and enforcement that may be harnessed for enforcement of section 1701. While the PLRB is pretending to search for such authorization to investigate and enforce, id. at pp. 14-17, it overlooks even the language of section 1701, where the General Assembly demanded that the PLRB establish rules and regulations "to prevent the circumvention or evasion of the provisions of this section." Section 1701 also requires the PLRB to enforce the collection reports or affidavits from violators, and

13. In a separate effort to avoid enforcing section 1701, the PLRB undermines its claim that it has no power to investigate by suggesting that it did in fact "investigate" Ms. Trometter's charge. PLRB's Brief, at pp. 25-27. The PLRB cannot have it both ways.

to impose sanctions in the event of a violation, and nowhere suggests that those responsibilities should be performed outside of the PLRB.

Moreover, the PLRB's rendering of section 1701 would produce absurd results. See 1 P.S. § 1922(1) ("[T]he General Assembly does not intend a result that is absurd, impossible of execution or unreasonable."). In addition to prohibiting political contributions, section 1701 states that an employee organization that has made contributions in violation of section 1701 must file a report or affidavit evidencing such contributions "within ninety days of the end of its fiscal year" or face additional fines. 43 P.S. § 1101.1701. But compliance with that provision would be near impossible if the PLRB must refer the matter to the Attorney General for time-consuming investigation and prosecution before a violation could even be determined.[14] In many instances, the Attorney General would have to review the charges and successfully prosecute an employee organization within mere months to properly enforce compliance with the reporting requirement. More likely, under the PLRB's reading, no employee organization would know if they were in violation of the law in order to file a timely report. If the PLRB cannot enforce its own statute,

14. Ms. Trometter's charge, for instance, was filed in November 2014. Compliance with the reporting mechanism in section 1701 required, at the very least, that the PLRB determine whether a violation occurred with sufficient time for the NEA and PSEA to file a report "within 90 days of the end of its fiscal year," presumably March 2015.

employee organizations would be unable to comply with the law, a result certainly not intended by the General Assembly.

Finally, the PLRB places great emphasis on the General Assembly's choice to grant it "discretion to adopt rules and regulations 'as it may find necessary to prevent the circumvention or evasion of' " section 1701, as if that language allowed the PLRB to decide whether section 1701 should be properly enforced. PLRB's Brief, at p. 12. But section 1701's assignment of rulemaking functions to the PLRB is limited to a delegation of developing the means for enforcement and does not grant to the PLRB the power to decide whether to enforce section 1701 in the first place. Neither that language nor the PLRB's vague, ineffective rule, 34 Pa. Code § 95.112, can exempt the PLRB from the General Assembly's intent that the PLRB enforce section 1701.

B. Referral to the Attorney General was unnecessary because no facts were disputed

Contrary to the PLRB's assumption, there are no disputed facts in this case, and therefore no investigation necessary that would prompt the PLRB to need to send this matter to the Attorney General for further action. The NEA and PSEA admitted to the charged activities below, Intervenors' Brief, at p. 7. (R 20a-51a, 61a, 62a, and R. 3a, 63a-64a), and now state their agreement even more clearly:

> Trometter and the Unions agree that the petition presents a pure legal question concerning the interpretation and constitutionality of PERA § 1701.

Intervenors' Brief, at p. 9.

C. The Commonwealth Attorneys Act in no way precludes the PLRB from enforcing section 1701

In another rush to rid itself of responsibility, the PLRB seeks cover under the Commonwealth Attorneys Act, 71 P.S. §§ 732-101 – 732-506. But again, the PLRB must ignore clear statutory text to make its case.

First, the PLRB supposes that, because the Attorney General can represent state agencies in civil litigation and pursue collection of "all debts, taxes and accounts due," 71 P.S. § 732-204(c), then the PLRB can safely refer any charges of illegal contributions to the Attorney General, even "without consideration of the underlying merits of [Ms. Trometter's] report." PLRB's Order, at p. 2. But the PLRB wholly misses the fact that we are not in the midst—or even on the cusp—of civil litigation: Ms. Trometter did not file any action against the PLRB, and the PRLB's Order referring Ms. Trometter's request made no request that the Attorney General "represent" the PLRB in a civil action. Section 204(c) of the Commonwealth Attorneys Act, which requires the Attorney General to represent Commonwealth agencies "in any action brought by or against the . . . agencies" has no application

whatsoever in this administrative proceeding, initiated by an individual ultimately against public-sector unions. And there is absolutely no indication that the PLRB seeks to initiate its own civil case against the NEA or PSEA.[15]

Second, the PLRB contends that section 1701 is actually a criminal statute that may only be enforced by the Attorney General. But again, the PLRB ignores its own responsibilities for enforcement. Like the State Ethics Commission, the PLRB has the responsibility of investigating and determining statutory violations, then imposing penalties. 65 Pa.C.S. §§ 1107, 1108, 1109(f). And like the State Ethics Commission, those actions are purely administrative in nature, and do not require the Attorney General to prosecute and impose fines. The only difference, of course, is that the State Ethics Commission's statute also sets forth recognizable criminal violations, complete with criminal classifications and the requirement of

15. Likewise, section 403 of the Commonwealth Attorneys Act has no relevance to Ms. Trometter's charge of illegal contributions. Section 403(a) allows agency counsel to represent the agency in an "action . . . brought by or against any independent agency or independent official," provided that the Attorney General authorizes it. 71 P.S. § 732-403(a). Ms. Trometter did not file a civil action against the PLRB, and the PLRB has no intention of initiating a civil action against the NEA or PSEA.

conviction prior to imposition of fines or imprisonment.[16] 65 Pa.C.S. § 1109(a)-(b), (e).

In any event, the PLRB failed to follow the prerequisite for referral to the Attorney General under the Commonwealth Attorneys Act. Section 205(a)(6) of the Commonwealth Attorneys Act requires agency investigation before the Attorney General could prosecute.[17] 71 P.S. § 732-205(a) ("The Attorney General shall have the power to prosecute in any county criminal court . . . . [c]riminal charges investigated by and referred to him by a Commonwealth agency.") (emphasis added). The PLRB's Order referring the case makes clear that it did not come close to conducting an investigation—it failed to even consider the merits of Ms. Trometter's claim. PLRB's Order, at p. 2 ("[T]he Board shall refer [Ms. Trometter]'s report to the Attorney General without consideration of the underlying merits of the report.").

16. Likewise, in a case cited by the PLRB, Commonwealth v. Farmer, 750 A.2d 925, 928 (Pa. Cmwlth. 2000), the Department of Environmental Protection's statute clearly imposes criminal liability for certain violations. 35 P.S. § 6018.606.

17. The PLRB twice improperly cites its manufactured, off-record letter from the Attorney General's Office in which it purportedly "accepted" Ms. Trometter's "case." PLRB Brief, at p. 20 n.8 & p. 27 n.12. This Court specifically struck this information from the record on December 16, 2015, and should strike it from the PLRB's Brief as well. Whether or not the Attorney General "accepted" the referral does not settle the matter of whether the Attorney General has jurisdiction to prosecute—an issue sure to be taken up by the NEA and PSEA in the event of prosecution.

In fact, the PLRB elsewhere insists that it cannot investigate violations of section 1701 in the first place. PLRB's Brief, at p. 14 ("However, there is no statutory authority for the Board to investigate alleged violations of those reporting requirements . . . ."); id. at p. 17 ("There are no provisions of PERA that specifically permit the Board to investigate . . . alleged violations of Section 1701 of PERA."). To side with the PLRB, therefore, this Court would have to conclude that agency investigation is a wholly unnecessary precursor to the Attorney General's jurisdiction. Even under the lower standard urged by the PLRB, the PLRB's actions do not approach "investigation."[18] See Commonwealth v. Farmer, 750 A.2d 925, 928 (Pa. Cmwlth. 2000) (noting that the state agency had actually evaluated a citizen's complaint "at several levels within the agency before referral to the Attorney General").

Although of immediate importance, requiring the PLRB to conduct an actual investigation would be somewhat beside the point. An in-depth investigation was not necessary to determine that the NEA and PSEA violated section 1701—they

18. And the PLRB's actions fall far short of those expected in an investigation leading to referral to the Attorney General. For example, in Commonwealth v. Frey, 42 Pa. D. & C.3d 653, 1986 WL 15993, at *1 (Pa. Ct. Common Pleas 1986), where the agency had conducted an investigation, determined that the subject of the investigation was criminally liable for failure to remit sales taxes, and then referred the matter with a final report "recommending the filing of criminal charges."

admitted to the underlying conduct. The PLRB admits as much, conceding that the primary obstacle in fulfilling its duties was its belief that section 1701 is unconstitutional under Citizens United.[19] PLRB's Brief, at p. 26 n.11. The point is that section 1701 vests enforcement responsibility with the PLRB, and it must fulfill its statutory duties to, at a minimum, determine whether a violation has occurred.

Finally, even if criminal penalties were appropriate, by the PLRB's own admission, the Pennsylvania Rules of Criminal Procedure provide that a Commonwealth Agency may also be a "law enforcement officer" in summary criminal prosecutions where, as here, enabling statutes provide the authority.[20] Respondent's Brief, at p. 27.

Seeking safe harbor under the Commonwealth Attorney's Act cannot prevent the PLRB from fulfilling its duty to enforce the regulations outlined in PERA Section 1701.

19. Deciding against taking action directed by the General Assembly is an inappropriate a constitutional determination as striking down a statute. The PLRB should not be allowed to pretend it is avoiding a separation of powers problem.

20. Again, at the very least, section 1701 provides such authority by giving the board the power to establish rules and regulations to enforce section 1701 and by including all penalties in the PLRB's authorizing statute.

CONCLUSION

In sum, this Court should hold that section 1701 is valid law, that the PLRB erred in attempting to avoid its statutory mandate, and that its rule, 34 Pa. Code § 95.112, is invalid. This Court should also conclude that the PLRB was presented with evidence sufficient to determine that the NEA and PSEA violated section 1701 and remand for further proceedings.

Respectfully submitted,

THE FAIRNESS CENTER

February 22, 2016

David R. Osborne
PA Attorney ID#: 318024
Karin Sweigart
PA Attorney ID#: 317970
225 State Street, Suite 303
Harrisburg, PA 17101
844-293-1001
david@fairnesscenter.org
karin@fairnesscenter.org

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the word-count limit described in Rule of Appellate Procedure 2135(a)(1). According to the word count feature of the word-processing system used to prepare the brief, it contains 5,915 words.

February 22, 2016 By: 

David R. Osborne
PA Attorney ID#: 318024
The Fairness Center
225 State Street, Suite 303
Harrisburg, PA 17101
844-293-1001
david@fairnesscenter.org

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of Petitioner's Reply Brief, has on this date been served on the following:

John B. Neurohr, Esq.
Peter Lassi, Esq.
Warren R. Mowery, Jr., Esq.
418 Labor & Industry Building
651 Boas Street
Harrisburg, PA 17121
Counsel for Respondent

Richard E. Burridge, Esq.
400 N. Third Street
Harrisburg, PA 17101
Counsel for Intervenors PSEA and NEA

Jason Walta, Esq.
Samuel W. Wheeler, Esq.
1201 16th Street, NW
Washington, DC 20036
Counsel for Intervenor NEA

February 22, 2016

David R. Osborne
PA Attorney ID#: 318024
Karin Sweigart
PA Attorney ID#: 317970
225 State Street, Suite 303
Harrisburg, PA 17101
844-293-1001
david@fairnesscenter.org
karin@fairnesscenter.org