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**VIA HAND DELIVERY**

December 19, 2014

Larry D. Cheskawich, Board Secretary
Pennsylvania Labor Relations Board
651 Boas Street, Room 418
Harrisburg, PA 17121-0750

**Re: Response to Charge in Case No. PERA-M-14-366-E (*Trometter v. PSEA/NEA*)**

The Pennsylvania State Education Association ("PSEA") and National Education Association ("NEA") submit this response to the charge filed by Mary Trometter on November 18, 2014.

## INTRODUCTION

Trometter, a member of both PSEA and NEA (collectively, the "Unions"), has charged the Unions with making political "contribution[s]" in violation of Section 1701 of the Public Employe Relations Act ("PERA § 1701"). According to Trometter, the alleged illegal "contribution[s]" take the form of two communications sent by the Unions: (1) a letter sent from NEA to her husband urging him to vote for Governor-elect Tom Wolf in the Commonwealth's November 2014 gubernatorial election; and (2) a PSEA magazine that "was used to support Tom Wolf for Governor." (Complainant's Specification of Charges ¶¶ 1-2.)

The charge has no legal foundation and should be dismissed. PERA § 1701 prohibits the making of "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 Pa. Cons. Stat. Ann. § 1101.1701 (emphasis added). But, neither the NEA letter nor the PSEA magazine qualify as a prohibited "contribution" under this provision.

There are three separate and independent reasons why the term "contribution" in PERA § 1701 does not reach the activity at issue here—namely, a union's communications with its own members and their families. First, the common, everyday understanding of a

"contribution" is that of something that is *given to another*, not spending on one's *own speech*. Second, another provision of Pennsylvania law specifically *authorizes* unions to communicate with members and their families on any subject—which includes the subject of recommending candidates for elected office—and, therefore, PERA § 1701 must be construed to avoid a direct conflict with that statute. Finally, such an interpretation is necessary to avoid serious doubt as to PERA § 1701's constitutionality under the First Amendment. Because none of the communications identified in the charge violate PERA § 1701, the charge must be dismissed.

## STATEMENT OF FACTS

Pennsylvania's Election Code declares that "*no provision* of the laws of this Commonwealth" may be construed to prohibit "direct private communications" on "*any subject*" made by unions or other associations to "members *and their families.*" 25 Pa. Cons. Stat. Ann. § 3253(c) (emphasis added). Pursuant to this explicit statutory authorization, the Unions made the two communications that are the subject of this charge.

First, on October 17, 2014, PSEA mailed to its members' households the November edition of PSEA's member magazine, *The Voice*. (Declaration of David Broderic at ¶¶ 5, 6, attached as Exhibit A.) The November edition contained numerous articles and ads urging members to vote for PSEA's endorsed gubernatorial candidate, Tom Wolf. (*Id.* at ¶ 7.) PSEA sends *The Voice* to its members' households and pays for the publication and distribution of *The Voice* with general treasury funds. (*Id.* at ¶¶ 3, 4.) For one of the articles in the November edition of *The Voice*, Tom Wolf was briefly interviewed to ascertain his position on certain policy issues, and his answers to some of the interview questions were included in the article that urged members to vote for Wolf. (*Id.* at ¶ 8, 9.) However, PSEA did not discuss with Wolf or his campaign what the contents of that article would be. (*Id.*) In all other respects, neither the content nor any other aspect of the November issue of *The Voice* was made in cooperation or consultation with Governor-elect Wolf or any political committee authorized by Wolf, or at the request or suggestion of Wolf or his campaign. (*Id.* at ¶ 9.)

Second, on October 28, 2014, NEA sent a letter (the "Letter") exclusively to the household family members of PSEA members urging them to vote for Wolf. (Declaration of Amy Kurtz at ¶¶ 5, 9, attached as Exhibit B.) NEA paid for the publication and distribution of the Letter through the NEA Advocacy Fund, a political action committee that is funded with NEA treasury money to make election-related communications that are not coordinated with candidates or political parties. (*Id.* at ¶¶ 3, 4, 6.) The Letter was published and sent without coordinating or consulting with Wolf or his campaign. (*Id.* at ¶¶ 6, 7.)

Since Trometter is a member of PSEA and NEA, her household received a copy of the November issue of *The Voice*. (Exh. A at ¶ 6.) Her husband, Jeffrey Trometter, received a copy of NEA's Letter urging him to vote for Wolf. (Exh. B at ¶ 5.) Trometter filed the instant charge shortly after both communications were received at her household.

## DISCUSSION

The charge does not state a violation of PERA § 1701. As a result, it should be immediately dismissed. As we explain below, the communications made by the Unions to their own members and their families are not prohibited "contribution[s]." Instead, they are communications that both Pennsylvania law and the United States Constitution privilege the Unions to make.

### 1. The Unions' own communications with members and their families are not "contribution[s]" under the ordinary meaning of that term.

A term that is not specifically defined by statute—like the term "contribution" in PERA § 1701—should generally be given its "ordinary, plain[,] and everyday meaning." *Harris-Walsh, Inc. v. Borough of Dickson City*, 216 A.2d 329, 336 (Pa. 1966). In normal usage, "contribution" denotes a gift of money or some other thing of value *to another* person or entity for a specified purpose. Authoritative dictionary definitions of the term include the act of "giv[ing] (something, such as money, goods, or time) to help a person, group, cause, or organization" (such as to "contribute money to a cause"),[1] and a "gift or payment to a common fund or collection."[2] These definitions do not contemplate spending money to convey one's *own* message as a "contribution."

That sense of the term "contribution" accords, not only with everyday usage, but also with its common *legal* usage in connection with elections for political office. The U.S. Supreme Court, for example, has consistently recognized a difference between "contributions" (giving money to another entity) and "expenditures" (spending one's own money directly on advocacy). *See, e.g., Buckley v. Valeo*, 424 U.S. 1, 20-22 (1976) (per curiam); *Ariz. Free Enter. Club's Freedom Club PAC v. Bennett*, 131 S. Ct. 2806, 2817 (2011). And, that same distinction is codified explicitly in Pennsylvania's own Election Code. *Compare* 25 Pa. Cons. Stat. Ann. § 3241(b) (defining "contribution"), *with id.* § 3241(d) (defining "expenditure").

As a matter of common usage, PERA § 1701's reference to "contribution" should not be read to include a union's expenditure of funds to communicate directly with its own members and their families. In producing and distributing the Letter and *The Voice*, the Unions spent money to communicate a political message to their members and their families in furtherance of the members' interests. The Unions did *not* give money or any other thing of value to Governor-elect Wolf or to any other candidate or political committee. Thus, neither the Letter nor *The Voice* qualifies as a prohibited "contribution" under PERA § 1701.

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[1] Merriam-Webster Online Dictionary, *available at* http://www.merriam-webster.com/dictionary/contribute.

[2] Oxford Dictionaries, *available at* http://www.oxforddictionaries.com/definition/american_english/contribution.

**2. To avoid a direct conflict with another provision of Pennsylvania law, the term "contribution" in PERA § 1701 must be construed so as not to reach the Unions' communications with members and their families on any subject.**

The term "contribution" in PERA § 1701 must also be read so as not to conflict with a later-enacted provision of the Pennsylvania Election Code that explicitly, and without limitation, allows the Unions to expend treasury funds to communicate directly with members and their families on any subject.

It is a fundamental maxim of statutory interpretation that "a conflict between various statutes . . . is to be avoided." *Hous. Auth. v. State Civil Serv. Comm'n*, 730 A.2d 935, 946 (Pa. 1999). Thus, the Legislature requires that its statutes that "relate to the same persons or things . . . shall be construed together, if possible." 1 Pa. Cons. Stat. Ann. § 1932(a)-(b). This holds equally true where one of the statutes involved is one that, like the PERA, is construed and enforced by an administrative agency. As the U.S. Supreme Court has explained in the context of the administration of the National Labor Relations Act (NLRA),[3] the National Labor Relations Board "has not been commissioned to effectuate the policies of the [NLRA] so single-mindedly that it may wholly ignore other and equally important [c]ongressional objectives." *Hoffman Plastic Compounds, Inc. v. NLRB*, 535 U.S. 137, 143 (2002) (quoting *Southern S.S. Co. v. NLRB*, 316 U.S. 31, 47 (1942)).

The relevant provision of the Election Code could not be clearer in addressing this topic. It declares that "*no provision* of the laws of this Commonwealth" may be construed to prohibit "direct private communications" on "*any subject*" made by unions or other associations to "members *and their families*." 25 Pa. Cons. Stat. Ann. § 3253(c) (emphasis added). This blanket exemption for unions and other associations to communicate freely with members and their families is hardly unique. Indeed, the vast majority of states that otherwise restrict or prohibit unions' political contributions have similar exemptions for union-to-member communications.[4]

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[3] Both the courts and the PLRB have "not hesitated to consider, and to follow, federal interpretation of the NLRA due to the similarity between the federal labor law and our own laws dealing with labor relations." *Com., Office of Admin. v. PLRB*, 916 A.2d 541, 550 (Pa. 2007); *accord N. Schuylkill Educ. Support Personnel Ass'n v. N. Schuylkill Sch. Dist.*, 36 PPER ¶ 1 n.1 (Final Order, 2005).

[4] *See* 2 Alaska Admin. Code § 50.990(7)(C)(iv); Ala. Code § 17-5-8(j); Ariz. Rev. Stat. § 16-920(B); Ark. Code Ann. § 7-6-201(5); Cal. Gov't Code § 85312; Colo. Const. art. XXVIII, § 2(8)(b)(III); Conn. Gen. Stat. Ann. §9-601a(b)(2); Del. Code Ann. tit. 15, § 8002(15); Fla. Stat. Ann. § 106.011(10)(a); Idaho Code Ann. § 67-6602(f)(2)(iii); 10 Ill. Comp. Stat. Ann. 5/9-1.14(b)(5); Ind. Code Ann. § 3-9-5-15(b); Iowa Code Ann. § 68A.503(6); La. Rev. Stat. Ann. 18:1483(9)(d)(ii); 21-A Me. Rev. Stat. § 1012(3)(B)(3); Md. Code Ann., Elec. Law § 13-306(a)(6)(ii)(2); Mass. Gen. Laws Ann. ch. 55 § 1; Mich. Comp. Law §§ 169.206; Mo. Stat. § 130.011(15)(e); Mont. Code Ann. § 13-1-101(7)(b); Neb. Rev. Stat. § 49-1419(3); N.J. Stat. Ann. § 19:44A-29(f); N.Y. State Board of Elections, 1978 Op. No. 16; N.C. Gen. Stat. Ann. § 163-278.19(b); Ohio Rev. Code Ann. § 3599.03(F)(3); Okla. Stat. Ann. § tit. 74, ch. 62, Rule 2.29; Or. Rev. Stat. § 260.007(7); R.I. Gen. Laws Ann. § 17-25-3(14)(ii)(C); S.D. Codified Laws § 12-27-1(11); Tenn. Code Ann. § 2-10-102(4)(D); Tex. Elec. Code Ann. § 253.098(a); Utah Code Ann. § 20A-11-1404(4); Wash. Rev. Code Ann. § 42.17A.005(13)(b)(v); W. Va. Code Ann. § 3-8-1a(12)(B)(vi); Wis. Stat. Ann. § 11.29(1); Wyo. Stat. Ann. § 22-25-102(d).

Federal law—which the PLRB frequently looks to for guidance, *see* note 3, *supra*—is no different. Although federal campaign-finance laws prohibit labor organizations from making contributions in connection with federal elections, *see* 52 U.S.C. § 30118(a), there is a broad exemption for "communications . . . by a labor organization to its members and their families *on any subject*," *id.* § 30118(b)(2) (emphasis added). The communications protected under this exemption can even be made in direct coordination or consultation with candidates and their campaigns. 11 C.F.R. § 114.3(a)(1).

Here, the only way to avoid a direct conflict with the relevant provision of the Pennsylvania Election Code is to construe the term "contribution" in PERA § 1701 so as *not* to reach a union's dues-funded communications with its own members and their families. Otherwise, the PLRA would "unduly trench upon [the] explicit statutory" protections contained in the Election Code, *Hoffman Plastic Compounds*, 535 U.S. at 151, and violate the Legislature's clear command that these two statutes "relat[ing] to the same persons or things . . . be construed together, if possible," 1 Pa. Cons. Stat. Ann. § 1932(a)-(b).

What is more, even if PERA § 1701 could not be read in harmony with the Election Code's broad exemption for union-to-member communications, the only way to reconcile the two conflicting provisions would be to conclude that the Legislature repealed PERA § 1701 to the extent its prohibition on "contribution[s]" reaches a union's communications with its members and their families. The Election Code could not be clearer that it is intended to freely allow union-to-member communication by expressly declaring that "[*n*]*o provision* of the laws of this Commonwealth"—which include PERA § 1701—can "be deemed to prohibit direct private communications" by a union or other association "to its members and their families on any subject." 25 Pa. Cons. Stat. Ann. § 3253(c) (emphasis added). This language "clearly indicat[es] the intent and meaning of the legislature that certain acts or character of legislation theretofore existing were repealed." *Durr v. Commonwealth*, 12 A. 507, 508 (Pa. 1888). Moreover, even if there were no explicit language demonstrating an intent to repeal existing provisions that might conflict with this union-to-member communication exemption, the relevant provision of the Election Code was enacted after PERA § 1701. *Compare* General Laws, Session of 1978, No. 171 § 1633 (adopting provision currently codified as Section 3253(c) of Election Code), *with* General Laws, Session of 1970, No. 195 § 1701 (adopting provision currently codified as PERA § 1701). As a result, the protection for union-to-member communications in the Election Code governs under the rule that "[w]henever the provisions of two or more statutes enacted finally by different General Assemblies are irreconcilable, the statute latest in date of final enactment shall prevail." 1 Pa. Stat. Ann. § 1936.

**3. To avoid grave doubts about PERA § 1701's constitutionality, the term "contribution" in that provision must be construed not to reach the Unions' communications with members and their families on any subject.**

Finally, PERA § 1701 cannot be construed to reach the communications at issue without raising grave concerns about its constitutionality under the First Amendment. Such constructions of a statute are to be avoided whenever possible. *In re F.C. III*, 2 A.3d 1201, 1214 (Pa. 2010) ("[C]ourts have the duty to avoid constitutional difficulties, if possible, by

construing statutes in a constitutional manner."); *Brown v. Montgomery County*, 918 A.2d 802, 807 n.10 (Pa. Commw. Ct. 2007) ("It goes without saying . . . that an agency can interpret the statute it must enforce and should do so in a way that is consistent with the demands of applicable constitutional principles."); *accord United States v. CIO*, 335 U.S. 106, 121 n.20 (1948) ("[W]here a statute is susceptible of two constructions, by one of which grave and doubtful constitutional questions arise and by the other of which such questions are avoided, our duty is to adopt the latter.") (quoting *United States v. Del. & Hudson Co.*, 213 U.S. 366, 407-08 (1909)); *see also* 1 Pa. Cons. Stat. Ann. § 1922 (mandating a presumption in statutory interpretation that "the General Assembly does not intend to violate the Constitution of the United States or of this Commonwealth").

Laws that purport to regulate election-related speech raise special constitutional concerns because "the First Amendment 'has its fullest and most urgent application precisely to the conduct of campaigns for political office.'" *Lodge No. 5 of Fraternal Order of Police ex rel. McNesby v. City of Philadelphia*, 763 F.3d 358, 367 (3d Cir. 2014) (quoting *McCutcheon v. Fed. Election Comm'n*, 134 S. Ct. 1434, 1441 (2014)). Accordingly, such laws must be read to "give the benefit of any doubt to protecting rather than stifling speech." *Fed. Election Comm'n v. Wisconsin Right To Life, Inc.*, 551 U.S. 449, 469 (2007).

Moreover, there are two particular lines of the U.S. Supreme Court's First Amendment cases that have direct application to how PERA § 1701 must be applied to the facts presented here in order to avoid constitutional difficulties. First, in *United States v. CIO*, the Court faced a federal statute that swept even more broadly than PERA § 1701 and prohibited unions from making both "contributions" and "expenditures" in connection with certain elections. 335 U.S. at 107 & n.1. The Court held, however, that if the federal statute "were construed to prohibit the publication, by corporations and unions in the regular course of conducting their affairs, of periodicals advising their members, stockholders or customers of danger or advantage to their interests from the adoption of measures or the election to office of men, espousing such measures, the gravest doubt would arise in our minds as to its constitutionality [under the First Amendment]." *Id.* at 121. Accordingly, the Court applied the presumption against constitutional doubt to hold that the federal ban did not reach a union's communications with its members. *Id.* at 121-22. The Court's decision in *CIO* protects not only union publications like *The Voice*, but any communications that are distributed to members, their households, and other constituents of the union's inner circle. *See id.* at 123; *see also United States v. United Auto. Workers*, 352 U.S. 567, 588-89 (1957) (restating that the law addressed in *CIO* was interpreted so as not to forbid an "organization merely distribut[ing] its house organ to its own people.").[5] Hence, the

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[5] A labor union's "own people" encompasses not only members themselves but also their families. Following the Supreme Court's decision in *CIO*, Congress amended the statute discussed in *CIO* to explicitly protect "communications by a corporation to its stockholders and their families or by a labor organization to its members *and their families* on any subject." *Pipefitters Local Union No. 562 v. United States*, 407 U.S. 385, 410 (1972) (emphasis added). This addition, which is mirrored by Pennsylvania's own election law, did not constitute a change in the law, but merely codified *CIO* and related Supreme Court decisions. *See id.* at 409–11; *see also Colo. Educ. Ass'n v. Rutt*, 184 P.3d 65, 80-81 (Colo. 2008) (holding that exemptions for a union's communications with its members are constitutionally compelled and must be broadly construed in favor of the union's speech).

constitutional doubt identified in *CIO* would apply with equal force to any interpretation of PERA § 1701 as prohibiting either the Letter or *The Voice*.[6]

Second, *Citizens United v. FEC*, 558 U.S. 310 (2010), casts serious doubt on any interpretation of the term "contribution" in PLRA § 1701 that would encompass communications—like the Letter and much of the content of *The Voice*—that were made without coordination or cooperation with a candidate or campaign. In *Citizens United*, the Supreme Court struck down, as contrary to the First Amendment, a statute that prohibited both corporations and unions "from using their general treasury funds to make independent expenditures[7]. . . for speech expressly advocating the election or defeat of a candidate." *Citizens United*, 558 U.S. at 318–19; *see also id.* at 365. The Letter and much of the *The Voice* were expenditures made for the purpose of influencing the Commonwealth's gubernatorial election, without coordination with a candidate or campaign. (*See* Exh. A at ¶ 9; Exh. B at ¶¶ 7, 8.) Since *Citizens United* is fully applicable to statutes of the Commonwealth,[8] these communications are protected by the First Amendment. Accordingly, construing PERA § 1701 to prohibit these expenditures would raise serious doubts as to the provision's constitutionality.

Indeed, *CIO* and *Citizens United* raise more than constitutional *doubts* about applying PERA § 1701 to the Letter and *The Voice*; they show *conclusively* that the First Amendment forbids such an application. If PERA § 1701 cannot be construed to avoid restricting union-to-member communications and independent expenditures, the only appropriate course is to recognize that the statute plainly violates the First Amendment as applied to these circumstances.[9]

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[6] Given that *CIO* had been on the books for more than two decades by the time the legislature passed PERA § 1701 in 1970, there can be no doubt that the legislature's intent must be construed to respect that decision. *See* 1 Pa. Con. Stat. Ann. § 1922(3); *id.* § 1922(4) (prescribing the presumption that "when a court of last resort has construed the language used in a statute, the General Assembly in subsequent statutes on the same subject matter intends the same construction to be placed upon such language"). In enacting a statute, the legislature is presumed to have been familiar with the law, as it then existed and the judicial decisions construing it. *See Fletcher v. Pa. Prop. & Cas. Ins. Guar. Ass'n*, 985 A.2d 678, 694 (Pa. 2009).

[7] "[A]n independent expenditure is political speech presented to the electorate that is not coordinated with a candidate." *Citizens United*, 558 U.S. at 360; *see also* 25 Pa. Cons. Stat. Ann. § 3241(e).

[8] *See Am. Tradition P'ship, Inc. v. Bullock*, 132 S. Ct. 2490, 2491 (2012) (per curiam) (declaring that "[t]here can be no serious doubt" that the holding of *Citizens United* applies fully to state laws); *see also* Pa. Dept. 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), available at http://www.portal.state.pa.us/portal/server.pt/gateway/PTARGS_0_160329_772781_0_0_18/DOS%20Statement%20on%20Citizens%20United%20Case%2003-10.pdf

[9] Although administrative agencies cannot declare that the statutes they administer are facially unconstitutional, they are authorized to find that those statutes are unconstitutional as applied to particular circumstances. *See Lehman v. Pa. State Police*, 839 A.2d 265, 276 (Pa. 2003).

## CONCLUSION

For the reasons stated above, PERA § 1701 does not restrict a union's communications—such as the Letter and *The Voice*—directed solely at members and their families. That being the so, the charge does not, as a matter of law, state a violation of PERA and should therefore be dismissed without further action.

Respectfully submitted:

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## CERTIFICATE OF SERVICE

I hereby certify that I am serving a true and correct copy of the foregoing ANSWER TO UNFAIR LABOR PRACTICE CHARGE, date and time stamped document upon the person(s) indicated below, service by first class United States Mail, postage prepaid and addressed as follows:

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Date: December 19, 2014

| | |
|---|---|
| **Mary Trometter,** | |
| **Complainant** | |
| **v.** | **Case No. PERA-M-14-366-E** |
| **Pennsylvania State Education Association – National Education Association,** | |
| **Respondent** | |

**DECLARATION OF DAVID BRODERIC**

I, David Broderic, declare as follows:

1. I am the Director of Communications of the Pennsylvania State Education Association ("PSEA").

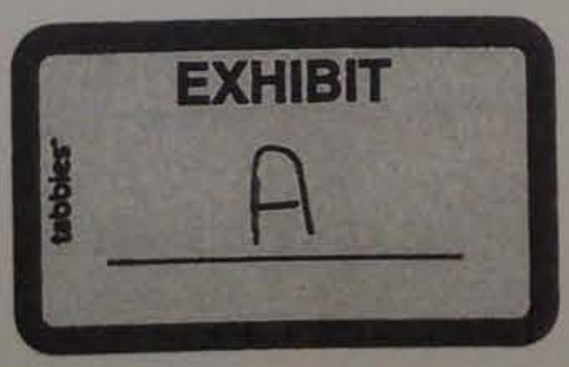
2. In my capacity as PSEA's Director of Communications, I oversee the production and dissemination of *PSEA Voice*, a magazine that is produced by PSEA and mailed to PSEA members at their homes six times a year.

3. *PSEA Voice* is PSEA's "house organ," a publication that serves as one of the primary means by which PSEA communicates with its members on a variety of topics.

4. PSEA uses general treasury funds to pay the expenses for production and mailing of *PSEA Voice*.

5. In my capacity as PSEA's Director of Communications, I oversaw the production and dissemination of the November 2014 issue of *PSEA Voice* (the "11/2014 *Voice*"), a copy of which is attached to the Specification of Charges in this case as Exhibit C.

6. Printed copies of the 11/2014 *Voice* were mailed to PSEA members at their households.



7. The 11/2014 *Voice* contains a number of articles urging members to vote in the then-upcoming elections and, specifically, to vote for Tom Wolf for governor.

8. For the 11/2014 *Voice*, Tom Wolf was briefly interviewed to ascertain his position on certain policy issues, and his answers to some interview questions were included in an article that urged members to vote for Wolf; however, PSEA did not discuss with Wolf or his campaign what content that article would include.

9. In all other respects, neither the content nor any other aspect of the 11/2014 *Voice* was made in cooperation or consultation with Governor-Elect Wolf or any political committee authorized by Wolf, or at the request or suggestion of Wolf or his campaign.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 19 day of December, 2014.

DAVID BRODERIC

**Mary Trometter,**

**Complainant**

**v.**

**Case No. PERA-M-14-366-E**

**Pennsylvania State Education Association – National Education Association,**

**Respondents**

## DECLARATION OF AMY KURTZ

I, Amy Kurtz, declare as follows:

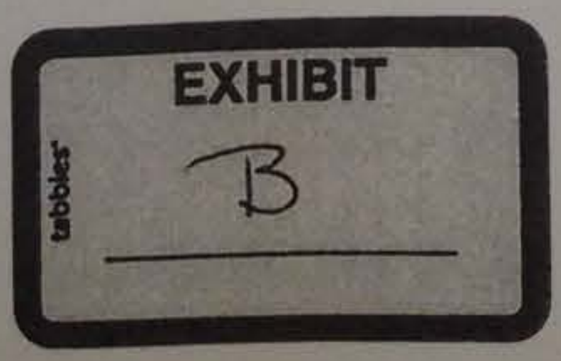
1. I am a manager in the Campaigns and Elections Department of the National Education Association ("NEA").

2. In my capacity at NEA, I manage and oversee all of the expenditures from the NEA Advocacy Fund, which is a political action committee ("PAC") sponsored by NEA.

3. The NEA Advocacy Fund receives all of its funding from dues paid by NEA members.

4. The NEA Advocacy Fund is registered with the Federal Elections Commission as an Independent-Expenditure Only PAC; as such, it is used to fund election-related communications that are not coordinated with candidates or parties, and to make contributions to other PACs for communications that are not coordinated with candidates or parties.

5. In my role as manager, I oversaw the team that produced and disseminated a letter dated October 28, 2014, signed by NEA President Lily Eskelsen Garcia and Pennsylvania State Education Association ("PSEA") President Michael J. Crossey, and sent



to Jeffrey Trometter (the "Letter"), a copy of which is attached to the Specification of Charges in this case as Exhibit A.

6. The NEA Advocacy Fund paid for the production and distribution of the Letter.

7. Neither the content nor any other aspect of the Letter was made in cooperation or consultation with Governor-elect Tom Wolf or any political committee authorized by Governor-elect Wolf.

8. Neither the content nor any other aspect of the Letter was made in concert with or at the request or suggestion of Governor Wolf or any political committee or agent of Governor Wolf.

9. Other letters substantially identical to the Letter were circulated to household family members of PSEA members, in accordance with the provision of the Pennsylvania Election Code allowing labor organizations such as NEA to use funds derived from member dues to send communications on "any subject" to NEA's "members and their families." 25 Pa. Cons. Stat. Ann. § 3253(c).

10. NEA did not circulate the Letter or similar letters to persons who are not household family members of PSEA members.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 8th day of December, 2014.

AMY KURTZ