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July 14, 2010

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Re: Policy Brief/Press Release on PennFuture's Lobbying

Gentlemen:

I am writing as counsel to Citizens for Pennsylvania's Future ("PennFuture"). The Commonwealth Foundation's recently-issued Policy Brief on "PennFuture's Lobbying" includes a number of serious errors. The associated Press Release repeats certain of those errors and makes others. We outline the most serious below. A correction/retraction on these issues, as described below, is the responsible and appropriate action. The Foundation's "Guarantee of Quality Scholarship" confirms its commitment to verifiable, fact-based analysis, accurately presented, and its willingness to make revisions when a publication does not meet those standards.<sup>1</sup>

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<sup>1</sup> The "Guarantee of Quality Scholarship" states in relevant part:

[T]he Commonwealth Foundation guarantees that all statements of fact presented in our publications are verifiable, and information attributed to other sources is accurately represented. ... [T]he Commonwealth Foundation welcomes critical review of its work. If the accuracy of our research is questioned and brought to the Foundation's attention with supporting evidence in writing, the Foundation will respond. If an error exists, the Commonwealth Foundation will issue an errata sheet that will accompany all subsequent distributions of the publication ....

The Guarantee then states that the errata sheet for future distribution "constitutes the complete and final remedy under this guarantee." That limitation on corrective action is insufficient for many obvious purposes: it does not address the recipients of prior distributions. I cannot imagine that the Foundation would accept that limitation were it the subject of erroneous accusations. The appropriate remedies are, at a minimum, the measures described in this letter.

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**1. CLAIM: PennFuture Uses Taxpayer Money To Lobby For Taxpayer Money**

The Policy Brief twice alleges that PennFuture has used taxpayer money to lobby for more taxpayer money.

Since 2002, the group has lobbied for and received over \$1 million in taxpayer money, which is then used to lobby elected and appointed officials for additional taxpayer money. (at 1)

Completing the circle of funding, a.k.a. the iron triangle, PennFuture then uses that money to lobby for even higher taxes and fees, more mandates, and taxpayer-funded grants to support its lobbying efforts. (at 6)

The Press Release repeats the allegation (“The report also notes that PennFuture has received over \$1 million in taxpayer-funded grants since 2002, which it then used to lobby elected and appointed officials for additional taxpayer money.”)

A bit of thought and understanding as to how government operates, not to mention minimal investigation, would have demonstrated the errors, in this claim. PennFuture did not use any of the public grant funds it has received for lobbying, let alone to lobby to receive additional public funds.

With the rarest of exceptions (for example, actions taken to comply with a court order), all money spent by a Commonwealth agency must be consistent with both an appropriation and with a substantive (non-appropriation) statute authorizing the action. Does it seem likely that the General Assembly has enacted legislation authorizing the Department of Environmental Resources or any other Department to give funds to PennFuture, or any other entity, for purposes of lobbying? Of course, the legislature has not done so and, again not surprisingly, the various Departments have not provided funds for that purpose on their own.

To the contrary, the Departments have made *grants* – an award of funds for a specified purpose – to PennFuture, as to thousands of other organizations, to accomplish specific purposes as detailed in the grant application and award. The Departments do so following a statutory authorization and a pertinent appropriation. Typically, the Departments require that performance under the grant be audited to make sure funds have been used as contemplated.

A listing of grants PennFuture has received from the Commonwealth is attached. There are two central points:

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- (1) No grant was for the purpose of lobbying; and
- (2) All grant money was used for its intended purpose.

Finally, the Brief notes that the amount of grant funds PennFuture reported on its federal filing (IRS Form 990's) is, for several years, less than the amount that the Department of Treasury reported, in response to a Right-to-Know request (presumably made by the Foundation) that the Commonwealth paid to PennFuture. We, of course, do not know precisely what the Commonwealth Foundation requested (wording can be important) or what the Treasury Department provided.<sup>2</sup> What we do know is that PennFuture has received awards of attorneys fees in successful litigation against Commonwealth agencies in many fiscal years in the period covered in the Brief. These payments are not grants. The fee amounts account for the complete difference between the grant amounts PennFuture reported on its Form 990s and the Treasury Department's listing of funds paid to PennFuture for three fiscal years (2002-03, 2004-05, and 2005-06) in which there appeared to be a discrepancy. PennFuture reported the grants and the fee awards (typically on Form 990, Part VII, "Analysis of Income Producing Activities") separately in its Form 990s. Had the Commonwealth Foundation requested an explanation from PennFuture regarding the "discrepancy" in grants reported, it would have learned that there was none.

**The Required Remedy:** With respect to these errors, the two offending paragraphs identified above (at pages 1 and 6) must be removed from the Report, both as it appears on the Foundation's website and as it is distributed in hard copy form; any existing stock must be destroyed. The revised Report should indicate that it "was corrected and certain erroneous statements removed on [date]". The Press Release must likewise be revised on the website and as distributed, with a comparable legend. A Corrective Notice must be posted on the website comparable in size to the original Notice advising that corrections have been made. The corrected documents should be sent to the same distribution list as the original documents.

## **2. CLAIM: PennFuture Engages in "Secret Lobbying"**

The press release is titled "PennFuture's Secret Lobbying." That charge is demonstrably false under any reasonable understanding of the word "secret."<sup>3</sup> Neither the Report nor the Release contains any support for any allegation that PennFuture engages in "secret lobbying."

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<sup>2</sup> Please provide me with both the request and response.

<sup>3</sup> Dictionary.com defines "secret" as something that is "done, made, or conducted without the knowledge of others: *secret negotiations*"; or that is "kept from the knowledge of any but

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PennFuture files and has filed throughout its existence the required reports with the Department of State and with the Internal Revenue Service as to its lobbying activities. Those PennFuture employees who qualify as lobbyists under Pennsylvania Law have filed the appropriate registrations. PennFuture has repetitively answered “yes” to the Form 990 question “has the organization attempted to influence national, state, or local legislation, including any attempt to influence public opinion on a legislative matter or referendum” and those forms, as you likely know, are publicly available at several places, including PennFuture’s website. Your Report (at 5) quotes an unnamed legislator stating that he receives “emails in newsletter form from PennFuture several times a week.” Whether or not that qualifies as lobbying, it is clear that those activities are not secret.

PennFuture’s accountants are reviewing the various filings to determine if there are any underreportings. PennFuture intends that all of its regulatory filings be entirely accurate. But clearly, there is a vast difference between arguably reporting a number in one document that is less than the amount reported elsewhere and attempting to keep an activity “secret.”

**The Required Remedy:** With respect to this error, the press release must be revised, both as it appears on the Foundation’s website and as it is distributed in hard copy form; any existing stock must be destroyed; and the revised press release should indicate that it “was corrected and certain erroneous statements removed on [date]”. A revised press release noting the corrections (and those corrections discussed below) must be distributed in the same manner as the original.

### **3. CLAIM: PennFuture Uses Foundation Funding For Lobbying**

The Policy Brief (at 7) asserts that PennFuture, in addition to using taxpayer funds for its lobbying activities (it does not), uses funds provided from various Foundations.

The Heinz Endowments, William Penn Foundation, and the Pew Charitable Trusts ... invest millions of dollars in organizations like PennFuture to *advocate for taxpayer subsidization of less efficient and expensive “alternative” energy forms.*

(emphasis supplied). That too is incorrect and for essentially the same reason as the assertion regarding the taxpayer-funded lobbying. Foundations award grants, to PennFuture and many others. They do so in response to grant proposals that outline precisely how the funds will be used. The Foundations take appropriate steps to see that their funds are used as the grant conditions require. Grant award letters commonly contain language requiring the grantee to use

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the initiated or privileged: *a secret password*; or “designed or working to escape notice, knowledge, or observation: *a secret drawer; the secret police.*”

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the grant funds solely for the purposes as expressed in the underlying proposal and in accordance with a proposed budget; and further requiring the grantee to repay the Grantor any monies not used for the purposes of the grant. I suspect that the Commonwealth Foundation likewise receives grants and it should, therefore, be aware of these standard terms.

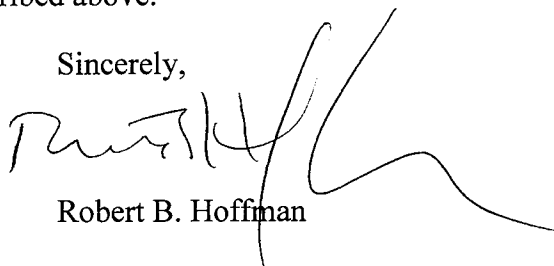
It is also the case that the Report provides no support for the assertion that Foundation funds were used for lobbying activities. It identifies no grant that authorized funds to be used for that purpose or that was used for that purpose in violation of the grant's identified purposes.

**The Required Remedy:** With respect to this error, the paragraph identified above (at page 7) must be removed from the document, both as it appears on the Foundation's website and as it is distributed in hard copy form; any existing stock must be destroyed. The revised report should indicate that it "was corrected and certain erroneous statements removed on [date]." The Press Release should likewise be revised on the website and as distributed, with a comparable legend. A Notice should be posted on the website comparable in size to the original Notice advising that corrections have been made. Again, distribution must be made to the original recipients.

PennFuture respects the right of other entities, like the Commonwealth Foundation, to disagree with its positions. PennFuture, like the Commonwealth Foundation and all similar entities, must operate consistent with the law. But, as the Foundation's "Guarantee of Quality Scholarship" appears to recognize, criticisms must be accurate and factually-based, leveled after a fair investigation by persons with an understanding of the subject matter at hand. Those standards have not been met in the Commonwealth Foundation's PennFuture report. Rather, it appears that the Foundation's agenda of finding ways to criticize an entity with different policy views has, in at least the instances noted here, led to assertions that the Foundation does not support and that are, in fact, demonstrably false.

I look forward to hearing from you promptly and seeing that the Commonwealth Foundation has taken the various corrective actions described above.

Sincerely,



Robert B. Hoffman

cc: Jan Jarrett

PENNFUTURE GRANTS FROM COMMONWEALTH AGENCIES, 2002-10

<b>Grantor</b>	<b>Time Period</b>	<b>Amount</b>	<b>Purpose/Comments</b>
USDOE/DEP	1/31-11/25/02	\$112,500	Pass through of funds to Mid-Atlantic Renewable Energy Coalition for public education campaign on buying renewable electricity
DEP	4/03	\$1,000	Sponsorship for Energy Conference, paid to vendors
DEP	7/04	\$500	Alternative Fuel Incentive Grant re purchase of hybrid car
DEP	12/05	\$200,000	“Energy Harvest” grant for Hazleton community wind project. Received \$28,955 reimbursement for one year project monitoring; in 2008 PennFuture was authorized to receive additional \$300,000. In 2010, it became clear project was not viable; PennFuture declined the remainder of the grant and received no funding beyond the project monitoring reimbursement (\$28,955)
DEP/Pa Energy Devel. Auth.	5/06	\$348,000	Funding for solar energy project planned for Turkey Hill dairy; grant was reassigned from PennFuture to Tier 1, a private company, and the project was completed at REI (outdoor clothing and equipment company) not Turkey Hill
DEP	11/06 - 8/08	\$60,000	Report on economic benefits of renewable fuels ; PennFuture paid \$50,000 to report writers, \$10,000 to PennFuture for administration and report oversight
DCED	8/04	\$75,000	Creation of Center for Energy, Enterprise and the Environment at PennFuture, which engages in a variety of activities seeking to move alternative energy technology to reality.
DCED	4/05	\$250,000	Redesign Website; HVAC efficiency upgrades

<b>Grantor</b>	<b>Time Period</b>	<b>Amount</b>	<b>Purpose/Comments</b>
DCED	3/07	\$135,000	PennFuture provided technical assistance to wind, solar and biofuels companies; held Energy Conference; provided local government official education; public education about wind and wildlife; publication of E3 and Green Power updates; HVAC efficiency upgrades
DCED	6/09	\$138,250	Educational outreach to school districts about accessing Act 129 programs.
L&I	5-7-10	\$100,000	Participate with L&I in the creation of the Green Jobs Workforce Development Center of Excellence (no funds received to date)
Total \$ Awarded		\$1,420,250	
Total \$ Received		\$1,149,205	Adjustment (\$171,045) re Hazelton wind project and L&I Green Jobs Workforce