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*Original via US First Class mail and
Via email to LindaD@ATG.WA.GOV*

January 6, 2017

Linda A. Dalton
Senior Assistant Attorney General
Office of the Attorney General
P.O. Box 40100
Olympia, WA 98504-0100

RE: Freedom Foundation Citizen Action Notice Against SEIU 775, Et. Al.
SCBIL File No. 3263-248

Dear Ms. Dalton:

We write to you on behalf of our client, SEIU 775, in response to your letter dated December 19, 2016, regarding (and enclosing) a 45-day Citizen Action Letter filed against SEIU 775 and three of its officers by The Freedom Foundation ("FF") with the Washington State Attorney General's office on December 15, 2016 ("the Letter"). The gravamen of the Letter is that SEIU 775 is properly characterized as a "political committee," as defined by RCW 42.17A.005(37), under both the "contributions" and "expenditures" prongs of that definition.

As you know, very similar, if not identical, allegations were lodged by FF against SEIU 775 on July 22, 2015. Those allegations were carefully investigated by the Washington State Public Disclosure Commission ("PDC") in PDC Case No. 15-070, which issued an Executive Summary and Staff Analysis on or about September 22, 2015, which found the charges lacking in merit. On September 24, 2015, the Washington State Attorney General's Office then reached the same conclusion, effectively adopting both the analysis and the conclusions of the Commission.

Given this history, and consistent with the request you made in your letter for us to address "any disclosure requirements SEIU 775 may have had during 2016 and whether [we] believe SEIU 775 complied with those requirements," this response to your letter will be focused almost exclusively on the few new arguments raised by FF, and on the events and actions that have taken place since January 1, 2016. For the reasons set forth below, it is clear that there is still no merit to the claims being made by FF. We therefore ask that the AG again find no basis to take any action against SEIU 775 based on the allegation that SEIU 775 is an unlawfully unregistered political committee.

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SEIU 775 is not an unregistered political committee under the “contributions” prong.

SEIU 775 is not an unregistered political committee under the “contributions” prong because there is no evidence that it at any time, much less in 2016, had “the expectation of receiving contributions” in support of, or opposition to, any candidate or ballot proposition.

The FF’s first basis for this charge is that SEIU 775 has received money from SEIU International (“SEIU”). There is no evidence, however, that this money was either solicited or used for the purpose of supporting or opposing any candidate or ballot proposition. In fact, the second-hand information relied upon by FF for this assertion, e.g., the assertion in an SEIU LM-2 report, Exhibit A, showing that a sum of money was provided to SEIU 775 by SEIU for “political advocacy,” and the information contained in Exhibit B (an LM-2 filed by SEIU 775) showing more generally that SEIU 775 received money from SEIU, provides no evidence that the money was intended to be used for electoral political activity.¹ Given the absence of any evidence that SEIU 775 in *fact* used any of the money it received from SEIU to support or oppose any candidate or ballot proposition, there is equally no evidence that SEIU 775 had an expectation of receiving money from SEIU to be used for these purposes.

The FF’s second argument relies on the same error or misunderstanding that flawed its 2015 Citizen Action Letter, in that it misunderstands the provision by SEIU 775 of staff time to other entities (or political committees) in exchange for money as evidence that SEIU 775 has received “contributions” from such entities. Regarding Working Washington, for example, cited in the Letter on page 3, and *see* Exhibit I, evidence that money was paid to SEIU 775 as a “cost reimbursement” does not show that a “contribution” was made by Working Washington to SEIU 775, much less that SEIU 775 received that money for the purpose of supporting or opposing any candidate or ballot proposition. Instead, the money was paid to SEIU 775 for services provided by SEIU 775 to Working Washington, and thus was not a contribution to SEIU 775 of any kind. The same flaw attaches to the FF’s contention that money paid to SEIU 775 by SEIU 775 Quality Care PAC to purchase staff time from SEIU 775 (Letter, p. 3; *see also* Exhibits C, J, and K) was a contribution being made to SEIU 775 for electoral political purposes. Transparently, and for the same reason, it was not.

Third, FF’s assertion that SEIU 775’s activities designed to raise money for SEIU COPE render SEIU 775 a political committee under the “contributions” prong was previously investigated and rejected by the PDC in Case No. 15-070, the Executive Summary and Staff Analysis for which noted properly, at pages 2-3:

Receiver of Contributions Prong: The complaint alleged that SEIU 775 is a political committee because it has an expectation of receiving contributions, and

¹ In addition, the contributions from SEIU to SEIU 775 identified in Exhibits A, B, and D took place between January 2010 and December 2011, outside of even the five-year statute of limitations applicable to any action that might be brought under the Fair Campaign Practices Act (“FCPA”) by the State of Washington, much less the two-year statute of limitations applicable to any hypothetical citizen’s suit. (Note that Exhibit D, cited for the same proposition as Exhibit A, is in fact a duplicate of Exhibit A). The contributions identified in Exhibit E and F, while more recent, still fall outside of that two-year period.

is a receiver of contributions. This argument is based on the fact that in an August 12, 2014 letter, SEIU 775 asked IPs who are nonmembers to join the union as full members, and after joining, to authorize their employer to withhold an indicated amount per month from their pay and forward it to SEIU 775 as a contribution to be forwarded to SEIU COPE.

SEIU 775's role in these transactions was to ask nonmembers to become full members and to authorize payroll deductions for contributions to SEIU COPE. In soliciting contributions to a federal political committee, **SEIU 775 was not a receiver of contributions under RCW 42.17A, nor do these actions demonstrate an expectation of receiving contributions reportable under RCW 42.17A. These activities do not make SEIU 775 a political committee.**

(Emphasis added).

Fourth, FF's argument that SEIU 775 is a political committee because it allegedly uses union dues from Individual Providers to fund contributions which SEIU 775 makes to SEIU 775 Quality Care PAC is flatly inconsistent with *State ex rel. Evergreen Freedom Foundation v. Washington Educ. Ass'n*, 140 Wn.2d 615, 639, 999 P.2d 602 (2000), which held that former RCW 42.17.760 (now RCW 42.17A.500) "inferentially allows labor organizations to use dues paid by members for contributions to political committees and candidates.... [T]he Initiative did not alter the ability of labor organizations to use members' dues for contributions under Chapter 42.17 RCW." It is thus beyond dispute under Washington law that labor organizations may make such use of dues paid by members without thereby incurring the obligations and responsibilities inherent in being deemed a political committee.

It is for this reason, presumably, that this same contention by FF was just recently rejected by your office in the December 21, 2016, letter it sent to FF explaining why the Attorney General's Office was going to take no action related to the Citizen Action Notice filed by the FF against Governor Jay Inslee and the Department of Social and Health Services on October 3, 2016, a Notice that similarly claimed that the ultimate use of dues money by SEIU 775 to make donations to a political committee meant that SEIU 775 is a political committee under the contributions prong.

Fifth and finally, contrary to the contention made by FF, the status of SEIU 775 is not dependent upon what SEIU 775's members might know or believe about how SEIU 775 uses their dues. *State ex rel. Evergreen Freedom Foundation v. Washington Educ. Ass'n*, 111 Wn. App. 586, 603, 49 P.3d 894 (2002), relied upon by FF for this proposition, in fact holds precisely the opposite, concluding as a matter of law that where a union's members (like SEIU 775's members here) "paid dues into the [union's] general fund, which was not segregated in any manner for political expenditures," the members had no actual or constructive knowledge that their particular membership dues would be used for electoral political activity and, "[t]hus, those dues were not 'contributions' as defined under the Act" and the union in question was not a

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political committee as a receiver of contributions.² For this reason, the extensive discussion by FF (pages 4-12) intended to demonstrate that SEIU 775's members have "actual" or "constructive" knowledge that SEIU 775 spends some money derived from union dues on electoral political activity is entirely beside the point. Given that SEIU 775 does not segregate any specific portion or proportion of its members' dues into a political account, SEIU 775 is conducting itself precisely in the manner approved by the Court of Appeals in the case relied upon by FF, and similarly cannot be deemed to be a political committee under the contributions prong.³

SEIU 775 is not an unregistered political committee under the "expenditures" prong.

As was noted above, on September 24, 2015, the Office of the Attorney General, after conducting an exhaustive review of SEIU 775's expenditures, concluded that "[t]he records and the analysis do not support a conclusion that one of the primary purposes of SEIU 775 is campaign activities." See September 24, 2015, letter from Linda Dalton to James Abernathy, et. al., page 2, paragraph 1.

Because the Attorney General's Office has previously examined SEIU 775's expenditures prior to 2016 and found, properly, that such expenditures do not convert SEIU 775 into a political committee, this letter need focus only on SEIU 775's 2016 expenditures, which similarly do not have that result. The 2016 expenditures, including both cash and in-kind contributions, included:

1. \$1,585,000 contributed to the Campaign to Prevent Fraud and Protect Seniors.
2. \$208,236.40 contributed to Raise Up Washington.
3. \$58,763 contributed to the SEIU 775 Quality Care Committee
4. \$2,500 contributed to Washington Won't Discriminate.
5. \$151,249.70 contributed to Yes on I-125

All of these contributions were properly reported by SEIU 775 on Adam Glickman's L2 filings.

SEIU 775 has not yet prepared or filed financial reports with the Internal Revenue Service for calendar year 2016; thus, it is impossible to do a precise analysis of the relationship

² Were the law otherwise, then not only SEIU 775, but every labor organization that, with the knowledge of its members, donates money to its own PAC or separate segregated fund to be used for electoral political activity would be required to register with the PDC as a political committee. It was very clearly not the intent of the FCPA to impose this burden on unions that avail themselves of the right, recognized in *State ex rel. Evergreen Freedom Foundation v. Washington Educ. Ass'n*, 140 Wn.2d 615, discussed above, "to use members' dues for contributions under Chapter 42.17 RCW," and, equally clearly, that is not the law in Washington State.

³ FF's argument, at p. 12-13, that SEIU 775 in fact segregates funds for political purposes in such as way as to justify deeming it a political committee under the contributions prong is not supported by any evidence. An argument based purely on the amount of money spent by SEIU 775 on a broad range of political activities, many of which have no connection to electoral political activity, provides no factual basis for concluding that SEIU 775 apportions some percentage or amount of dues in such as way as might properly be characterized as segregating a portion of member dues for political activity.

between the expenditures for electoral political activity noted above and SEIU 775's 2016 expenditures. However, we have determined that SEIU 775's total expenditures in 2016 will exceed its 2015 expenditures. The IRS Form 990 filed by SEIU 775 for calendar year 2015 reveals that SEIU 775 spent a total of \$25,259,216 in that year. Using that sum as the absolute minimum level of SEIU 775 expenditures in 2016, the amount of money spent by SEIU 775 on electoral political activity in 2016 will be less than 8% of its entire budget. While this is a slightly higher percentage that was the case in prior years, it remains true, as the PDC found in its 2015 Executive Summary and Staff Analysis, at page 5, that this amount "is clearly less than a majority of SEIU 775's expenditure activity, considered an important part of the balancing of factors recommended by the *EFF v. WEA* court."

Moreover, even this 8% figure is historically anomalous for SEIU 775 and therefore has to be looked at in the context of SEIU 775's activities over a longer time period. Looking at the expenditures made by SEIU 775 on electoral political activity during the two-year period covered by the Letter, for example – i.e., combining the amount spent in 2016 with the \$79,000 the PDC determined SEIU 775 spent in 2015 (*see* 2015 Executive Summary and Staff Analysis, page 5, third paragraph), and assuming the same number for overall annual expenditures, \$25,259,216, for each of the two years covered – one can determine that during the relevant time period, SEIU 775 spent slightly less than 4% of its budget on electoral political activity – again, *dramatically* less than a majority of its expenditure activity.⁴

It cannot reasonably be disputed, moreover, that the other nonexclusive analytical factors that are used to answer the question of whether an entity is a political committee under the expenditures prong (i.e., (1) the content of the organization's stated goals and mission; (2) whether the organization's actions further its stated goals and mission; (3) whether the stated goals and mission of the organization would be substantially achieved by a favorable outcome in an upcoming election; and (4) whether the organization uses means other than electoral political activity to achieve its stated goals) continue to require a conclusion regarding SEIU 775's status adverse to FF, the same conclusion that was reached by both the PDC and the Office of the Attorney General at the end of 2015. Significantly, FF has cited no evidence indicating that SEIU 775 took any action, or made any statement, *subsequent to September 24, 2015*, that could lead any decision-maker to reach a different decision than the one previously reached. It remains true, in the words of the PDC Executive Summary and Staff Analysis, at page 4, that:

No evidence was submitted to contradict SEIU 775's public statements concerning the union's mission, goals and strategies to achieve its goals. No evidence was provided demonstrating that SEIU 775 has merely restated its primary political purpose in broad nonpolitical terms. No non-financial evidence was provided showing that supporting candidates or ballot proposition campaigns

⁴ Over the past four years, moreover, using the assumptions noted above about SEIU 775's 2016 total expenditures and expenditures for electoral political activity as well as the PDC's 2015 determination that in each of the years preceding 2016 SEIU 775's campaign contributions did not exceed 1.66% of its annual expenditures (*see* 2015 Executive Summary and Staff Analysis, page 5, third paragraph), SEIU 775 spent only 3.2% of its budget on electoral political activity.

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was a top priority for SEIU 775 during either of the two years subject to the Citizen Action Notice.⁵

In light of the foregoing evidence and information, it is clear that the Attorney General's Office should again conclude, as it did in September of 2015, that SEIU 775 is also not a political committee under the expenditures prong.

Conclusion

SEIU 775 has not violated any of the applicable provisions of RCW 42.17A. We therefore ask that the Complaint be dismissed. While we trust that this is sufficient to overcome the allegations in the Complaint and ensure its dismissal, we would be happy to provide any supporting information you may need.

Please do not hesitate to contact us if you have any questions, or if we can be of further assistance.

Sincerely,



Dmitri Iglitzin
Counsel for SEIU Local 775

cc: Judy Krebs, General Counsel, SEIU 775

⁵ Mr. Glickman's January 4, 2016, e-mail encouraging caregivers to participate in political activity, Exhibit GGG to the Letter, appears to be the only post-September 24, 2015, communication not oriented to one specific candidate or ballot measure relied upon by FF to support its assertion that electoral political activity is one of SEIU 775's primary purposes. This communication, however, is not any different in tone or kind from the extensive communications predating September 24, 2015, previously reviewed by the PDC and the Office of the Attorney General, including those relied upon by FF in its letter at page 15. There is nothing about that e-mail, or about the various other post-September 24, 2015, e-mails, tweets and public announcements referenced by FF in its letter on page 19, that would logically lead the State to reach a different conclusion on this issue than it did previously.