

November 3, 2015

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ATTORNEY GENERAL
STATE OF WASHINGTON
GSE/OLYMPIA

Dear Messrs. Ferguson, Satterberg, and Tunheim,

I write pursuant to RCW 42.17A.765(4) to report multiple violations of the Public Disclosure Act (“PDA”), RCW 42.17A, by the Washington State Labor Council AFL-CIO (“WSLC”), and by Jeff Johnson and Lynne Dodson in their respective capacities as President and Secretary-Treasurer of WSLC, respectively (“WSLC officers”).

The first violation. WSLC is a political committee pursuant to RCW 42.17A.005(37). The organization both expects to receive contributions and make expenditures to support or oppose candidates or ballot propositions. It is also a primary purpose of WSLC to support and/or oppose candidates and/or ballot propositions. *See Utter v. Bldg. Indus. Ass'n of Washington*, 182 Wn.2d 398, 427 (2015). As a political committee, WSLC has failed to file with the Public Disclosure Commission (“PDC”) a “statement of organization” required for all political committees. RCW 42.17A.205(1).

WSLC, as a political committee, also violated RCW 42.17A.235 by failing to file mandatory reports including summaries of monetary contributions and receipts of expenditures. Sufficient evidence of WSLC’s extensive but unreported political contributions and expenditures exist in C3 and C4 reports filed by other political committees, including WSLC’s own continuing political committees.

The second violation. WSLC, as a lobbyist employer, violated RCW 42.17A.630 by failing to file legally required reports detailing its monetary and in-kind contributions to political

committees. At least \$403,750.92 worth of monetary expenditures by WSLC remains unreported to the PDC. Further, WSLC failed to file at least \$122,255 of in-kind contributions to its continuing political committees, and has possibly neglected to file in-kind contributions to other political committees.

A. Violations of RCW 42.17A.205 and RCW 52.17A.235.

WSLC is organized as a non-profit labor organization. WSLC is not a union, however, and is not the bargaining representative for any employees. Its sole purpose is political, and much of its activity constitutes electioneering. Furthermore, by its own statements and conduct, it is **also** a political committee under Washington law. RCW 42.17A.005(37) sets forth the definition of political committee:

"Political committee" means any person (except a candidate or an individual dealing with his or her own funds or property) having the expectation of receiving contributions or making expenditures in support of, or opposition to, any candidate or any ballot proposition.

In *Utter v. BIAW*, 182 Wn.2d 398, 427 (2015), the Washington Supreme Court adopted an additional "primary purpose" test that an organization must satisfy before it may be considered a "political committee" under RCW 42.17A.005(37). This additional test requires that "electioneering" be "a primary purpose" of an organization. *Id.* at 426.¹ (Emphasis added.) If an entity is a political committee, then it must meet regular reporting requirements set forth in the PDA.

RCW 42.17A.005(37) sets forth two independent ways an organization may be considered a political committee. First, the organization must have the expectation of receiving contributions in support of or opposition to any candidate or ballot proposition. Evidence found in various political committees' C4 reports show that WSLC expects to and does receive contributions to that end. Second, a person or organization is a political committee if it has the expectation of making expenditures in support of or opposition to candidates or ballot propositions. Under this expenditures test, one of the organization's primary purposes must also be to use these expenditures to support or oppose candidates or ballot propositions. WSLC's own stated goals and mission constitute evidence this primary purpose test is satisfied. In addition, the C3 reports of other political committees show the expenditures of WSLC supports WSLC's goals.

An appropriate framework for determining if electoral political activity is one of an organization's primary purposes includes an examination of the stated goals or mission of the organization and whether electoral political activity is a primary means of achieving these goals or mission. *State ex el. Evergreen Freedom Foundation v. Washington Education Ass'n*, 111

¹ The *Utter* Court used "electioneering" as abbreviated shorthand for the statutory definition of a political committee in RCW 42.17A.005(37): "having the expectation of receiving contributions or making expenditures in support of, or opposition to, any candidate or any ballot proposition." The *Utter* Court also used the phrases "influence[ing] the political process," *Utter*, 182 Wn.2d at 414, "to affect, directly or indirectly, governmental decision making by supporting or opposing candidates or ballot propositions," *Id.* at 423, and "influencing an election," *Id.* Thus, all organizations which satisfy the *Utter* primary purpose test also satisfy RCW 42.17A.005(37). This letter may reference each of these phrases.

Wn.App. 586, 599-601 (2002). WSLC's stated mission and core programs are found in several locations on its website. First, it declares the core programs to be "legislative advocacy, political action, communications and media relations, and assistance with organizing campaigns." See **Exhibit 1**.² WSLC provides these political services to unions and others. See **Exhibit 2**.³ For instance, the "What's New" page of WSLC's website states that "As a state federation of the AFL-CIO, the Washington State Labor Council provides many services to its affiliated unions, with a focus on legislative advocacy, political action, communications, and organizing support." WSLC's conduct demonstrates that it uses electioneering to further these broad categorical goals.

Additional explanations of support offered to affiliated unions can be found on WSLC's "Services" page. See **Exhibit 3**.⁴ Under "Political Action," it states "The WSLC's political education program, considered a national model by the AFL-CIO, offers instruction and assistance for unions interested in voter registration drives, candidate training for union members, establishing and building political action funds, and communication with members via mail, phone and worksite leafleting." *Id.*

WSLC's own statements and actions demonstrate that electoral political activity is one of the organization's primary purposes. Its website includes several examples of the efforts that support this primary purpose. One such example is on the "Coming Events" page. See **Exhibit 4**.⁵ On this page, WSLC advertises its 2016 Legislative Lobbying Conference in Olympia and its Constitutional Convention in Wenatchee. Further, WSLC's "Legislative Voting Records" page contains a link to Legislative Voting Records from 2000 through 2015. See **Exhibit 5**.⁶ The Legislative Voting Record includes Senate and House voting records. The Senate voting record for 2015, for example, shows how each state senator voted "right" or "wrong" according to the standards set by WSLC. See **Exhibit 6**.⁷ The bottom of the page also gives voting descriptions for certain senate bills. In addition, the House voting record demonstrates whether the state representatives voted "right" or "wrong," their WSLC lifetime voting record, and descriptions of house bills. See **Exhibit 7**.⁸ WSLC's use of "right" and "wrong" indicates its support and/or opposition of particular elected officials and candidates.

Also on its website, WSLC advertises its annual convention and displays its resolutions. These resolutions include support of and opposition to candidates and ballot propositions. See **Exhibit 8**.⁹ Resolution #1 shows that WSLC vows to take action and perform the necessary steps to create an initiative and specifically resolves to "urge members to support the "WAmend" effort to obtain the number of signatures necessary to qualify Initiative 735 as an initiative to the legislature," "support I-735 during the legislation session," and "support campaign efforts in educating voters." See **Exhibit 9**. In Resolution #2, WSLC supports repealing an amendment and says "the Washington State Labor Council, AFL-CIO, will encourage its affiliates to adopt this resolution and work to take legislative action to amend or repeal I-200..." See **Exhibit 10**. Next,

² See also <http://www.wslc.org/whoweare.htm> (last visited Oct. 19, 2015).

³ See also <http://www.wslc.org/news.htm> (last visited Oct. 13, 2015).

⁴ See also <http://www.wslc.org/services/index.htm> (last visited Oct. 19, 2015).

⁵ See also <http://www.wslc.org/upcoming.htm> (last visited Oct. 19, 2015).

⁶ See also <http://www.wslc.org/legis/votrec.htm> (last visited Oct. 19, 2015).

⁷ See also <http://www.wslc.org/legis/vr-sen15.htm> (last visited Oct. 19, 2015).

⁸ See also <http://www.wslc.org/legis/vr-hou15.htm> (last visited Oct. 19, 2015).

⁹ See also <http://www.wslc.org/00resolu.htm> (last visited Oct. 19, 2015).

WSLC reveals its desire to create a publically owned state bank and resolves to “convene a study group to examine the possibility of sponsoring an initiative of the people for the 2016 general election...” See **Exhibit 11**.

Further, WSLC promises to send Resolution #15 to Congressional members and resolves to stop supporting those members if they did not vote the way WSLC desires. See **Exhibit 12** (WSLC states “...during our future candidate endorsement process for Congress, we will take into account this vote and shall have a discussion on whether we continue to support any incumbent”). WSLC states in Resolution #18 that it will “lead the fight [for fair revenue] politically, by supporting legislation and *candidates* that support a fair revenue solution...” See **Exhibit 13** (emphasis added).

Additionally, WSLC states in Resolution #22 that it and “its affiliates, through their legislative and political action committees, work to support legislation and other activities that would make postage for return ballots prepaid.” See **Exhibit 14**. WSLC’s statements and conduct in other contexts (much of which is cited herein) show that “other activities” includes supporting and/or opposing candidates and/or ballot initiatives.

The above-mentioned resolutions by no means represent all support of candidates and/or ballot propositions, but merely depict a portion of WSLC’s own stated support of candidates and/or ballot propositions.

WSLC also specifically endorses candidates and initiatives on its “Political Education” page. See **Exhibit 15**.¹⁰ Specifically, WSLC states that it “has endorsed Carol Gregory in the special election for 30th District State Representative.” *Id.* WSLC shows its opposition to yet another initiative when it says, “WSLC is also urging No on Initiative 1366, Tim Eyman’s latest ballot measure...” *Id.* WSLC provides further evidence of its electioneering agenda when it says, “WSLC only makes endorsements in state legislative and statewide races. To find out who labor’s endorsed candidates are for county, city and other local positions, contact your area AFL-CIO Central Labor Council.” *Id.* Finally, WSLC encourages members to donate to its continuing political committee, WSLC DIME PAC. They state WSLC DIME PAC’s mission is to “recruit and elect champions of Washington’s working families.” *Id.*

WSLC’s own statements exemplify its political electoral goals and that it seeks to further those goals through its electoral activities. In addition, multiple C3 reports filed by a variety of committees which support or oppose candidates and/or ballot initiatives, including WSLC’s own political committees, confirm that the expenditures made by WSLC are a primary means to further its electoral goals. An example of WSLC’s expenditures that support its electoral goals includes its **\$100,000** contribution in 2010 to No on I-1082 Committee. See **Exhibit 16**. WSLC also gave **\$25,000** and **\$50,000** donations that same year to the same committee, totaling **\$175,000** in one year to one ballot initiative. See **Exhibits 17 and 18**.

WSLC also expends large amounts of money on its continuing political committees, WSLC DIME PAC and WSLC PPP Committee. These donations total **\$27,224** for WSLC DIME PAC and **\$111,876.92** for WSLC PPP Committee from January 2010 to present. See **Exhibits 19 and**

¹⁰ See also <http://www.wslc.org/cope/index.htm> (last visited Oct. 19, 2015).

20. WSLC's contributions to these political committees are expenditures in support of or opposition to the candidates and/or ballot propositions supported and/or opposed by those political committees. Doing so reflects the fact that WSLC expects to receive contributions and make expenditures in support of or opposition to candidates or ballot initiatives.

Finally, upon information and belief, WSLC employees spend significant time supporting and/or opposing candidates and/or ballot propositions while being compensated by WSLC. This compensation constitutes expenditures by WSLC in support of and/or opposition to candidates and/or ballot propositions, and should be thoroughly investigated. (*In the least*, this would violate PDA provisions related to lobbyist-employers if WSLC donated unreported employee time to a political committee. See below.)

WSLC meets the definition of a political committee in RCW 42.17A.00(37). WSLC also satisfies the primary purpose test set forth in *State ex el. Evergreen Freedom Foundation v. Washington Education Ass'n*, 111 Wn. App. 586, 598-603 (2002) and *Utter v. BIAW*, 182 Wn.2d 398, 427 (2015). By failing to report a statement of organization as a political committee, WSLC neglected to meet its reporting requirements set forth in the PDA. RCW 42.17A.205.

As a political committee, WSLC is required to submit monthly reports of every contribution received and expenditure made. RCW 42.17A.235. WSLC failed to meet its requirements under RCW 42.17A.235, *some* evidence of which is below (though not all).

C3 reports of other political committees showing money contributed by WSLC to political committees indicates WSLC failed to report at least **\$403,770** in expenditures from 2010 to 2015. See **Exhibit 21**. These expenditures were given to its continuing political committees, both the WSLC DIME PAC and the WSLC PPP Committee, other political committees, candidates running for office, and initiative support groups. WSLC neglected to report **\$27,224 given to WSLC DIME PAC, \$111,876 given to WSLC PPP Committee, \$119,650 given to other political committees or candidates, and \$145,000 given to support initiatives**. *Id.* These categories clearly reflect that WSLC continually expects to and is making expenditures in support of and/or in opposition to candidates and/or ballot initiatives, and is therefore required to report these expenditures to the PDC.

Further, the C4 reports of other political committees show that **\$225,835.39** has been given to WSLC from 2010-2015. See **Exhibit 22**. Most of these contributions or in-kind contributions have not been reported by WSLC. **WSLC DIME PAC contributed \$109,754.39 to WSLC and WSLC PPP Committee contributed \$12,501 to WSLC**. *Id.* Other political committees contributed **\$103,580**. *Id.* In their C4 reports, WSLC DIME PAC and WSLC PPP Committee reported in-kind donations to WSLC in the form of wage reimbursements, postage, tax payments, salary and benefits, supplies, printing, and legal and accounting services, to name a few. See **Exhibit 23** for an example of an in-kind contribution. WSLC has not reported most of these in-kind contributions.

Additionally, every political committee must timely file these regular monthly reports with the PDC detailing each contribution received and expenditure made, which the WSLC failed to do. RCW 42.17A.235.

B. Violation of RCW 42.17A.630.

WSLC violated, and continues to violate, RCW 42.17A.630. RCW 42.17A.630(2) requires a lobbyist employer to file monthly reports detailing its monetary and in-kind contributions totaling more than \$110 to candidates, elected officials, officers of public agencies, or political committees. Lobbyist employers are required to submit these monetary and in-kind contributions on either an "Employer of Lobbyist Monthly Political Contribution Report," also known as an L-3c, or on its lobbyists' L2 reports. WSLC engages in lobbying activity and is therefore considered a lobbyist employer. The PDC lists the lobbyists' L2 reports from 2010-2015 that show compensation from WSLC. *See Exhibit 24.* As a lobbyist employer, WSLC fails to file reports detailing all monetary and in-kind contributions to candidates, elected officials, officers, or political committees.

The C3 reports filed by political committees document WSLC's contributions to political committees. Based on reports from 2010-present, WSLC gave **\$12,775 to candidates** and **\$390,995 to political committees.** *See Exhibit 25.* WSLC reported none of these contributions on any L-3c or L-2 reports. Thus, WSLC violated RCW 42.17A.630 by failing to report at least **\$403,770** in monetary contributions from 2010 to present.

In addition, WSLC DIME PAC and WSLC PPP Committee reimbursed WSLC for wages, benefits, supplies, postage, and legal services, indicating that WSLC has made extensive in-kind contributions to at least its own continuing political committees—and likely many others. From 2010 to the present, WSLC DIME PAC reimbursed WSLC a total of **\$109,754** for in-kind contributions. *See Exhibit 26.* Likewise, over the same period, WSLC PPP Committee reimbursed WSLC for in-kind contributions totaling **\$12,501.** *See Exhibit 27.* WSLC's failure to report these and additional in-kind contributions on its L-3c or L2 reports demonstrate extensive and ongoing violations of Ch. 42.17A RCW.

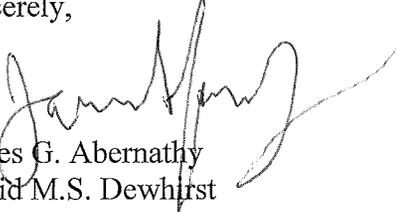
RCW 42.17A.630(2) requires lobbyist employers to file monthly reports detailing any and all monetary or in-kind contributions of more than \$110 to candidates, elected officials, officers of public agencies, or political committees. As indicated above, WSLC has made numerous monetary and in-kind contributions exceeding \$110 to candidates and political committees, but failed to file the reports required by § 630(2). This failure constitutes a violation of RCW 42.17A.630.

C. Conclusion.

As explained above, WSLC violated and continues to violate numerous portions of the Public Disclosure Act, Ch. 42.17A RCW. This Citizen Action Notice provides only some of the evidence demonstrating WSLC's violations. We respectfully request that the Washington Attorney General's Office and/or the county prosecuting attorneys investigate these violations as expeditiously and efficiently as possible. The Freedom Foundation understands these investigations take time. As a courtesy the Foundation agrees to waive its right to bring a citizen action (in the absence of governmental action) until, at the earliest, the 75th day after the date of this letter.

Please do not hesitate to contact me at 360.956.3482 or JABernathy@myfreedomfoundation.com if I can be of assistance. Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "James G. Abernathy". The signature is fluid and cursive, with a long, sweeping underline that extends to the right.

James G. Abernathy
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