



STATE OF WASHINGTON
PUBLIC DISCLOSURE COMMISSION

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BEFORE THE PUBLIC DISCLOSURE COMMISSION
OF THE STATE OF WASHINGTON

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| IN RE COMPLIANCE |) | PDC CASE NO: 1543 |
| WITH RCW 42.17A |) | |
| |) | |
| Washington State Labor Council, |) | |
| AFL-CIO, Jeff Johnson and |) | REPORT OF INVESTIGATION |
| Lynne Dodson |) | |
| |) | |
| |) | |
| Respondents. |) | |
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I.

BACKGROUND

- 1.1 The Washington State Labor Council AFL-CIO (hereafter, WSLC) is the state federation of the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO), a national trade union center and the largest federation of unions in the United States. WSLC is a membership organization made up of 600 union locals and councils representing approximately 400,000 rank-and-file union members in Washington State. The Web site of the WSLC, www.wslc.org, describes WSLC as the “voice of labor” in Washington. Jeff Johnson is WSLC’s President, and Lynne Dodson is its Secretary Treasurer.
- 1.2 On September 1, 2004, Jami Lund of the Evergreen Freedom Foundation filed a 45-day Citizen Action Notice with the Washington Attorney General and King County Prosecutor, alleging violations of RCW 42.17 by WSLC. Among other allegations, the Citizen Action Notice alleged that WSLC had as one of its primary purposes the making of expenditures to support or oppose candidates or ballot propositions, and so met the definition of a political committee in the law as interpreted by the Washington Supreme Court in *State v. Evans*, and later by the Court of Appeals, Division II, in *Evergreen Freedom Foundation v. Washington Education Association*. The Citizen Action Notice alleged that WSLC failed to register and report as a political

committee, alleged violations of RCW 42.17.040, RCW 42.17.080, and RCW 42.17.090¹.

- 1.3 At the request of the Washington Attorney General's office, PDC staff investigated Mr. Lund's allegations under PDC Case No. 05-067. On October 26, 2004, PDC staff presented its findings in Case 05-067 to the Commission. Staff recommended (**Exhibit 1**) no further action on the allegations, including the allegation that WSLC met the legal definition of a political committee, because WSLC did not satisfy the analysis used by courts in interpreting the "maker of expenditures" prong of the statutory definition of "political committee." The Commission voted to accept staff's recommendation, and on October 27, 2004, staff mailed a letter to Attorney General Christine Gregoire communicating the Commission's belief that no further action was warranted on Mr. Lund's complaint.
- 1.4 On November 4, 2015, James Abernathy and David Dewhirst, both Counsel to the Freedom Foundation², filed a new 45-day Citizen Action Notice with the Washington Attorney General and King County Prosecutor (**Exhibit 2**), alleging violations of RCW 42.17A by WSLC. (Hereafter, the Notice.) On November 19, 2015, the Washington Attorney General referred the Notice to PDC staff for review and possible investigation.

II.

ALLEGATIONS IN COMPLAINT

- 2.1 As with Jami Lund's September 1, 2004, Citizen Action Notice against WSLC, the November 4, 2015 Notice by James Abernathy and David Dewhirst alleged that WSLC is a political committee under the "maker of expenditures" prong of the statutory definition of that term. The Notice further alleged that WSLC was also a political committee under the alternate prong of the definition, as a "receiver of contributions." The Notice alleged that WSLC and its officers Jeff Johnson and Lynne Dodson failed to register and report contribution and expenditure activity as a political committee, alleged violations of RCW 42.17A.205 and RCW 42.17A.235³. Finally, the Notice alleged that as the employer of a registered Washington State lobbyist, WSLC failed to file monthly reports detailing its monetary and in-kind contributions totaling more than \$110 to candidates, elected officials, officers

¹ Effective January 1, 2012, RCW 42.17.040, RCW 42.17.080, and RCW 42.17.090 were recodified as RCW 42.17A.205, RCW 42.17A.235, and RCW 42.17A.240, respectively.

² The current name of the former Evergreen Freedom Foundation.

³ Although not cited in the complaint, PDC staff reviewed the allegations in the November 4, 2015 Notice under RCW 42.17A.240, which specifies the contents of reports required under RCW 42.17A.235.

of public agencies, or political committees, alleged violations of RCW 42.17A.630.

III.

FINDINGS

Alleged Failure by WSLC to Register and Report as a Political Committee

- 3.1 **“Receiver of Contributions” Prong of Political Committee Definition:**
The Notice alleged that because various political committees, including the WSLC-affiliated DIME PAC and WSLC PPP Committee, reported making reimbursements to compensate WSLC for staff labor performed in service of the committees, those payments were reportable by WSLC as contributions to a political committee. Because registered political committees regularly make payments to recipients who are not themselves political committees, this allegation appeared to rest on the determination that WSLC is a political committee under other operations of the definition, presumably the “maker of expenditures” prong of the political committee definition.
- 3.2 **“Maker of Expenditures” Prong of Political Committee Definition:** The Notice alleged that WSLC has as one of its primary purposes the making of expenditures to support or oppose candidates or ballot propositions. The Notice stated that the stated goals and mission of WSLC confirm this allegation, as both WSLC’s “core programs” and its services to affiliated unions as described on the WSLC Web site include “political action.”
- 3.3 The Notice cited numerous activities undertaken by WSLC as evidence that expenditures for electoral political activity were a primary way that WSLC fulfilled its stated goals and mission. These activities included:
- WSLC planning and advertisements for a 2016 Legislative Lobbying Conference in Olympia and Constitutional Convention in Wenatchee;
 - A "Legislative Voting Records" page on WSLC's Web site, containing a link to legislative voting records from 2000 through 2015, and WSLC’s position on the votes;
 - WSLC’s advertisement of resolutions urging members to take action to support state legislation, including Initiatives to the Washington Legislature;
 - WSLC’s stated plans to “convene a study group to examine the possibility of sponsoring initiative of the people for the 2016 general election for the purpose of creating a publicly owned state bank”;

- WSLC’s public promise to consider Congressional voting records in determining federal candidate endorsements;
- WSLC’s public support for *“legislation and other activities that would make postage for return ballots prepaid”*;
- Statements on the WSLC Web site, communicating WSLC’s endorsement of state-level candidates and ballot propositions;
- Statements on the WSLC Web site, soliciting contributions to the WSLC-affiliated political committee, DIME PAC;
- WSLC’s monetary and in-kind contributions to various political committees, which allegedly totaled more than \$403,770 from 2010 to 2015. These contributions included:
 - \$27,224 contributed to WSLC DIME PAC;
 - \$111,876 given to WSLC PPP Committee;
 - \$119,650 allegedly contributed to other political committees and candidates;
 - \$145,000 contributed to ballot initiatives; and
 - Alleged unreported in-kind contributions to DIME PAC and WSLC PPP Committee in the form of staff services;

3.4 **PDC Staff Evaluation of Evidence in the Notice:** Reviewing the Notice, staff noted that a portion of the activity alleged to indicate WSLC’s primary purpose as a maker of expenditures to support or oppose candidates or ballot propositions did not, in fact, concern candidates or ballot propositions. Instead, the activity concerned WSLC’s position on state legislation, and communications to members concerning that position. Under Washington law, a person or entity may conduct lobbying activity from general treasury funds without incurring the requirement to register and report as a political committee. Accordingly, it appears that such activity by WSLC may not contribute to the “primary purpose” analysis recommended by courts, including the Court of Appeals, Division II, in *EFF v. WEA*.

3.5 Staff’s review of the Notice indicated that Mr. Abernathy and Mr. Dewhirst raised specific allegations concerning some of the factors identified as important by the *EFF v. WEA* court in interpreting the “maker of expenditures” prong of the political committee definition, but omitted discussion of other factors. As described above, the Notice identified that “political action” was included in the description of WSLC’s “core programs”

and its services to affiliated unions on the WSLC Web site; the Notice alleged that “political action” thus represented WSLC’s stated goals and mission, at least in part. The Notice further alleged that specific expenditures for electoral political activity furthered WSLC’s stated goals and mission. However, the Notice did not discuss whether WSLC used means other than electoral political expenditures to achieve its stated goals and mission. Further, the Notice did not explain whether the stated goals and mission of WSLC (including any aspects that did not refer to electoral politics) would be substantially achieved by a favorable outcome in an upcoming election; in fact, no specific election was cited in the Notice.

3.6 PDC Staff Review of WSLC Expenditures for Electoral Political Activity:

On December 14, 2015, a response to the Notice was received from Dmitri Iglitzin, Counsel to WSLC. **(Exhibit 3.)** Reviewing information in that response, and information in campaign finance reports and data filed with the PDC by WSLC, by PACs affiliated with WSLC, and unaffiliated candidate and political committees, PDC staff arrived at a picture of WSLC’s expenditures to support to oppose candidates during the five-year period of the PDC’s statute of limitations.

3.7 Although the Notice alleged expenditures by WSLC totaling \$403,770 from 2010 to 2015 for monetary and in-kind contributions to candidates and political committees, only the final month of 2010 falls within the five-year statute of limitations. According to reports and data on file with the PDC, WSLC expenditures for contributions made within the period of the statute of limitations, December 2010 to December 2015, totaled \$170,613. In his response, Mr. Iglitzin stated that this figure was in fact inaccurate, because a number of candidates had filed reports with the PDC attributing contributions to WSLC that were in fact made by WSLC PPP Committee, a political committee registered and reporting with the PDC. Mr. Iglitzin stated that WSLC never makes contributions from its general treasury to candidate committees, and any representation to the contrary was an error on the part of the receiving candidate.

3.8 Taking this explanation into account, staff’s review indicates that WSLC used general treasury funds to make approximately \$164,356 in contributions to political committees from December 2010 to December 2015. **(Exhibit 4.)** Approximately half of this amount, \$84,725, consisted of monetary and in-kind contributions to the WSLC-affiliated political committees WSLC PPP Committee and DIME PAC. The contributions to all recipients occurred as follows:

- December 2010: \$510
- Calendar Year 2011: \$47,630
- Calendar Year 2012: \$56,923
- Calendar Year 2013: \$26,813

- Calendar Year 2014: \$10,504
- Calendar year 2015 (to date): \$21,976

TOTAL – \$164,356

3.9 **Response to the Notice by WSLC:** In his December 14, 2015 response to the Notice, Mr. Iglitzin noted first the PDC's finding in 2004 that WSLC was not an unregistered political committee, because WSLC's goals were to bring together all unions and act harmoniously in matters affecting the unions and their members, not to support or oppose candidates or ballot issues. He stated that the same is true of WSLC today. **(Exhibit 3.)**

3.10 Mr. Iglitzin provided additional information concerning the stated goals and mission of WSLC. He stated that as described in various public statements including the WSLC Web site, WSLC's Constitution, and the organization's IRS 990 filings, the mission of WSLC is *"to bring together all unions and act harmoniously in matters affecting the unions and their members," "[t]o protect and strengthen the rights and conditions of working people and their families," to "[improve] the working conditions and living standards of Washington's working families," and to seek "more effective organization of working men and women."* He stated that WSLC's stated goals and purposes in furtherance of its mission are as follows:

1. *Establish better relations among local unions in the State of Washington;*
2. *Encourage harmonious action in matters affecting the welfare of our labor movement;*
3. *To propose, support, and promote legislation favorable to and to oppose legislation detrimental to the interest of workers and organized labor;*
4. *Promote and distribute labor literature and aid and encourage a more complete labor press;*
5. *Promote and agitate for the union label, shop card, and services;*
6. *Better prepare ourselves to combat the enemies of organized labor;*
7. *Assist local unions in organization and contract negotiations, whenever asked, and to have information and statistics available for all affiliated bodies to aid them in their problems;*
8. *To encourage workers to register and vote, to exercise their full rights and responsibilities of citizenship, and to perform their rightful part in the political life of the local, state and national communities;*

9. *To encourage and assist in the formation of local central bodies within the state;*
10. *Bring into affiliation with the Washington State Labor Council all who are eligible, to the end that the Council shall become a powerful force to speak and act in defense and promotion of the whole body of laboring people of our state; and*
11. *Give recognition to the principle that both craft and industrial unions are appropriate, equal and necessary as methods of union organization.*

Mr. Iglitzin stated that only the third of these goals (“To propose, support, and promote legislation favorable to and to oppose legislation detrimental to the interest of workers and organized labor”) could be read to even imply that WSLC might support or oppose candidates or ballot propositions; he stated that this goal is more suggestive of an intent to engage in lobbying. However, PDC staff noted that the eighth stated goal, (“To encourage workers to register and vote, to exercise their full rights and responsibilities of citizenship, and to perform their rightful part in the political life of the local, state and national communities”) also suggests involvement in election campaigns, though not necessarily for the specific purpose of making expenditures to support or oppose candidates or ballot propositions. The remaining goals do not appear to refer to election campaigns or related activity.

3.11 Mr. Iglitzin cited the *EFF v. WEA* court in stating that “*if electoral political activity is merely one means [an] organization uses to achieve its legitimate broad nonpolitical goals, electoral political activity cannot be said to be one of the organization’s primary purposes.*” To demonstrate that WSLC uses means other than electoral political activity to achieve its stated goals, Mr. Iglitzin provided a complete description of the nine “core programs” undertaken by the organization. These core programs are as follows:

1. Legislative Advocacy;
2. Political Action;
3. Communications;
4. Organizing Support;
5. College/K-12 Apprenticeship;
6. Dislocated Worker Assistance;
7. Project Help;
8. Education; and
9. Research.

Mr. Iglitzin stated that only one of WSLC's nine programs of activity have any relation to electoral political activity, and that electoral political activities are only a small portion of the work that WSLC performs for its members. He stated that the remaining eight programs are designed to provide assistance to union members seeking help with organizing and publicizing events, job retraining, worker's compensation claims, general education on worker's rights, contract and economic research for the negotiation of contracts, and lobbying for legislation. He stated that most of WSLC programs and services are unrelated to political activities of any sort, as the PDC recognized in 2004. He stated that WSLC would continue its activity regardless of the outcome in any election.

3.12 **Financial Evidence of WSLC Activities:** Mr. Iglitzin provided copies of IRS 990 forms filed by WSLC for all periods within the five-year statute of limitations, up to April of 2015. **(Exhibit 5.)** Because no 990 form has yet been prepared for the period of April to December 2015, Mr. Iglitzin provided an estimated total of expenditures for that period, in order for PDC staff to evaluate WSLC's electoral expenditures in the context of the organization's non-electoral activity.

3.13 The IRS 990 forms and other information provided by Mr. Iglitzin indicate that WSLC's total expenditures for any 12-month period within the five-year statute of limitations ranged between \$3.3 million and \$4.2 million:

- April 1, 2010 – March 31, 2011: \$3,498,515
- April 1, 2011 – March 31, 2012: \$3,999,105
- April 1, 2012 – March 31, 2013: \$3,331,937
- April 1, 2013 – March 31, 2014: \$4,242,597
- April 1, 2014 – March 31, 2015: \$3,597,352
- April 1, 2015 – December 2015 (estimated): \$2,800,410

TOTAL – \$19,137,573 (December 2010 – December 2015 only)

This financial information, together with the other evidence reviewed by PDC staff, indicates that at no point in any 12-month period within the statute of limitations did WSLC's expenditures for electoral political activity exceed 1.4% of the organization's total expenditures. For the entire five-year period, WSLC's expenditures for electoral political activity constituted less than 1% of total expenditures for all programs.

Alleged Failure by WSLC to file Special Reports of Contributions as a Lobbyist Employer

3.14 During the five-year period reviewed by staff, thirteen individuals were registered with the PDC to lobby on behalf of WSLC. The individuals were as follows:

1. Rick Bender;
2. Jeff Johnson;
3. Rebecca Johnson;
4. Alan Link;
5. Taylor Phares;
6. Lynne Dodson;
7. Teresa Mosqueda;
8. Lori Province;
9. Robert Stevens;
10. Carlo Caldirola-Davis;
11. Joseph Kendo;
12. Katie Garrow; and
13. Conor Bronsdon.

Staff reviewed monthly L-2 Lobbyist Expense Reports filed by these thirteen lobbyists, and saw that only Mr. Bender, Mr. Johnson, Ms. Dodson, Ms. Mosqueda, Ms. Province, and Mr. Kendo disclosed contributions to any candidate or political committee on form L-2. Without exception, the contributions disclosed were from the personal funds of the lobbyist. None of the lobbyist's L-2 reports disclosed contributions on behalf of the lobbyist employer, WSLC.

3.15 During the five-year period reviewed by staff, WSLC filed eleven special L-3c reports disclosing \$28,570 in monetary or in-kind contributions as required. **(Exhibit 6.)** However, considering the contribution activity discussed above, it appears WSLC failed to disclose approximately \$135,775 in contributions over the five years on form L-3c. It appears that L-3c reports were not filed as required for 32 months in which WSLC exceeded the reporting threshold¹. The undisclosed amount includes \$2,040 in in-kind contributions to WSLC PPP Committee, and \$400 in in-kind contributions to DIME PAC. It also includes \$56,877 in monetary contributions to WSLC PPP Committee, and

¹ This threshold was more than \$100 in aggregate monthly contributions until December 1, 2014, when it was adjusted to \$110. WAC 390-20-150.

\$22,224 in monetary contributions to DIME PAC. The remaining \$54,244 in undisclosed activity consists of monetary and in-kind contributions by WSLC to other political committees.

3.16 In his December 14, 2015 response to the Notice, Mr. Iglitzin stated, *“it does appear that WSLC has failed, in its role as a lobbyist employer, to report each and every contribution it has made to a political committee (including PPP, DIME PAC, and non-affiliated political committees) on a monthly basis on either an L2 or L3c form...there does appear to be a basis for the PDC, and the Office of the Attorney General, to conclude that WSLC has improperly failed to comply with the requirements of RCW 42.17A.630 by failing to properly report certain of its monetary contributions to political committees. We look forward to discussing this issue further with the PDC and the Office of the Attorney General, as appropriate.”*

IV.

SCOPE

4.1 PDC staff reviewed the following documents:

1. A PDC staff report and related documents in PDC Case 05-067;
2. A 45-Day Citizen Action Notice filed on November 4, 2015 with the Washington Attorney General and King County Prosecutor by James Abernathy and David Dewhirst, alleging violations by WSLC and its officers Jeff Johnson and Lynne Dodson;
3. Information concerning WSLC available on the WSLC Web site, www.wslc.org;
4. PDC campaign finance and lobbying reports and data;
5. A response to the Citizen Action Notice, received on December 14, 2015 from Dmitri Iglitzin, Counsel to WSLC; and
6. IRS 990 forms filed by WSLC for April 2010 – March 2015.

V.

LAW

RCW 42.17A.005(37)¹

"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.

RCW 42.17A.205

Every political committee shall file a statement of organization with the commission. The statement must be filed within two weeks after organization or within two weeks after the date the committee first has the expectation of receiving contributions or making expenditures in any election campaign, whichever is earlier.

RCW 42.17A.235 and .240

Every political committee is required to file ongoing reports of contributions and expenditures at specified intervals.

RCW 42.17A.630(2)

Requires an employer of a lobbyist to file a special report with the Commission if the employer makes a contribution or contributions aggregating more than \$110 in a calendar month to a candidate, elected official, officer or employee of an agency, or political committee, unless the contribution is reported by the lobbyist under RCW 42.17A.615.

Respectfully submitted this 18th day of December, 2015.



Tony Perkins
Compliance Officer

¹ For periods prior to January 1, 2012, RCW 42.17A.005, RCW 42.17A.205, RCW 42.17A.235, RCW 42.17A.240, and RCW 42.17A.630 were codified as RCW 42.17.050, RCW 42.17.040, RCW 42.17.080, RCW 42.17.090, and RCW 42.17.180, respectively.

EXHIBIT LIST

- Exhibit 1** A PDC staff report in PDC Case 05-067, presented to the Commission on October 26, 2004.
- Exhibit 2** A 45-Day Citizen Action Notice filed on November 4, 2015 with the Washington Attorney General and King County Prosecutor by James Abernathy and David Dewhirst, alleging violations by WSLC and its officers Jeff Johnson and Lynne Dodson.
- Exhibit 3** A response to the Citizen Action Notice, received on December 14, 2015 from Dmitri Iglitzin, Counsel to WSLC.
- Exhibit 4** A table listing \$164,356 in contributions by WSLC to political committees from December 2010 to December 2015.
- Exhibit 5** Copies of IRS 990 forms filed by WSLC for all periods within the five-year statute of limitations, up to April of 2015. (Cover sheets only.)
- Exhibit 6** Eleven special L-3c reports filed by WSLC between December of 2010 and September of 2013, disclosing \$28,570 in monetary or in-kind contributions.