

February 18, 2019

Public Disclosure Commission
711 Capitol Way S. #206
P.O. Box 40908
Olympia, WA 98504

Public Disclosure Commission Staff,

I would like to bring to your attention a series of violations of the Fair Campaign Practices Act (“FCPA”), Chapter 42.17A RCW, by the Service Employees International Union Political Education and Action Fund (“SEIU PEAFF”).

Based in Washington, D.C., SEIU PEAFF is a “political organization” for the purposes of 26 U.S. Code § 527 and federal tax law. *See Appendix pages 2-4*, a copy of the most recent form 8871 SEIU PEAFF filed with the Internal Revenue Service (“IRS”). It is chaired by Mary Kay Henry, the president of the Service Employees International Union. Since 2010, it has periodically filed forms C5 with the Public Disclosure Commission (“PDC”) as an out-of-state political committee.

In brief, SEIU PEAFF has violated RCW 42.17A.405 and RCW 42.17A.442 by contributing funds to political committees in Washington without first receiving the requisite contributions from registered voters in Washington. Additionally, SEIU PEAFF has repeatedly violated RCW 42.17A.250 by failing to state its purpose on forms C5, filing forms C5 late, and failing to report contributions received from persons residing outside Washington state.

Legal background

RCW 42.17A.405(12) provides:

“...[N]o corporation or business entity not doing business in Washington state, no labor union with fewer than ten members who reside in Washington state, and no political committee that has not received contributions of ten dollars or more from at least ten persons registered to vote in Washington state during the preceding one hundred eighty days may make contributions reportable under this chapter to a state office candidate, to a state official against whom recall charges have been filed, or to a political committee having the expectation of making expenditures in support of the recall of the official...”

Similarly, RCW 42.17A.442 states:

“A political committee may make a contribution to another political committee only when the contributing political committee has received contributions of ten dollars or

more each from at least ten persons registered to vote in Washington state.”

RCW 42.17A.250 specifies the reporting requirements for out-of-state political committees:

“(1) An out-of-state political committee organized for the purpose of supporting or opposing candidates or ballot propositions in another state that is not otherwise required to report under RCW 42.17A.205 through 42.17A.240 shall report as required in this section when it makes an expenditure supporting or opposing a Washington state candidate or political committee. The committee shall file with the commission a statement disclosing:

(a) Its name and address;

(b) The purposes of the out-of-state committee;

(c) The names, addresses, and titles of its officers or, if it has no officers, the names, addresses, and the titles of its responsible leaders;

(d) The name, office sought, and party affiliation of each candidate in the state of Washington whom the out-of-state committee is supporting or opposing and, if the committee is supporting or opposing the entire ticket of any party, the name of the party;

(e) The ballot proposition supported or opposed in the state of Washington, if any, and whether the committee is in favor of or opposed to that proposition;

(f) The name and address of each person residing in the state of Washington or corporation that has a place of business in the state of Washington who has made one or more contributions in the aggregate of more than *twenty-five dollars to the out-of-state committee during the current calendar year, together with the money value and date of the contributions;

(g) The name, address, and employer of each person or corporation residing outside the state of Washington who has made one or more contributions in the aggregate of more than *two thousand five hundred fifty dollars to the out-of-state committee during the current calendar year, together with the money value and date of the contributions.

Annually, the commission must modify the *two thousand five hundred fifty dollar limit in this subsection based on percentage change in the implicit price deflator for personal consumption expenditures for the United States as published for the most recent twelve-month period by the bureau of economic analysis of the federal department of commerce;

(h) The name and address of each person in the state of Washington to whom an expenditure was made by the out-of-state committee with respect to a candidate or political committee in the aggregate amount of more than *fifty dollars, the amount, date, and purpose of the expenditure, and the total sum of the expenditures; and

(i) Any other information as the commission may prescribe by rule in keeping with the policies and purposes of this chapter.

(2) Each statement shall be filed no later than the tenth day of the month following any month in which a contribution or other expenditure reportable under subsection (1) of this section is made. An out-of-state committee incurring an obligation to file additional statements in a calendar year may satisfy the obligation by timely filing reports that supplement previously filed information.”

The corresponding regulation governing out-of-state political committees, WAC 390-16-049, provides further:

“(1) RCW 42.17A.250 governs campaign reporting in Washington state by committees located outside of Washington. The statute directs that an out-of-state political committee organized for the purpose of supporting or opposing candidates or ballot propositions in another state (and that is not otherwise required to report as an in-state committee) reports the information listed in RCW 42.17A.250 on a C5 form (WAC 390-16-050). The committee begins reporting on a C5 form when it makes an expenditure supporting or opposing a Washington state candidate or political committee.

(2) To file as an out-of-state political committee, all the criteria in (a) and (b) of this subsection must be satisfied:

(a) Out-of-state. First, the committee must be located out-of-state. It must be maintaining its office or headquarters in another U.S. state or the District of Columbia, and has no office, street address or corporate registered agent in Washington state. If there is no office or headquarters in another state or the District of Columbia, and no corporate registered agent in Washington state, the political committee is deemed out-of-state if its treasurer resides in another U.S. state or the District of Columbia.

(b) Organizational purpose and campaign activities. Second, the committee must also be currently organized primarily for engaging in campaign activities in another state.

Therefore, to qualify as a current out-of-state committee, the committee must also:

(i) Be currently registered and actively filing campaign disclosure reports in one or more other states and has been so filing for the preceding two years; and

(ii) Have organizational documents showing it was originally formed and is currently organized for the purpose of making expenditures in another state or soliciting contributions for use in another state's election campaigns; and

(iii) Have spent less than twenty percent of its aggregate expenditures for all political campaign activity nationwide at any point in any calendar year to support and/or oppose Washington candidates for state, local and judicial office, Washington ballot measures and/or Washington political committees.

(3) A committee that does not satisfy the criteria in subsection (2) of this section shall file as an in-state committee under chapter 42.17A RCW, including RCW 42.17A.205 through 42.17A.240.

(4) Out-of-state political committees reporting under RCW 42.17A.250 are also subject to reporting pursuant to RCW 42.17A.260 (political advertising independent expenditures) and RCW 42.17A.305 through 42.17A.315 (electioneering communications).”

Lastly, WAC 390-16-050 establishes:

“The official form for the report required by RCW 42.17A.250 of contributions and expenditures of an out-of-state political committee organized for the purpose of supporting or opposing candidates or ballot propositions in another state, that is not otherwise required to report under RCW 42.17A.205 through 42.17A.240, is designated ‘C-5.’”

Allegations

1. Contributing to political committees in Washington without first receiving 10 contributions from Washington voters

RCW 42.17A.405(12) prohibits political committees from contributing to candidates for state office unless they first receive “contributions of ten dollars or more from at least ten persons registered to vote in Washington state during the preceding one hundred eighty days.” RCW 42.17A.442 similarly requires that a political committee receive “contributions of ten dollars or more each from at least ten persons registered to vote in Washington state” before it may “make a contribution to another political committee.”

SEIU PEAFF filed five forms C5 with the PDC during 2018. *See App. 5-14.* On each form, SEIU PEAFF checked the box in item 13 indicating that it received at least 10 contributions from Washington voters of at least \$10.

However, none of SEIU PEAFF’s forms C5 filed with the PDC nor any of the forms 8872 it filed with the IRS detailing its contributions and expenditures indicate SEIU PEAFF has ever received any contributions from Washington voters or, for that matter, residents. Nevertheless, SEIU PEAFF made at least five contributions to three political committees in Washington totaling \$747,982.69 during 2018. *See App. 5-14.*

SEIU PEAFF Contributions to WA Political Committees			
Recipient	Amount	Date of Contribution	Date reported
SEIU 775 Quality Care Committee	\$139,849.02	2/1/2018	3/7/2018
SEIU 775 Quality Care Committee	\$206,562.19	5/13/2018	6/18/2018
SEIU 775 Quality Care Committee	\$148,072.73	6/14/2018	7/11/2018
SEIU Local 925 Public Service PAC	\$203,498.75	7/26/2018	8/13/18?
New Direction PAC	\$50,000.00	9/25/2018	10/10/2018
Total	\$747,982.69		

While not candidates themselves, these political committees predominantly, if not exclusively, supported candidates and not ballot measures in 2018.

Thus, SEIU PEAFF both provided false information on its forms C5 and made significant contributions to Washington political committees without legal authority.

2. Failure to timely file a properly completed form C5 for February 2018

SEIU PEAFF’s form C5 for February 2018 was filed on March 7, 2018. *See App. 5-6.* The form:

- Failed to state SEIU PEAFF’s purpose, in violation of RCW 42.17A.250(1)(b).
- Indicated that SEIU PEAFF’s aggregate year-to-date expenditures in Washington state represented “20% or more of the committee's nationwide campaign activity to date

for this calendar year.” If this was incorrect, it is a violation of RCW 42.17A.250(i), WAC 390-16-049(2)(b)(iii) and WAC 390-16-050.

- Indicated, incorrectly, that the YTD aggregate amount SEIU PEAFF had received from SEIU International was \$242,320.18. The correct amount was \$1,482,522, according to forms 8872 SEIU PEAFF filed with the IRS. *See App. 15-41*. This violated RCW 42.17A.250(1)(g, i) and WAC 390-16-050.
- Failed to disclose a \$1,235,207 contribution SEIU PEAFF received from SEIU International on January 10, 2018, in violation of RCW 42.17A.250(1)(g). *See App. 16*, an SEIU PEAFF form 8872 disclosing receipt of the contribution to the IRS.

SEIU PEAFF should have submitted a “properly completed statement” no later than March 12, 2018 (March 10 was a Saturday). Accordingly, as of February 15, 2019, it is 340 days delinquent in filing a correct form C5, in violation of RCW 42.17A.250(2).

3. Failure to timely file a properly completed form C5 for May 2018

SEIU PEAFF’s form C5 for May 2018 was filed on June 18, 2018. *See App. 7-8*. The form:

- Was due on June 11, 2018 (June 10 was a Sunday), but was filed seven days late, in violation of RCW 42.17A.250(2).
- Failed to state SEIU PEAFF’s purpose, in violation of RCW 42.17A.250(1)(b).
- Incorrectly indicated that the YTD aggregate amount SEIU PEAFF had received from SEIU International was \$3,526,454.81. The correct amount was \$3,526,444, according to forms 8872 SEIU PEAFF filed with the IRS. *See App. 15-41*. This violated RCW 42.17A.250(1)(g, i) and WAC 390-16-050.

As of February 15, 2019, it has been 242 days since SEIU PEAFF filed its inaccurate form C5, in violation of RCW 42.17A.250(2).

4. Failure to timely file a properly completed form C5 for June 2018

SEIU PEAFF’s form C5 for June 2018 was filed on July 11, 2018. *See App. 9-10*. The form:

- Was due on July 10, 2018 but was filed one day late, in violation of RCW 42.17A.250(2).
- Failed to state SEIU PEAFF’s purpose, in violation of RCW 42.17A.250(1)(b).
- Incorrectly indicated that the YTD aggregate amount SEIU PEAFF had received from SEIU International was \$3,854,527.54. The correct amount was \$4,034,517, according to forms 8872 SEIU PEAFF filed with the IRS. *See App. 15-41*. This violated RCW 42.17A.250(1)(g, i) and WAC 390-16-050.
- Failed to disclose a \$180,000 contribution SEIU PEAFF received from SEIU International on June 8, 2018, in violation of RCW 42.17A.250(1)(g). *See App. 19*, an SEIU PEAFF form 8872 disclosing receipt of the contribution to the IRS.

As of February 15, 2019, it has been 219 days since SEIU PEAFF filed its inaccurate form C5, in violation of RCW 42.17A.250(2).

5. Failure to timely file a properly completed form C5 for July 2018

SEIU PEAFF's form C5 for July 2018 was filed on August 13, 2018. *See App. 11-12.* The form:

- Was due on August 10, 2018 but was filed three days late, in violation of RCW 42.17A.250(2).
- Failed to state SEIU PEAFF's purpose, in violation of RCW 42.17A.250(1)(b).
- Incorrectly indicated that the YTD aggregate amount SEIU PEAFF had received from SEIU International was \$4,058,026.29. The correct amount was \$4,238,016, according to forms 8872 SEIU PEAFF filed with the IRS. *See App. 15-41.* This violated RCW 42.17A.250(1)(g, i) and WAC 390-16-050.

As of February 15, 2019, it has been 186 days since SEIU PEAFF filed its inaccurate form C5, in violation of RCW 42.17A.250(2).

6. Failure to timely file a properly completed form C5 for September 2018

SEIU PEAFF's form C5 for September 2018 was filed on October 10, 2018. *See App. 13-14.* The form:

- Failed to state SEIU PEAFF's purpose, in violation of RCW 42.17A.250(1)(b).
- Failed to disclose a \$203,499 contribution SEIU PEAFF received from SEIU International on July 26, 2018 and another \$1,355,256 contribution it received from SEIU International on August 21, 2018, in violation of RCW 42.17A.250(1)(g). *See App. 23,* an SEIU PEAFF form 8872 disclosing receipt of the contributions to the IRS.
- Incorrectly indicated the total aggregate amount SEIU PEAFF had received from SEIU International was \$6,593,275.31 as of the end of September, according to forms 8872 SEIU PEAFF filed with the IRS. *See App. 15-41.* The correct amount was \$8,128,221. This violated RCW 42.17A.250(1)(g, i) and WAC 390-16-050.

As of February 15, 2019, it has been 128 days since SEIU PEAFF filed its inaccurate form C5, in violation of RCW 42.17A.250(2).

Conclusion

SEIU PEAFF's consistent and extensive failure to comply with Washington state campaign finance laws has substantively damaged election transparency by obscuring the source of millions of dollars spent to influence Washington elections. Its behavior stands in direct contradiction to the FCPA's proclamation that "political campaign and lobbying contributions and expenditures be fully disclosed to the public and that secrecy is to be avoided."

The large dollar amounts involved and persistence of the violations over the course of the year disqualifies SEIU PEAFF's violations from being treated as "remedial" under RCW 42.17A.005(45). Further, none of the mitigating factors courts may consider when assessing civil

penalties for violations of the FCPA are applicable to SEIU PEAFF's actions.¹ The violations were "systematic" and "ongoing," not "isolated or limited in nature"; they were committed by an extremely well-funded organization with professional legal counsel, not campaign volunteers; the amount of money involved is substantial; the public was deprived of "timely" and "accurate" information over the course of a major election cycle; and the violations did not occur due to emergencies or factors outside SEIU PEAFF's control.

We respectfully request that the PDC undertake a thorough investigation into these allegations and initiate an enforcement action.

Please do not hesitate to let me know if I can be of any further assistance in this matter. Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Maxford Nelsen". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Maxford Nelsen
Director of Labor Policy
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¹ See RCW 42.17A.750(1)d).