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March 13, 2019

Micaiah Titus Ragins
Compliance Coordinator
Public Disclosure Commission
711 Capitol Way S. #206
PO BOX 40908
Olympia, WA 98504-0908

Re: PDC - SEIU Political Education and Action Fund: Alleged Violation of RCW
42.17A.250, .405, .442
BIL File No. 3150-023

Dear Ms. Ragins:

On behalf of SEIU PEAFF, thank you for giving us this opportunity to respond to the complaint brought against it by the Freedom Foundation.

First, regarding the portion of the complaint that asserts a failure by SEIU PEAFF to comply with RCW 42.17A.405 and RCW 42.17A.442, let me start by noting that the allegation is not supported factually. Although the Freedom Foundation may not have realized this, because contributions in the amount less than \$25 are not called out separately on filings, the PDC's records will show that SEIU PEAFF has, in fact, received \$10 from 10 Washington voters. For that reason alone, we ask that the PDC dismiss this portion of the Freedom Foundation's complaint.

Further, as the PDC is aware, the constitutionality of RCW 42.17A.442 (and, per force, RCW 42.17A.405(12)) has been cast into doubt by the ruling in *Washington v. Grocery Manufacturers Ass'n* ("GMA"), No. 142000275, 2014 WL 5430056 (Schaller, J.), Order Denying in Part and Granting in Part Motion for Judgment on the Pleadings (Thurston Cty. Jul. 25, 2014). In *GMA*, Judge Schaller held that RCW 42.17A.442 was unconstitutional because the requirement it imposed was not "closely drawn" to combat the ill it was targeting while preserving constitutional rights to the greatest possible extent. It was not closely drawn in part because the need to find ten willing small-time contributors was unlikely to pose any obstacle to a sufficiently motivated outside donor. In addition, the requirement did not actually abolish sham committees; it merely identified an imprecise proxy. The provision infringed on constitutional rights because, by requiring support from registered voters, it improperly favored and forced association with a particular class of speakers – natural persons living in Washington. However,

in *Citizens United v. Federal Election Commission*, 558 U.S. 310, 130 S. Ct. 876 (2010), the Supreme Court declared the speech rights of artificial persons such as corporations and unions to be equal to that of natural persons.¹

While *GMA* dealt with the constitutionality of applying the \$10-from-10-voters requirement as to ballot initiative committees, this requirement is equally infirm as applied to committees that support candidates. There is nothing materially different about the two kinds of committees that would affect the two elements of the intermediate scrutiny test – namely that the regulation (a) be closely drawn to target the problem at hand, and (b) not infringe on constitutional rights.²

It is our understanding, moreover, that the PDC now summarily declines to pursue allegations that the two statutory provisions in question have been violated, based on the superior court ruling noted above and, presumably, the PDC's own determination, in light of that ruling, that this portion of the FCPA simply may not be constitutionally enforced. *See, e.g., See Return Letter, 42nd Leg District Committee GOP*, Case No. 41519 (Dec. 13, 2018); *Return Letter, Friends of Jimmy PAC*, Case No. 9379 (Aug. 1, 2017). Notably, both of these cases involved either a candidate committee (*Friends of Jimmy*) or a committee which contributed to another group that itself gave exclusively to candidate committees (*42nd Leg District Committee GOP*).

Second, the Freedom Foundation notes monetary discrepancies between certain Form 8872's that PEAFF filed with Internal Revenue Service and the C-5 reports filed by SEIU PEAFF with the PDC, and asserts that that means that the C-5 reports were erroneous. Regrettably, there is some truth to this. On four occasions, contributions received by SEIU PEAFF from SEIU's general fund account were designated for political activity in states other than Washington State, and were processed accordingly. Specifically, these funds were not deposited into the particular bank account that SEIU PEAFF uses for its Washington State expenditures. Due to an inadvertent error on our compliance end, these funds were therefore not reported on the C-5 reports, either as amounts received from SEIU International on a particular date or as part of the aggregate YTD amount received from that source. Although neither the receipt of this money nor the way SEIU PEAFF spent this money had any relationship to SEIU PEAFF's electoral political activity in Washington State, it is correct that both the receipt of this money, and the expenditures from the non-Washington State bank accounts, should have been reported by SEIU PEAFF on its C-5 filings. SEIU PEAFF has already filed amended C-5 reports that correct this mistake.³

¹ The State did not appeal the Superior Court's decision on the \$10-from-10-voters issue. *State v. Grocery Manufacturers Ass'n*, 5 Wn. App. 2d 169, 180, n.4, 425 P.3d 927 (2018). A different Superior Court judge later entered a permanent injunction barring the state from enforcing the requirement. *GMA*, Cause No. 13-2-02156-8, Order Granting GMA's Unopposed Motion and Entering Permanent Injunction at 2 (Hirsch, J.) (Thurston Cty. Jan. 26, 2017).

² In another proceeding, the Freedom Foundation is making precisely that argument. It claims that there is a more pronounced fear of corruption from undisclosed outside interests in the context of candidate campaigns, as compared with ballot initiative drives. The Foundation has not cited any authority to support this proposition.

³ It is worth noting, however, that the Freedom Foundation's claim, in the third bullet point of Allegation 6, that SEIU PEAFF failed to disclose on its September 2018 C-5 a \$203,499 contribution it received from the International, is simply incorrect. In fact, that contribution was received on July 26, 2018, and was properly disclosed by SEIU PEAFF on its August 2018 C-5.

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The other allegations made by the Freedom Foundation are too trivial to warrant punitive action by the PDC. We address them here as follows:

- The supposed “failure to state SEIU PEAFF’s purpose” allegation is not meaningful, where that purpose is apparent from the face of the C-5 itself. We note that even the PDC’s “example” C-5, found on its website, does not provide any information other than the name of the out-of-state committee at item 3 of that form, which asks the filer to, among other things, “Provide the purpose of the committee...”.
- The fact that the “yes” box, instead of the “no” box, was erroneously checked at item 10 of the February 2018 C-5 filed by SEIU PEAFF is equally insignificant. This was a scrivener’s error; our client has taken measures to make sure that this mistake does not occur again.
- The fact that the C-5 covering May, 2018, was filed seven days late is also regrettable, but essentially trivial, especially given the fact that this was nowhere near the date of any election in which SEIU PEAFF or any of the recipients of contributions from it were participating.
- The C-5 covering May, 2018, also reflected a mathematical mistake of \$10 (the figure \$1,291,037.40 was accidentally mistyped as \$1,291,047.40). This too is regrettable, but de minimis.
- Similarly, that the C-5 covering June, 2018, was filed one day late, is also a trivial administrative error on the part of SEIU PEAFF’s compliance team.
- The same holds true for the 3-day delay in filing the C-5 covering July, 2018.

In light of the foregoing, we respectfully ask the PDC to dismiss the Freedom Foundations’ complaint as not justifying the imposition of any penalty.

Sincerely,



Dmitri Iglitzin
Counsel for SEIU PEAFF

cc: Dora Chen, SEIU PEAFF