June 17, 2018

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 apparent violations of the Fair Campaign Practices Act (FCPA), Chapter 42.17A RCW, by the Department of Social and Health Services (DSHS or Department) and by Jay Inslee in his capacity as Governor of Washington state.

In brief, DSHS has been withholding financial contributions to as many as five political committees from the wage payments it makes to the state's individual provider home care aides (IPs), as defined by RCW 74.39A.240(3). In violation of RCW 42.17A.495(3), the Department has been making the payroll deductions without IPs' written authorization.

Additionally, DSHS has violated RCW 42.17A.495(4) by failing to maintain records of IPs' deduction authorizations.

Factual Background

RCW 74.39A.270(1) designates the governor as IPs' employer "solely for the purposes of collective bargaining." RCW 74.39A.270(2) establishes that Chapter 41.56 RCW governs the collective bargaining relationship between the state and IPs, except as provided by RCW 74.39A.270. RCW 41.56.113(1) authorizes the state to withhold union dues and make other deductions from IPs' pay, and sets the parameters for doing so.

Up until April 1, 2016, the wage payments to the state's approximately 35,000 IPs were made through the Department's Social Service Payment System (SSPS). As of April 1, 2016, however, IPs' payments are being made through a new payroll system, Individual ProviderOne (IPOne), managed by a contractor, Public Consulting Group, Public Partnerships, LLC.[1]

Prior to June 2014, the Department withheld deductions on behalf of SEIU 775 from its payments to IPs that were members of the union and automatically withheld an agency shop fee equivalent to dues from nonmember IPs, in accordance with the union security provision in Article 4 of the 2013-15 collective bargaining agreement (CBA). *See* **Appendix page 2**, a copy of SEIU 775's 2013-15 CBA with the State of Washington. On June 30, 2014, however, the U.S. Supreme Court ruled in *Harris v. Quinn,* 134 S. Ct. 2618 (2014), that it is unconstitutional for public employers

[1] The home page of IPOne's website currently notes, "IPOne replaced the former payment system, Social Service Payment System (SSPS), as of March 1, 2016." See http://www.ipone.org

and unions to require "partial-public employees" to pay union dues or agency fees as a condition of employment.

SEIU 775's secretary-treasurer, Adam Glickman, explained the state's pre-*Harris* dues deduction practices in a declaration submitted in *Centeno v. Quigley* (No.: 2:14-cv-00200-MJP) (U.S. Dist. Ct. W. Dist. Wash. 2015):

> "Until the Supreme Court's decision in *Harris v. Quinn*, 134 S. Ct. 2618 (2014), article 4 of the CBA between SEIU 775 and the State included a union security clause that required the State to deduct either member dues or non-member agency fees from the paychecks of IPs, as authorized by RCW 41.56.122(1) and RCW 41.56.113(1)(a)… Up until the Supreme Court's decision in *Harris v. Quinn*, IPs who did not wish to be Union members could (1) pay an agency fee that was the equivalent of full monthly membership dues but decline membership; (2) object to paying the full agency fee equivalent of dues and instead pay the reduced *Chicago Teachers Union v. Hudson*, 475 U.S. 292 (1986), agency fee objector rate (which is about 60 percent of membership dues); or (3) object to the agency fee based on religious objector grounds and pay the equivalent of full member dues to a charity of his or her choice."

See **App. 44**, a copy of Mr. Glickman's declaration.

Article 4 of the 2013-15 CBA between SEIU 775 and the State was titled, "Union Membership and Union Security," and provided:

> "Article 4.1: Union Security
>
> Not later than thirty (30) days following the first pay period of employment, or the effective date of employment, whichever is later, every home care worker covered by this Agreement shall, as a condition of employment and continued eligibility to receive payment for services provided, become and remain a member of the Union paying the periodic dues, or for nonmembers of the Union, the fees uniformly required. The Employer shall cause the State as payor, but not as the employer, to enforce this union security provision according to RCW 41.56.113 by deducting from the payments to bargaining unit members the dues required for Union membership, or, for nonmembers of the Union, a fee equivalent to the dues. Any individual provider home care workers who fail to satisfy this obligation shall, within thirty (30) days of written request by the Union to the Employer, be provided written notice of their discontinued eligibility to receive payment for services until such a time as this obligation is satisfied. Subsequent to written notice being issued, any such individual provider home care worker who fails to satisfy this obligation within thirty (30) days shall have his or her eligibility to receive payment from the State for providing services discontinued.
>
> Article 4.2: Right of Non-Association
>
> It is the intent of this Agreement that the provisions of this Article safeguard the right of home care workers to remain non-members based on bona fide religious tenets or teachings

of a church or religious body of which such home care worker is a member. Such home care workers shall pay an amount of money equal to the periodic dues and fees uniformly required under Section 4.1, to a nonreligious charity or to another charitable organization mutually agreed upon by the home care worker affected and the Union. On at least a quarterly basis, the home care worker shall furnish written proof to the Union that such payment has been made. Any home care worker who claims a right of non-association based on bona fide religious tenets or teachings of a church or religious body of which such home care worker is a member shall provide written notice of that claim to the Union, and shall, at the same time, provide the Union with the name(s) and address(es) of one (1) or more nonreligious charitable organizations to which the home care worker is prepared to make alternative payments in lieu of the payments required by this union security provision. Within sixty (60) days after it receives written notice of a claimed right of non-association, the Union shall provide a written response to the worker, setting forth the position of the Union as to both:

A. The eligibility of the home care worker to make alternative payments; and
B. The acceptance or rejection by the Union of the charitable organization(s) suggested by the home care worker.

Any disputes regarding the eligibility of the home care worker to make alternative payments and/or if the Union and home care worker are unable to mutually agree to a nonreligious charitable organization, the matter shall be forwarded to the Public Employment Relations Commission (PERC) for final disposition."

See **App. 12.**

After *Harris*, SEIU 775 and the state ceased collecting fees from agency fee payers and religious objectors. According to Mr. Glickman's declaration:

> "The day after the U.S. Supreme Court decided *Harris v. Quinn*, SEIU 775 asked the State of Washington to cease agency fee or religious objector deductions for the 0.5% of the IP bargaining unit who had objected to paying dues… In August 2014, SEIU 775 notified all current IPs who had not previously objected, regardless of whether they signed a membership card, that they are not required to be Union members or to financially support the Union."

See **App 44.**

On September 26, 2014, the State and SEIU 775 agreed on a memorandum of understanding (MOU) modifying Article 4 of the CBA and eliminating the union security language. The MOU replaced Sec. 4.1 and 4.2 of the CBA with the following language:

> "4.1 Union Membership and Deduction of Dues and Fees
>
> A. In accordance with RCW 41.56.113(1)(b)(i), the State as payor, but not as the employer, shall cause the appropriate entity or agency to deduct the amount of dues or, for non-members of the Union, a fee equivalent to the dues from each home care worker's monthly payment for services (paycheck or direct deposit).

B. The Union shall notify each home care worker covered by this Agreement that he or she is not required to join or financially support the Union. New home care workers will be notified as soon as possible, but no later than fourteen (14) days from the Union receiving the home care worker's contact information. The Union shall escrow the fee paid by a new home care worker in an interest-bearing account. The fee shall remain in this account until the home care worker is notified of the opportunity to opt-out and given thirty (30) calendar days to do so. If the home care worker objects to paying the fee within thirty (30) days of the notification from the Union, the Union shall, within twenty (20) days of receiving the notice from the home care worker, refund the fee with interest (at the rate of interest it has received). The Union will notify the Employer to cease further deductions in accordance with Subsection 4.1 C below.

C. Home care workers covered by this Agreement who inform the Union that they do not wish to join or financially support the Union will not have any fee deducted from the payments made to them by the State and will suffer no penalty as a result of their failure to pay such a fee to the Union. However, the Union reserves the right to enforce the terms and conditions of each home care worker's signed membership card with regard to when authorizations for deductions may be revoked. The Employer shall honor the terms and conditions of each home care worker's signed membership card. By the twenty-fifth (25th) day of each month, the Union shall provide the Employer with a list of home care workers who have informed the Union that they do not wish to join or financially support the Union. All home care workers who have objected to paying a fee by the twentieth (20th) day of the month shall be included in the list the Union provides to the Employer on the twenty-fifth (25th) of that month."

See **App 40.**

The 2017-19 CBA currently in effect between the State and SEIU 775 contains substantially similar language to that negotiated in the MOU:

"4.1 Union Membership and Deduction of Dues and Fees

A. In accordance with RCW 41.56.113(1)(b)(i), the State as payor, but not as the employer, shall cause the appropriate entity or agency to deduct the amount of dues or, for non-members of the Union, a fee equivalent to the dues from each home care worker's payment for services (paycheck or direct deposit).

B. The union shall notify each home care worker covered by this Agreement that he or she is not required to join or financially support the Union. New home care workers will be notified as soon as possible, but no later than fourteen (14) days from the Union receiving the home care worker's contact information. The Union shall escrow the fee paid by a new home care worker in an interest-bearing account. The fee shall remain in this account until the home care worker is notified of the opportunity to opt-out and given thirty (30) calendar days to do so. If the home care worker objects to paying the fee within thirty (30) days of the notification from the Union, the Union shall, within twenty (20) days of receiving the notice from the home care worker, refund the fee with

interest (at the rate of interest it has received). The Union will notify the Employer to cease further deductions in accordance with the Subsection 4.1C below.

C. Home care workers covered by this Agreement who inform the Union that they do not wish to join or financially support the Union will not have any fee deducted from the payments made to them by the State and will suffer no penalty as a result of their failure to pay such a fee to the Union. However, the Union reserves the right to enforce the terms and conditions of each home worker's signed membership card with regard to when authorizations for deductions may be revoked. The Employer shall honor the terms and conditions of each home care worker's signed membership card. By the third (3rd) and eighteenth (18th) day of each month, the Union shall provide the Employer with a list of home care workers who have informed the Union that they do not wish to join or financially support the Union. All home care workers who have objected to paying the fee by the twenty-seventh (27th) of the previous month shall be included in the list sent to the Employer on the third (3rd) of the month. All home care workers who have objected to paying the fee by the twelfth (12th) of the month shall be included in the list sent to the Employer on the eighteenth (18th) day of that month."

See **App. 62,** a copy of SEIU 775's 2017-19 CBA with the State of Washington.

In addition to the language of Article 4.1 of the CBA, Mr. Glickman's declaration confirms that the Department's practice is to deduct SEIU 775 dues from thousands of nonmember IPs who have never signed union membership or dues deduction authorization cards:

> "According to the Union's records, of the 43,000 IPs who paid membership dues during the proposed Class period without first signing a card, at least 20,000 of them subsequently signed a card… Approximately 28,000 of the 34,000 current IPs have signed formal membership cards. This translates to 82 percent of the bargaining unit."

See **App 44.**

In other words, as of March 2015 when Mr. Glickman's declaration was submitted, the Department was withholding union dues from about 6,000 IPs who had not "signed formal membership cards" with SEIU 775.

SEIU 775 as a political committee

Litigation currently before the Thurston County Superior Court alleges that SEIU 775 is, itself, a political committee on the basis of its extensive political activity. *State ex rel. Freedom Foundation v. SEIU 775*, No. 18-2-00454-34, (Thurston Sup. Ct., January 19, 2018).

SEIU 775 regularly uses the funds it collects from IPs—whether they have signed membership cards or not—to make donations to political action committees (PACs) from its general funds.

Reports filed with the state Public Disclosure Commission (PDC) indicate the union has made cash and in-kind contributions from its general fund totaling as much as $4,002,694 to political

candidates and committees in Washington since 2016. *See* **App. 98-103**, a summary of PDC reports indicating SEIU 775 contributions to candidates and PACs.[2]

Even if the courts ultimately determine that SEIU 775 is not a political committee, SEIU bylaws and policy require that a regular portion of the dues SEIU 775 collects from IPs be automatically forwarded to as many as four political committees: The Service Employees International Union Political Education and Action Fund (SEIU PEAF), SEIU Council 14, the SEIU WA State Council PAC, and the SEIU Initiative Fund.

SEIU Political Education and Action Fund

The international SEIU Constitution and Bylaws require all SEIU locals to pay a certain "per capita tax" to fund the international union. Article XIII, Section 1(a) provides:

> "The revenue of this International Union shall be derived from per capita tax, initiation fees, charter fees, assessments or from any other source that the International Executive Board may determine. The per capita tax from Local Unions shall continue to be $7.65 per member per month on all dues received by the Local Union."

Section 1(b) of the same article provides further that,

> "An amount of money which shall be determined annually by the International Executive Board shall be set aside from the per capita tax and shall be expended by the International Union directly or indirectly for political education and political action purposes…"

See **App. 129**, a copy of the SEIU international constitution and bylaws.

These funds are set aside in the SEIU PEAF, a "political organization" for the purposes of 26 U.S. Code § 527 and federal tax law. *See* **App. 180-182**, a copy of the form 8871 SEIU PEAF filed with the Internal Revenue Service (IRS). It is chaired by Mary Kay Henry, the president of the Service Employees International Union. SEIU PEAF received at least $5,903,733 in contributions from SEIU's general fund in 2017 alone. *See* **App. 183-192,** copies of forms 8872 SEIU PEAF filed with the IRS.

Since 2010, SEIU PEAF has reported to the PDC as an out-of-state political committee governed by RCW 42.17A.250. *See* **App. 193-231,** copies of forms C5 filed by SEIU PEAF with the PDC.

However, at least during 2016 and early 2018, more than 20 percent of SEIU PEAF's expenditures were made in Washington State, meaning that, according to WAC 390-16-049, it should have filed as an in-state political committee. Despite admitting on several forms C5 that it made enough expenditures in Washington to qualify as an in-state political committee, SEIU PEAF never registered with the PDC as one. *See* **App. 213, 215, and 231.** See *State ex rel. Freedom Foundation*

[2] Some of these contributions were likely made by SEIU 775's political committee, the SEIU 775 Quality Care Committee, but the varying names of the contributor reported by the various recipients make it difficult to discern which contributions were made by the union itself and which contributions were, in fact, made by the Quality Care Committee.

v. SEIU Political Education and Action Fund, No. 18-2-01731-34, (Thurston Sup. Ct., April 3, 2018).

SEIU Council 14, SEIU WA State Council PAC and SEIU Initiative Fund

Article XVIII, Section 3 of the international SEIU Constitution and Bylaws provides:

> "All Local Unions determined by the International Union to be within the jurisdiction of any intermediate body shall affiliate with such bodies and comply with their bylaws, including provisions in such bylaws requiring the payment of per capita taxes to the intermediate body…"

See **App. 143.**

The term "affiliated bodies" appears to be used interchangeably with "intermediate bodies" and is defined by Article III, Section 2(b) to include,

> "…State and Provincial Councils, Joint Councils, Service Councils, area, regional, or industry Conferences and Divisions, organizing committees, and provisional locals, and such other bodies on the local, national or international level as the International Union shall from time to time establish, but shall not include Local Unions."

See **App. 112.**

In Washington State, the "intermediate body" is the SEIU Washington State Council (also known as SEIU Leadership Council 14). Article 1, Section 2 of its bylaws provides,

> "Every chartered Local Union of the Service Employees Intonational Union, AFL-CIO, CLC, within the jurisdiction of the Washington State Council shall be required to affiliate with the Washington State Council. Affiliation shall include payment of per capita on all members…"

See **App. 232.**

Similarly, SEIU 775's constitution and bylaws require it to affiliate with and pay per capita taxes to both the SEIU State Council and the international SEIU. Article 3.5 of SEIU 775's 2017 constitution and bylaws, "Per Capita Tax," states:

> "This Union shall pay per capita tax to the International Union for any person from whom the Union receives revenue, whether called dues or otherwise… This Union shall affiliate with such SEIU State Councils, and other SEIU intermediate bodies as the International Union may direct."

See **App. 245**, a copy of SEIU 775's 2017 constitution and bylaws.

SEIU Council 14's 2016 form 990 filed with the Internal Revenue Service (IRS) explains that the

Council's mission is to, "…unite all local unions of the Washington State Council for their mutual aid and protection..." *See* **App. 260**, a copy of SEIU Washington State Council's 2016 990 form.

Accordingly, all SEIU locals in Washington, including SEIU 775, affiliate with and pay per capita taxes to the SEIU Council 14, which maintains a separate political committee registered with the PDC, called the "SEIU WA State Council PAC." *See* **App. 291,** a copy of SEIU WA State Council PAC's most recent form C1PC filed with the PDC.

However, last year, in response to a Freedom Foundation citizen action notice, the Attorney General's Office filed litigation against SEIU Council 14 itself for failure to register as a political committee. *State of Washington v. SEIU Leadership Council 14,* No. 17-2-04061-34, (Thurston Sup. Ct., July 11, 2017).[3] The litigation is ongoing.

Prior to 2018, the SEIU WA State Council PAC had received periodic, round-sum contributions from SEIU Leadership Council 14. It had no other contributors. *See* **App. 293-294,** a summary of contributions to the SEIU WA State Council PAC from 2015-18 exported from the PDC website.

However, as of January 2018, the SEIU WA State Council PAC began receiving monthly contributions in odd dollars amounts from the political committees associated with the various SEIU locals in Washington, including the SEIU 775 Quality Care Committee, the Public School Employees of Washington Political Fund (operated by SEIU Local 1948), the SEIU Healthcare 1199NW PAC, and the SEIU Local 925 Public Service PAC. *See* **App. 293-294.**

The ultimate source of nearly all the money in each of these political committees is union dues. The SEIU 775 Quality Care Committee is funded by contributions made by SEIU 775 from the dues money in its general fund and by contributions received from the previously discussed SEIU PEAF. *See* **App. 295-296,** a summary of contributions to the SEIU 775 Quality Care Committee from 2015-18. The Public School Employees of Washington Political Fund is almost exclusively funded with contributions from the dues money in SEIU Local 1948's general fund. *See* **App. 297-298,** a summary of contributions to the Public School Employees of Washington Political Fund from 2015-18. The SEIU Healthcare 1199NW PAC is almost exclusively funded with contributions from the dues money in SEIU Local 1199's general fund. *See* **App. 299-300,** a summary of contributions to the SEIU Healthcare 1199NW PAC from 2015-18. Lastly, the SEIU Local 925 Public Service PAC is funded almost entirely by contributions from the dues money in the union's general funds. *See* **App. 301-302,** a summary of contributions to the SEIU Local 925 Public Service PAC from 2015-18.

Further, a new political committee, the "SEIU Initiative Fund," filed a form C1PC with the PDC on January 11, 2018. *See* **App. 303-304,** a copy of the form C1PC filed by the SEIU Initiative Fund. The form indicates that the PAC's campaign manager and treasurer is Michael Nelson, the executive director of SEIU Council 14. Ana Crapsey, the finance and operations manager of SEIU Council 14, is listed as the "co-director" of the PAC. Lastly, the PAC's officers are comprised of a single executive from each SEIU local in Washington, including Karen Hart of SEIU 925, Diane

[3] Washington State Office of the Attorney General, "AGO files campaign finance complaint against SEIU Washington State Council," July 11, 2017. http://www.atg.wa.gov/news/news-releases/ago-files-campaign-finance-complaint-against-seiu-washington-state-council

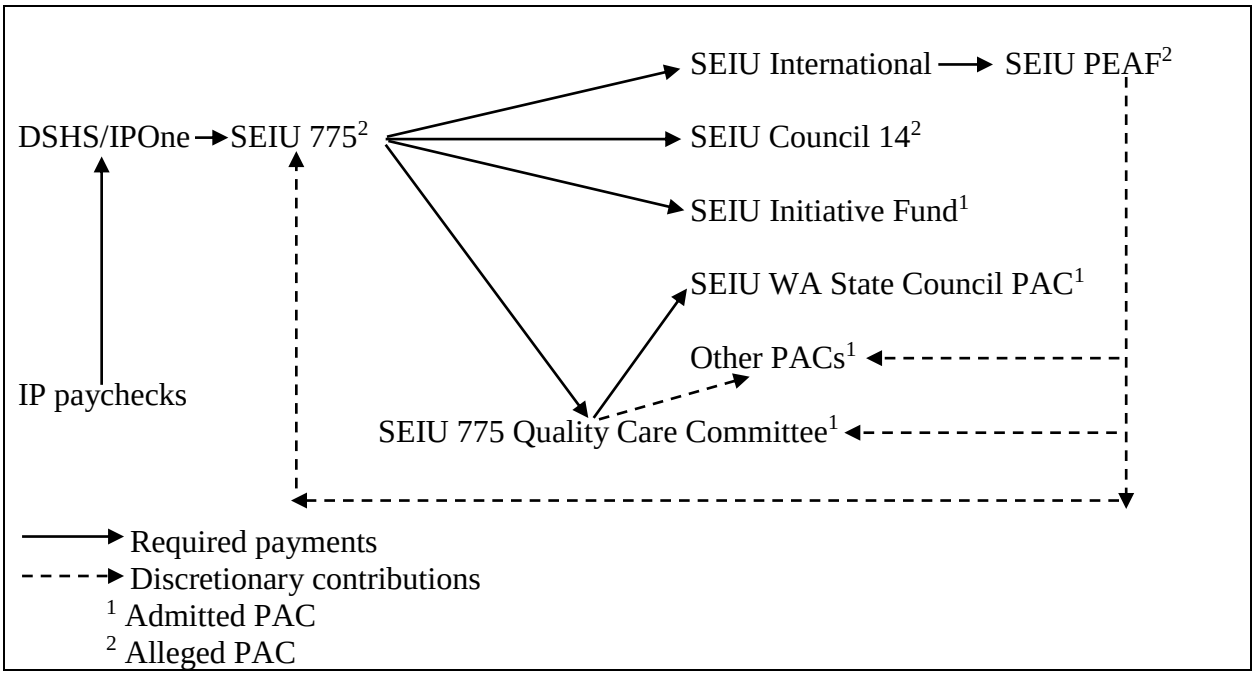
Sosne of SEIU 1199, Sergio Salinas of SEIU 6, Meg Niemi of SEIU 49, Charlotte Shindler of SEIU 1948, and Sterling Harders of SEIU 775.

Like the SEIU WA State Council PAC, the SEIU Initiative Fund is funded with monthly contributions from Washington SEIU locals in odd dollar amounts. *See* **App. 305,** a summary of contributions to the SEIU Initiative Fund. Unlike the SEIU WA State Council PAC, however, contributions to the SEIU Initiative Fund come directly from the general funds of the locals, instead of being first routed through the PACs of the respective locals. In both cases, however, the ultimate source of the funds in both the SEIU WA State Council PAC and the SEIU Initiative Fund is the union dues in the general funds of SEIU locals in Washington.

Several reports filed with the PDC by SEIU locals confirm that the payments to the SEIU Initiative Fund and SEIU WA State Council PAC are per capita taxes required by SEIU bylaws. The form C4 filed by the SEIU Healthcare 1199NW PAC on May 9, 2018 discloses a $13,010.52 payment to the SEIU Washington State Council PAC for, "March 2018 Per Capita - 50%." *See* **App. 306-307.** Similarly, the May 4 form C4 filed by the Public School Employees of WA Political Fund discloses a $15,854.59 payment to the SEIU WA State Council PAC and describes is not as a contribution, but as an "SEIU payment." *See* **App. 308-310.**

Whether the per capita taxes owed by Washington SEIU locals, including 775, to SEIU Council 14 are paid to the council directly, to the SEIU WA State Council PAC and/or to the SEIU Initiative Fund, the recipient is a political committee.

Thus, as a matter of policy, practice and as required by SEIU bylaws, SEIU 775 contributes a regular portion of the dues it collects from members to SEIU PEAF and to 1-3 political committees operated under the umbrella of SEIU Council 14.



According to statement B, item 56 of SEIU 775's 2017 form LM-2 filed with the U.S. Department of Labor, the union paid $6,017,707 in total per capita taxes in 2017. The report does not indicate how the funds were apportioned between SEIU Council 14/its affiliates and the international SEIU. *See* **App. 311-376,** a copy of SEIU 775's 2017 form LM-2.

Not counting the funds set aside in SEIU PEAF, statement B, item 51 of the international SEIU's 2017 form LM-2 recorded a total of $33,251,868 in political activities and lobbying.[4] *See* **App. 377-641,** a copy of SEIU international's 2017 form LM-2.

Overall, SEIU 775's most recent "schedule of expenses and allocation between chargeable and nonchargeable expenses," prepared in response to *Chicago Teachers Union v. Hudson,* 475 U.S. 292 (1986), indicates that 43 percent of the dues collected by SEIU 775 are ultimately used by SEIU 775, SEIU Leadership Council 14 and the national SEIU for nonchargeable activity. *See* **App. 642-651,** a copy of SEIU 775's notice to agency fee payers for 2018. Though nonchargeable activity is not exclusively political in nature, the bulk of such expenses typically is.

Notice to the State

In a letter emailed April 5, 2018, the Freedom Foundation notified Gov. Jay Inslee through his general counsel, Kathryn Leathers, and Bill Moss, Assistant Secretary for the Aging and Long-Term Support Administration of DSHS, of these facts and their legal ramifications. *See* **App. 679-682,** copies of the emails and accompanying letter. In a reply letter dated April 18, 2018, Mr. Moss stated,

> "We are in receipt of your April 5, 2018, letter regarding dues deductions for individual providers. The Department of Social and Health Services believes that our current process is consistent with both state and federal requirements regarding the deduction of union dues."

See **App. 683.**

Violations of RCW 42.17A.495

The deduction of union dues from IPs' pay without authorization violates RCW 42.17A.495 and WAC 390-17-100 because SEIU 775 regularly contributes portions of the dues it collects from IPs to various political committees, as directed by SEIU bylaws. In essence, the dues withheld from IPs' pay by DSHS contain political contributions, though not all of the funds will be used for political purposes. As such, DSHS should obtain and keep records of each IPs' written authorization before withholding funds for use as political contributions.

RCW 42.17A.495(3-4) provides:

> "(3) No employer or other person or entity responsible for the disbursement of funds in

[4] Under Item 69 of its 2017 form LM-2, the international SEIU notes, "The financial information of IPEA [PEAF] is not included in the International Union's Form LM-2, as it is required to file periodic, publicly available reports with the IRS and the following state agencies that disclose its financial activity…"

payment of wages or salaries may withhold or divert a portion of an employee's wages or salaries for contributions to political committees or for use as political contributions except upon the written request of the employee. The request must be made on a form prescribed by the commission informing the employee of the prohibition against employer and labor organization discrimination described in subsection (2) of this section. The employee may revoke the request at any time. At least annually, the employee shall be notified about the right to revoke the request.

(4) Each person or entity who withholds contributions under subsection (3) of this section shall maintain open for public inspection for a period of no less than three years, during normal business hours, documents and books of accounts that shall include a copy of each employee's request, the amounts and dates funds were actually withheld, and the amounts and dates funds were transferred to a political committee. Copies of such information shall be delivered to the commission upon request."

WAC 390-17-100(1-2) provides further:

> "(1) Each employer or other person who withholds or otherwise diverts a portion of wages or salary of a Washington resident or a nonresident whose primary place of work is in the state of Washington shall have on file the individual's written authorization before withholding or diverting the individual's wages or salary for:
>
> (a) The purpose of making one or more contributions to any political committee required to report pursuant to RCW 42.17A.205, 42.17A.215, 42.17A.225, 42.17A.235 or 42.17A.240; or
>
> (b) Use, specifically designated by the contributing employee, for political contributions to candidates for state or local office."

By knowingly withholding financial contributions to SEIU 775 from IPs' paychecks that are, as a matter of union policy, used to fund as many as five political committees without first obtaining and maintaining records of IPs' written authorization for such deductions, DSHS and Gov. Inslee are violating RCW 42.17A.495 and WAC 390-17-100.

RCW 42.17A.460 makes it very clear that even fund transfers made to candidates or PACs indirectly or through an intermediary are still considered political contributions:

> "All contributions made by a person or entity, *either directly or indirectly*, to a candidate, to a state official against whom recall charges have been filed, or to a political committee, are considered to be contributions from that person or entity to the candidate, state official, or political committee, as are contributions that are *in any way earmarked or otherwise directed through an intermediary or conduit* to the candidate, state official, or political committee. For the purposes of this section, 'earmarked' means a designation, instruction, or encumbrance, *whether direct or indirect, expressed or implied, or oral or written, that is intended to result in or does result in all or any part of a contribution* being made to a certain candidate or state official." (Emphasis added.)

Under its bylaws, SEIU 775 considers any person paying dues to be a member. *See* **App. 242-244.** Accordingly, members are subject to the bylaws of the union, including the provisions requiring

the payment of per capita taxes to SEIU Council 14/its political committees and the international SEIU/SEIU PEAF. Because the conveyance of funds withheld from the paychecks of IPs who are SEIU 775 members to as many as five political committees is required by and accomplished according to SEIU bylaws, such funds amount to indirect contributions to political committees directed through an intermediary. As such, they qualify as political contributions for the purposes of the FCPA.

The Washington State Supreme Court has confirmed that union dues and fees may be considered political contributions when the union uses the funds to support political candidates and PACs. In *State ex rel. Evergreen Freedom Foundation v. Washington Education Ass'n*, 140 Wn.2d 615, 635, 999 P.2d 602 (2000), the Washington State Supreme Court established,

> "When an employer has notice that the funds deducted are for the use of a political committee or candidate, the employer may not then make that deduction without specific annual authorization. However, when the employer makes deductions under the Education Employment Relations Act, RCW 41.59.100, and the Public Employees Collective Bargaining Act, RCW 41.56.110, and the employer is not made aware of the specific intended use of the funds, the employer has no legal obligation or authority to seek annual written authorization."

Chapter 41.56 RCW is also the chapter governing collective bargaining and dues deduction for IPs.

In her concurrence in part and dissent in part, Justice Madsen noted that, "under the majority's notice rule, if the employer has notice that some of the dues [deducted from employees' paychecks] will ultimately be put to [use as 'contributions to registered political committees'], then an annual authorization is required." 140 Wn.2d at 646.

While SB 6713 (2002) removed the requirement in RCW 42.17A.495 that employers get *annual* authorization from employees before withholding union dues or fees for "the use of a political committee or candidate," it left intact the requirement that employers obtain written authorization from employees before beginning to make any such deductions. *See* **App. 652-654,** a copy of SB 6713.

The state's violations affect two types of IPs. First, an undetermined number of IPs have signed union membership cards. However, SEIU 775, not DSHS, collects the cards and maintains the records. The law clearly provides that, as the entity withholding the dues, DSHS must have records of these authorizations before withholding financial contributions to SEIU 775 from IPs' pay for use as political contributions and must make the authorizations available for public inspection.

Second, there are thousands of IPs who have never signed an SEIU 775 membership form and who, nevertheless, have financial contributions to SEIU 775 deducted from their paychecks by DSHS for use as political contributions.

Because: (1) DSHS withholds union dues from IPs' pay on behalf of SEIU 775; (2) SEIU 775 in turn contributes designated portions of the funds to multiple political committees as dictated by

SEIU bylaws; (3) DSHS has been made aware that SEIU 775 uses IPs' dues for political activity, but continues to withhold the dues without first obtaining and maintaining records of IPs' written authorizations; therefore, (4) DSHS and Gov. Inslee are in clear violation of RCW 42.17A.495 and WAC 390-17-100.

Possible State defenses

DSHS and Gov. Inslee may make several arguments attempting to excuse their noncompliance with RCW 42.17A.495(3-4) with respect to IPs who have never signed union membership cards or in any way authorized the Department to withhold financial contributions to SEIU 775 from their pay. None obviate the responsibility of DSHS and Gov. Inslee to comply with state law.

First, DSHS and Gov. Inslee may attempt to argue that RCW 41.56.113(1)(b)(i) and Article 4.1 of the current 2017-19 CBA allows the state to withhold financial contributions to SEIU 775 from IPs' pay without their permission.

RCW 41.56.113(1)(b)(i) provides:

> "(b) If the governor and the exclusive bargaining representative of a bargaining unit of individual providers… enter into a collective bargaining agreement that:
> (i) Includes a union security provision authorized in RCW 41.56.122, the state as payor, but not as the employer, shall… enforce the agreement by deducting from the payments to bargaining unit members the dues required for membership in the exclusive bargaining representative, or, for nonmembers thereof, a fee equivalent to the dues…"

Article 4.1(A) of the CBA states:

> "In accordance with RCW 41.56.113(1)(b)(i), the State as payor, but not as the employer, shall cause the appropriate entity or agency to deduct the amount of dues or, for non-members of the Union, a fee equivalent to the dues from each home care worker's payment for services…"

The constitutionality of seizing dues from IPs' paychecks without authorization as directed by Article 4.1 and RCW 41.56.113(1)(b)(i) is currently being challenged in federal court. *Hoffman v. Inslee and SEIU 775* (No. 3:16-cv-05359) (U.S. Dist. Court W. Dist. Wash.). Courts may ultimately determine that RCW 41.56.113 is unconstitutional under *Harris*, which would harmonize with RCW 42.17A.495's requirement that the state obtain written authorization from IPs before withholding financial contributions to SEIU 775 from their pay that would, in turn, be contributed to various PACs and political campaigns.

However, even if courts ultimately determine that union dues may constitutionally be seized from IPs' pay without authorization, RCW 42.17A.495 would *still* require the state to obtain written authorization from IPs before withholding financial contributions to SEIU 775 from their pay that will be used to contribute to PACs and political campaigns.

RCW 41.56.113 regulates collective bargaining while RCW 42.17A.495 regulates campaign

finance activity. Though they operate independently, both statutes must be read together in a way that does not render one or the other superfluous or illogical. Unlike SEIU 775, some unions do not use dues or fees collected from represented employees to make PAC contributions and political expenditures.[5] If SEIU 775 similarly refrained from using dues money for political activity and instead relied on voluntary PAC contributions by its members made in excess of dues, RCW 41.56.113 would permit the state to collect fees equivalent to dues from nonmembers without their written authorization because such funds would not then be contributed to PACs and spent on political activity. However, because SEIU 775 does, in fact, contribute substantial sums of the money it collects from IPs to PACs and political campaigns, it triggers RCW 42.17A.495's requirement that the state first obtain written authorization from IPs before withholding funds for use as political contributions from their pay. Under the most logical interpretation, the two statutes complement, not contradict, each other.

Second, DSHS and Gov. Inslee might argue that another campaign finance statute, RCW 42.17A.500, allows the state to withhold financial contributions to SEIU 775 for political use from the paychecks of IPs that have refused to sign union membership cards.

RCW 42.17A.500 provides:

> "(1) A labor organization may not use agency shop fees paid by an individual who is not a member of the organization to make contributions or expenditures to influence an election or to operate a political committee, unless affirmatively authorized by the individual.
> (2) A labor organization does not use agency shop fees when it uses its general treasury funds to make such contributions or expenditures if it has sufficient revenues from sources other than agency shop fees in its general treasury to fund such contributions or expenditures."

The state and SEIU 775 may contend that the money it withholds from nonmembers without their permission constitutes an "agency shop fee" and that, since the union has "sufficient revenues" from the dues of actual members "in its general treasury" to fund its political spending, it may use the "agency fees" of nonmembers for political activity without their authorization. Such an argument, fails, however, because the money being withheld from IPs' pay without authorization is not an "agency shop fee."

The term "agency shop fee" is not defined in Chapter 42.17A RCW. In fact, the phrase is not explicitly defined anywhere in state statutes, though it is referred to several times in the state's collective bargaining laws. Nevertheless, its meaning is not difficult to discern.

In 1969, the Washington State Legislature created the Public Employees Collective Bargaining Committee (the Committee) and tasked it with "studying the efficacy of the Public Employees Collective Bargaining Act and other collective bargaining laws as a means of furthering and improving management relationships within public service."

[5] Maxford Nelsen. "Unfree Speech: Most Washington Unions Fund Political Campaigns with Compelled Dues." The Freedom Foundation. June 3, 2014.
http://www.freedomfoundation.com/sites/default/files/documents/Unfree%20Speech%20-%20Most%20WA%20Unions%20Fund%20Political%20Campaigns%20with%20Compelled%20Dues.pdf

The Committee issued its "First Biennial Report Submitted to the 42nd Session of the Washington State Legislature" in 1971 and issued a "revised second edition" within the year (the report). *See* **App. 655-676,** a copy of the Public Employees Collective Bargaining Committee's report to the legislature.

The report offers a definition of "agency shop" in "Appendix II: Glossary of Commonly Used Terms in Labor Relations, adapted from Report of the Task Force on State and Local Government Labor Relations (Chicago, Public Personnel Association, 1967)":

> "Agency Shop – A provision in a collective bargaining agreement which requires all employees who do not join the union to pay a fixed monthly sum, usually the equivalent of union dues and fees, as a condition of employment, to help defray the union's expenses in acting as bargaining agent for the group. Some arrangements provide that payments be allocated to the union's welfare fund or a charity, rather than to the union's treasury."

In *Clover Park Technical College*, Decision 6256 (PECB, 1998), the Public Employment Relations Commission noted that an "agency shop" provision "[imposes] an ongoing financial obligation on bargaining unit employees" and referenced the definition of "agency shop" provided by *Robert's Dictionary of Industrial Relations*:

> "**Agency shop** - A union security provision to eliminate 'free riders.' All employees in the bargaining unit are required to pay dues or service charges to the collective bargaining agent. Non-union employees, however, are not required to join the union as a condition of employment. Payment of dues is to defray the expenses of the bargaining agent in negotiations, contract administration, etc."[6]

Where the phrase "agency shop" is referenced in state collective bargaining statutes, it refers to the requirement of union nonmembers to pay, as a condition of employment, a fee equivalent to dues to a union certified as the bargaining unit's exclusive bargaining representative.[7]

The legislative history surrounding the passage of HB 2079, now codified as RCW 42.17A.500(2), confirms that the term "agency shop fee" refers to the requirement for public employees who refuse to become members of a union to pay representation fee to the union as a condition of employment.

The bill's prime sponsor, Rep. Joe McDermott, explained the concept of agency fees in testimony on HB 2079 before the Senate Committee on Labor, Commerce, and Research & Development:

> "Some employees choose not to join the union, and I defend their right to do so. They still pay a fee for the services they receive — that's called the agency fee, they still pay that fee — but they're entitled to get back anything above and beyond the exact cost of the collective bargaining…"[8]

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[6] Available here: https://decisions.perc.wa.gov/waperc/decisions/en/item/178041/index.do

[7] See, for instance, RCW 41.80.100, RCW 28B.52.020, and RCW 41.59.100.

[8] Rep. Joe McDermott. Comments before the Washington State Senate Committee on Labor, Commerce, and Research & Development regarding HB 2079. March 22, 2007. https://www.tvw.org/watch/?eventID=2007031152

The final bill report prepared by legislative staff describing HB 2079 noted:

> "Agency shop fees are fees paid by public employees who are not union members for the costs related to collective bargaining done by labor organizations or unions on behalf of all employees in the bargaining unit. Under Washington law, agency shop fees are equivalent to member dues and, like dues, may be deducted by employers from salary payments. A portion of member dues goes to the support of political and ideological causes as chosen by the labor organization or union; such expenditures are referred to as non-chargeable activities. The United States Supreme Court, in *Chicago Teachers Union v. Hudson*, 475 U.S. 292 (1986), ruled that unions must adopt procedures to protect the rights of agency fee payers who do not wish to support non-chargeable activities."

See **App. 677-678,** a copy of the legislative staff report for HB 2079.

The underlying assumption in all such commentary is that public employees who are not union members must still pay an agency fee to the union as a condition of employment. As established by the U.S. Supreme Court in *Abood v. Detroit Board of Education*, 431 U.S. 209 (1977), and *Hudson*, nonmembers can object to paying for union activity that is not germane to contract negotiation and administration.

By these standards, SEIU 775's 2013-15 CBA contained an "agency shop" type of "union security" provision prior to *Harris*. However, the U.S. Supreme Court explicitly stuck down the constitutionality of "agency shop fee" requirements for "partial public employees" in *Harris*, holding that, "The First Amendment prohibits the collection of an agency fee from personal assistants in the Rehabilitation Program who do not want to join or support the union" (IPs are "partial public employees"). The phrase "agency shop" and "agency fee" are used interchangeably throughout the court's decision.

Consequently, the current 2017-19 CBA does not require the payment of any dues or "agency shop fees" as a condition of employment. Glickman's declaration notes that, "the day after the U.S. Supreme Court decided *Harris v. Quinn*, SEIU 775 asked the State of Washington to cease agency fee or religious objector deductions…" *See* **App. 44-50**. Furthermore, Article 4.1(C) of the CBA confirms that nonmembers "will suffer no penalty as a result of their failure to pay a fee to the Union." *See* **App. 63.** In effect, then, RCW 42.17A.500 is entirely inapplicable to the case at hand because the money withheld from IPs by DSHS on behalf of SEIU 775 does not constitute "agency shop fees."

Third, Gov. Inslee and DSHS may contend that Article 4 of the 2017-19 CBA requires the state to automatically deduct financial contributions to SEIU 775 from the pay of IPs' who do not sign membership cards unless the IP asks the union to have the deductions ceased. However, this provision of Article 4 stands in direct conflict with RCW 42.17A.495(3)'s requirement that, as the "employer or other person or entity responsible for the disbursement of funds in payment of wages or salaries" to IPs, DSHS must collect proper authorization for and maintain records relating to SEIU 775 contributions made via payroll deduction from IPs' paychecks for the purpose of political contributions. It is well established that, when in conflict, the terms of a state statute shall

prevail over the terms of a CBA.[9]

Lastly, Gov. Inslee and DSHS may argue that they were not aware that the deductions being made from IPs pay on behalf of SEIU 775 were being used for political activity. However, Mr. Nelsen's documentation of these facts in his letter mailed April 5, 2018 should be more than sufficient to satisfy the notice standard described by the State Supreme Court in *State ex rel. Evergreen Freedom Foundation v. Washington Education Ass'n*. Any ongoing deductions DSHS makes from IPs' pay for use as political contributions without receipt of proper written authorization, made available for public inspection, are being made in violation of the law.

Conclusion

DSHS' and Gov. Inslee's present practice of withholding funds from IPs' pay on behalf of SEIU 775 for use as political contributions without first obtaining IPs' written authorization and subsequently making the authorizations and related records available to public inspection is a significant violation of the FCPA.

The violation takes two forms. First, some IPs may have provided written authorization to SEIU 775 for DSHS to withhold dues from their paychecks to be used for political purposes. However, DSHS is unable to produce records of any such authorizations as required by RCW 42.17A.495(4). Thus, millions of dollars are being funneled into political activity in Washington while the public is prevented from verifying the funds are being contributed legally and appropriately, damaging both the integrity and transparency of Washington's electoral system. Second, unknown thousands of IPs have never provided any kind of written authorization for the state to withhold SEIU 775 dues from their pay for political use. Consequently, the state's conduct also infringes upon the First Amendment rights of thousands of low-wage workers whose money is being spent on political activity without their consent.

The lack of accountability and respect for IPs' free speech protections resulting from DSHS and Gov. Inslee's arrangement with SEIU 775 is precisely the kind of situation RCW 42.17A.495(3-4) was enacted to prevent.

The Freedom Foundation respectfully requests that the Public Disclosure Commission perform an investigation into these allegations as expeditiously as possible. Please do not hesitate to contact us we can be of assistance. Thank you for your consideration.

Sincerely,

Maxford Nelsen
Director of Labor Policy
Freedom Foundation

[9] See, for example, RCW 41.80.020(6), which provides, "A provision of a collective bargaining agreement that conflicts with the terms of a statute is invalid and unenforceable."

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