

JAY INSLEE  
Governor



STATE OF WASHINGTON  
OFFICE OF THE GOVERNOR

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Public Disclosure Commission  
PO Box 40908  
Olympia, WA 98504-0908

RE: Freedom Foundation Complaint (DSHS)  
PDC Case Number 37105

Public Disclosure Commission Staff:

Thank you for the opportunity to respond to the Freedom Foundation's inaccurate complaint that Governor Inslee, in his official capacity, has violated Washington's campaign finance laws under the Fair Campaign Practices Act, RCW 42.17A. The complaint should be dismissed.

RCW 42.17A.495(3) states in relevant part, "no employer or other person or entity responsible for the disbursement of funds in 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 corresponding regulation, WAC 390-17-100, clarifies that RCW 42.17A.495(3) applies when the withheld funds are for (1) the purpose of making contributions to any political committee or (2) specifically designated political contributions to candidates for state or local office. WAC 390-17-100(1)(a),(b).

These laws do not apply to the circumstances alleged here. While the Governor is considered the "public employer" of individual providers "solely for the purposes of collective bargaining," RCW 74.39A.270(1), the Governor does not actually employ individual providers, nor he is responsible for the disbursement of individual providers' wages. *See* RCW 74.39A.270(3); RCW 41.56.113. Further, state law authorizes union dues to be withheld and submitted in accordance with the collective bargaining agreement reached with SEIU 775, but only under certain conditions and only if the individual provider provides written authorization. RCW 41.56.110, .113. Accordingly, the funds are withheld as union dues pursuant a collectively bargained agreement and on authorization of the provider for that purpose. They are not, therefore, subject to the requirements found in RCW 42.17A.495 and WAC 390-17-100.

The Washington State Supreme Court affirmed this construction in *State ex rel. Evergreen Freedom Foundation v. Washington Education Association*, 140 Wn.2d 615, 999 P.2d 602 (2000). In that case, the Freedom Foundation contended that school districts had violated the precursor to RCW 42.17A.495 by withholding union dues from teachers' pay. *Evergreen Freedom Foundation*, 140 Wn.2d at 623-24. The Supreme Court disagreed, finding that "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 [under RCW 42.17A.495 and WAC 390-17-100].” *Id.*

Here, as in *Evergreen Freedom Foundation*, even if the Governor were the individual providers’ employer—which he is not—he would have no obligation or authority to seek separate written authorization from the individuals providers under RCW 42.17A.495. The dues are being withheld pursuant to RCW 74.39A and RCW 41.56, and the Governor has no knowledge of SEIU 775’s specific intended use of the funds. RCW 42.A17.495 simply does not apply.

Finally, it should be noted that Freedom Foundation’s allegations against Governor Inslee were previously rejected by the Thurston County Superior Court in *Freedom Foundation v. Jay Inslee, et. al.*, Thurston County Superior Court No. 17-2-00417-34. In that action, the Freedom Foundation filed a nearly identical complaint against Governor Inslee and DSHS alleging violations of the Act by:

- (1) withholding and/or diverting union dues/fees to the Service Employees International Union 775 (SEIU 775), from the wage payments DSHS makes to Individual Home Care Providers (IPs), for use as political contributions; and
- (2) failing to allow for public inspection of IPs’ written deduction authorizations and related records.

*See* Attachment A (Complaint). The superior court dismissed the Freedom Foundation’s complaint, finding that “. . .when 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. . . .” as required under the campaign finance laws. *See* Attachment B (Transcript of decision at p. 34-35) (ruling begins on p. 33); Attachment C (Order on Dismissal).

The only difference between the superior court case and the complaint here is the Freedom Foundation’s allegation that SEIU 775, is itself, a political committee. *Compare* Att. A with PDC Complaint at 5. But Governor Inslee has no knowledge or legal basis for making that determination. He, therefore, has no obligation or authority to obtain the written authorizations required by RCW 42.17A.495.

The Freedom Foundation’s complaint has no basis in law or fact. The Governor asks that it be dismissed.

Sincerely,



Kathryn Leathers  
General Counsel