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***Via U.S. Mail and via email to:
kurt.young@pdc.wa.gov***

August 5, 2019

Kurt Young
Compliance Officer
Public Disclosure Commission
711 Capitol Way S. #206
P.O. Box 40908
Olympia, WA 98504-0908

Re: Complaint from the Freedom Foundation
PDC Case No. 54145
BIL Case File No. 3416-001

Dear Mr. Young,

On behalf of the American Federation of Federal, State, County, and Municipal Employees (“AFSCME”) we are hereby responding to the allegations raised by Freedom Foundation (the “Foundation”) in the above-referenced matter. AFSCME maintains a self-funded Separate Segregated Fund within the meaning of 26 U.S.C. § 527(f)(3), which is registered with the Internal Revenue Service (“IRS”) as “AFSCME Special Account” (“Special Account”). The Special Account files reports with the Public Disclosure Commission as an out-of-state political committee, (as “American Federation of State, County and Municipal Employees”), as required by law. The Foundation alleges that AFSCME and/or its Special Account violated provisions of the Fair Campaign Practices Act (“FCPA”) governing out-of-state political committees, including failure to report a handful of expenditures and contributions, as well as independent expenditures.

In short, the Foundation’s allegations are either wrong on the law or do not amount to material violations of the FCPA on the facts. A review of the Special Account’s contribution reports relevant to this case reveals that Special Account has substantially complied with all FCPA requirements for out-of-state political committees. The Foundation’s charge that there was a “consistent and extensive failure to comply with Washington state campaign finance laws” is baseless. It is, however, in keeping with the Foundation’s strategy of distorting campaign finance law in order to make outlandish claims against organizations that do not subscribe to its own ideological agenda.

ANALYSIS

I. The Alleged Failures to Disclose Independent Expenditures on C-6 Reports Are Wholly Without Merit.

The Foundation alleges that AFSCME's Special Account failed to file C-6 reports reflecting independent expenditures. However, the Foundation acknowledges that payments to Washington vendors for mail pieces and digital ad campaigns must be reported only if any of the purchases went to support or oppose candidates in Washington State. Here they did not. Instead, AFSCME's Special Account hired Hopkins & Sachs, Inc. and Cerillion N4 Partners to produce communications related to elections in Michigan, Minnesota, Oregon, and Wisconsin. Because RCW 42.17A.250 only requires the reporting of expenditures supporting or opposing a Washington state candidate or political committee, the Foundation's allegations that the Special Account failed to file C-6 reports are baseless and should be dismissed.

II. The Foundation's Allegations Regarding Failure to Report Expenditures and Contributions Are in Some Cases Unfounded and in Others So Minor As to Not Warrant an Enforcement Action.

A. The Alleged Failure to Report AFSCME's Own Self-Funding Of Its Segregated Fund Misapprehends the Nature of the Segregated Fund and Is Without Merit.

The Foundation alleges that AFSCME and/or the Special Account violated the FCPA by failing to disclose contributions from out of state donors and the source of its political spending in Washington. This argument rests entirely on the Foundation's depiction of AFSCME as an independent "contributor" to the Special Account. But the picture that the Foundation paints is incomplete. As prominently described on the submitted C-5s themselves, AFSCME's Special Account is a § 527 separate segregated fund. Although it is a legally distinct entity for purposes of the Internal Revenue Code, it is entirely controlled by AFSCME, all decisions regarding its activities are made by AFSCME, and it is entirely funded by AFSCME. AFSCME's Special Account is, in other words, an AFSCME bank account used and funded by AFSCME for AFSCME's own political activities. And, because it is simply an alter ego of AFSCME, it is registered with the PDC as AFSCME – the American Federation of State, County and Municipal Employees. In light of this fact and the Segregated Fund's exclusive funding from AFSCME, Special Account left blank the field on the C-5s for reporting contributions from "persons or corporations residing outside of Washington." It would elevate form over substance to require an organization to report itself as the source of contributions of its own funds deposited into its own bank account for its own reported activities as if these were standard contributions from other persons typically reported on an out-of-state PAC's C-5 form.

Moreover, the vast majority of the monies AFSCME deposited into its Special Account were not intended for electoral spending in Washington State and in fact were not used for political spending in Washington State. To put it in perspective, the Foundation alleges that \$81,293,134 should have been reported in contributions to the Special Account from 2014-2018. During this same time period, just \$790,000 of the political committee's funds were spent in Washington – less than one percent. In

other words, more than 99% of the deposits AFSCME made into its Special Account during the pertinent time period from 2014-2018 had nothing to do with electoral spending in Washington State.

Assuming *arguendo* that AFSCME's Special Account should have reported the AFSCME deposits as "contributions" received from out-of-state residents, the consequent FCPA violation was not material. Through its Form 8872 filings, AFSCME's Special Account has been fully transparent and comprehensive in publicly disclosing the source of its funding. Therefore, the public has not been denied the ability to inform itself of this financing. The fact that the Foundation has accessed and made use of these records is itself proof of AFSCME's Special Account's substantive compliance with campaign finance laws.

Regardless, to err on the side of disclosure and promoting as much public transparency as much as possible, AFSCME's Special Account will amend its C-5 reports to report AFSCME's deposits into the Special Account during the applicable periods.

B. The Special Account Has Not Received Contributions from Any Other Entities and the Foundation's Allegation That It Has Failed to Report Contributions from Miscellaneous Entities Is Unfounded.

The Foundation also alleges that the Special Account failed to report three contributions in 2014 from out-of-state contributors. Specifically, the Foundation alleges that the Special Account failed to report the following contributions:

- \$5,000 from Friends of Noam Bramson
- \$46,000 from Californians for Voter Turnout
- \$50,000 from the Committee for Working Families
- \$21,000 from Michigan for All
- \$25,000 from the Democratic Party of Hawaii
- \$8,500 from Ed Hernandez for Senate 2018
- \$11,609 from AFSCME SEIU Florida

However, each of these alleged contributions was not in fact a contribution reportable to the PDC. Instead, each reflected the Special Account's effort to report an intended expenditure that had been previously reported but was never consummated. For instance, the \$46,000 alleged contribution from Californians for Voter Turnout on October 14, 2014 corresponds to an expenditure the Special Account made to the same group on September 5, 2014 that was returned as a voided check. *See App. p. 274, 250.* Similarly, the \$50,000 contribution allegedly received from the Committee for Working Families on October 8, 2014 corresponds to a \$50,000 expenditure the Special Account made to that same entity on September 5, 2014 but that was returned as a voided check. *App. at 273, 258.* Likewise, the contributions from Friends of Noam Bramson, the Democratic Party of Hawaii, and Ed Hernandez for Senate 2018 were actually voided checks from intended contributions to each of those entities. The contributions from Michigan for All and AFSCME SEIU Florida also were not contributions *to* the Special Account, but rather, partial refunds of contributions to those entities *from* the Special Account, resulting in the return of AFSCME funds to the Special Account. In each instance, what appears to be a contribution on the 8872 form actually reports a returned expenditure.

IRS Form 8872 does not provide instructions on how to modify a previously filed report where the contributing party later learns that its contribution was not deposited, and does not provide a separate schedule or other reporting mechanism for disclosing that a receipt is a refund rather than a contribution. Rather than amend its previously filed 8872 reports, AFSCME's Special Account reported the unused contributions as contributions to the Special Account on Schedule A of a subsequently filed 8872. However, this effort to accurately account for the unused contribution does not convert those transactions to "contributions" that must be reported pursuant to RCW 42.17A.250(g).

From the PDC's perspective, those voided and refunded contributions are a non-event, they simply reflect AFSCME funds that never left or were returned to its Special Account. They do not reflect money that has been contributed to the Special Account by a third party (as opposed to by AFSCME, the Special Account's sponsor); thus, the Special Account properly did not report them as contributions. Reporting these transactions as contributions, then, would inaccurately amount to double reporting of contributions that already been reported on C-5 reports as deposits of AFSCME own funds into its SSF.

For these reasons, the Foundation's suggestion that AFSCME has failed to disclose receipts from entities *other than* AFSCME's general fund is without merit and should be dismissed.

C. The Alleged Failure to Report Three Expenditures Is a Relatively Minor Error that Has Since Been Corrected.

The Foundation alleges that AFSCME's Special Account, in the course of its long history of filing reports as an out-of-state PAC, failed to report three expenditures:

- \$25,000 to AFSCME Washington Council 2 on August 25, 2015
- \$25,000 to AFSCME Washington Council 2 on November 24, 2015
- \$200,000 to AFSCME Washington Council 28 on September 9, 2016

All three of these expenditures were reported to the IRS in a timely fashion on an 8872 form.

Now that these issues have been brought to its attention, the Special Account will amend its C-5 reporting to account for these three expenditures. Moreover, while the failure to report *any* electoral spending is unfortunate, the three expenditures at issue were insubstantial relative to the Special Account's spending in Washington and overall. The three disputed expenditures make up less than one-third of a percent of the \$81,293,134 the Foundation alleges that the Special Account took in during the pertinent time period. And, the Special Account correctly reported \$540,000 of its electoral spending in Washington to the PDC during the same period, meaning that approximately 70% of the Special Account's Washington spending was correctly reported in this state, while 100% of it was correctly reported to the IRS.

III. To the Extent Any of the Foundation's Allegations Are Found to Have Merit, They Involve Errors That Are So Minor as to Not Warrant Enforcement Action.

The Foundation's complaint has brought to light a handful of reporting errors that are relatively minor in light of the Special Account's long history of reporting as an out-of-state PAC in Washington. The reporting errors were the result of the Special Account's failure to appreciate two things about what must be reported on the C-5 reports: first, that *any* contributions intended for electoral political spending must be reported as expenditures, including political grants made through affiliate organizations, and second, that even deposits of AFSCME's own funds into its own separate segregated fund account may require reporting as "contributions" to the PAC. The Special Account now fully understands its reporting obligations and will report each of these categories of information in the future.

It is also worth emphasizing that there has never been a PDC complaint filed against AFSCME's Special Account during the time in which it has been registered as an out-of-state political committee in Washington. There is good reason to believe that the Special Account is fully capable of complying with reporting obligations when it understands what they are. In fact, the Foundation's examination of the Special Account's reporting over the past five years did not result in so much as a single late-filed report.

Moreover, the alleged shortcomings in the Special Account's reporting were minor in relation to the political committee's overall activities, the Special Account will take prompt action to amend its reporting in light of the Foundation's complaint, and it has taken steps to ensure that any similar issues do not arise in the future.

Finally, while the reporting errors were unfortunate, they did not result in the public being meaningfully deprived of information because in every instance, the information that allegedly should have been reported on a C-5 was timely reported on an 8872 form and readily available to the public.

Accordingly, to the extent there is any merit in the Foundation's allegations, they concern only "minor violations" that are appropriately resolved with a written warning. WAC 390-37-061(2)(a).

CONCLUSION

As a result of the Foundation's complaint, the Special Account has amended four previously filed C-5 reports to include reporting of AFSCME's deposit of funds into its Special Account on line 12, and has also filed three new C-5 reports. The Foundation's remaining allegations regarding alleged failure to report independent expenditures are without merit. AFSCME requests that the Foundation's complaint be dismissed outright, or resolved with a written warning. If you have any questions, or if there is anything we can do to be of assistance to you, please do not hesitate to contact me at (206) 257-6011.

Sincerely,

A handwritten signature in black ink, appearing to read "Danielle Franco-Malone". The signature is fluid and cursive, with a long horizontal flourish at the end.

Danielle Franco-Malone
Counsel for AFSCME