



18 West Mercer Street, Suite 400
Seattle, WA 98119

TEL (800) 238.4231
FAX (206) 378.4132

Danielle Franco-Malone
Partner
DIR (206) 257.6047
franco@workerlaw.com

Via U.S. Mail
And via email to kurt.young@pdc.wa.gov;
and to pdc@pdc.wa.gov

September 24, 2019

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

Mx. Fox Blackhorn
Compliance Coordinator 2
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. 56889
BIL Case File No. 3406-004

Dear Mr. Young:

We write to you on behalf of our client, the Washington State Council of County and City Employees/American Federation of State, County and Municipal Employees Council 2 in response to the Freedom Foundation's August 28, 2019, complaint against Council 2. The Foundation alleges Council 2 failed to report independent expenditures made in opposition to two municipal ballot propositions proposed in the City of Chelan in 2014. While WSCCCE now understands the need to report such expenditures, its previous failure to report was unintentional and inadvertent. WSCCCE has since reported the expenditures and will ensure that any future expenditures supporting or opposing municipal ballot measures are reported. In light of the several mitigating factors discussed below, WSCCCE requests that this case be resolved with a written warning.

Overview of Relevant Facts

The expenditures in question concerned two proposed ballot propositions that were submitted to the Chelan City Clerk in the fall of 2014. After the Chelan City Council determined that the propositions were not proper subjects of the municipal initiative power in Chelan, it directed the City Attorney to initiate a legal action to determine the lawfulness of the propositions. The Freedom Foundation filed a lawsuit seeking to compel the Chelan City Council to call an election on the proposed propositions. The City of Chelan filed a counterclaim requesting that the Foundation's claims be dismissed because the proposed propositions were not a valid exercise of the municipal initiative power. WSCCCE intervened in the litigation to support the City's position, and to argue that the proposed ballot propositions were not proper subjects for the municipal ballot power. The Court granted summary judgment in favor of the City and WSCCCE and the two proposed propositions were never voted upon.

Unaware of any obligation to report expenditures made related to the litigation, WSCCCE did not file any reports disclosing the sums it spent in litigation over whether the propositions were proper subjects of the municipal ballot power.

After the litigation was over and the propositions had concluded, a citizen complaint was filed against the Foundation, over its failure to report the in-kind value of pro bono legal services spent in support of the propositions. The Attorney General's Office filed suit against the Foundation in October of 2015. The Foundation argued in response that it had no obligation to report the value of its legal services, because the two propositions were not "ballot propositions" within the meaning of RCW 42.17A.005(4). In January 2019, the Washington Supreme Court disagreed, and issued a decision holding that the Foundation *did* have an obligation to report pro bono legal services under RCW 42.17A.255 and RCW 42.17A.005(4). The Foundation filed a petition for a writ of certiorari with the United States Supreme court, which was denied in May, 2019.

In light of the Washington Supreme Court's decision from earlier this year, it appears that WSCCCE may have had an obligation to report the value of expenditures made on litigation to oppose the propositions being placed on the ballot. However, this obligation was far from apparent at the time WSCCCE made the expenditures and was the subject of ongoing appeals until as recently as May 28, 2019, when the U.S. Supreme Court denied certiorari. Moreover, while the Washington Supreme Court found that the Foundation had an obligation to report the value of its legal services as an in-kind expenditure, it is far from clear that the Court's holding extends to expenditures made by WSCCCE, which incurred legal expenditures not as the result of advancing a political agenda (as was the case with the Freedom Foundation), but instead to defend its collective bargaining agreement with the City of Chelan and to ensure that the City bargained in good faith with WSCCCE as required by state collective bargaining laws.

Since the obligation to report the value of these legal expenditures was made known, through the filing of the instant complaint, WSCCCE promptly filed C-6 reports disclosing its total spending opposing the propositions being placed on the ballot.

Mitigating Factors

As detailed below, several factors should be taken into consideration and support an alternative resolution pursuant to WAC 390-37-061.

First, any failure to report was the result of a good-faith error or misunderstanding. As noted above, WSCCCE did not realize that the value of legal fees opposing a proposed measure that never actually materialized into a ballot measure was a reportable expense. The Foundation's own failure to report the value of its legal expenditures highlights the extent to which the obligation to report such legal expenses is not widely known. WSCCCE reasonably perceived the legal expenditures not as a reportable *political* expense, but as funds spent on the union's overall goal of collective bargaining. The proposed propositions were a direct attack on WSCCCE's ability to maintain its collective bargaining relationship with the City of Chelan in the same manner it had always done. And, WSCCCE contended that the proposed propositions would necessarily require the City of Chelan to violate its obligation to bargain in good faith according to the Public Employees Relations Act, RCW 41.56. Accordingly, WSCCCE

reasonably viewed legal expenses defending against the Foundation's attacks on the City's ability to engage in good faith negotiations as indistinguishable from its role in serving as the collective bargaining representative of Chelan employees. This is in contrast to the Foundation's legal expenses considered by the Washington Supreme Court in its recent decision, as those fees were untethered to any function other than its political agenda to weaken the role of public sector unions.

Second, WSCCCE's filing history makes clear that any alleged noncompliance was isolated or limited in nature, and not the result of systemic or ongoing problems. While WSCCCE itself has never before had occasion to file reports with the PDC, it *does* maintain a political committee which has diligently filed reports with the PDC to report its expenditures and contributions. Far from having systemic or ongoing problems, WSCCCE employs a Business Manager that is tasked with administering the political committee, including filing reports with the PDC. *See* PDC Case No. 51086, Response of WSCCCE (discussing Barbara Corcoran's duties in administering the WSCCCE political committee). There is no reason to believe that WSCCCE would neglect to report any similar expenditures it may make in the future.

Third, the impact of the noncompliance on the public was minimal. In light of the fact that the two proposed propositions were ultimately determined not to be proper subjects of the municipal initiative power, voters were never asked to approve or reject the propositions, and never had occasion or need to investigate the sources of funds supporting or opposing the propositions. The impact on the public was therefore minimal to nonexistent. Further, WSCCCE's involvement in opposing the propositions inclusion on the ballot was hardly secret – the litigation was publicly reported on as it progressed. *See e.g.* Robbins, Jefferson, "Chelan anti-union petitions struck down in court," Wenatchee World, Feb. 27, 2015, available at https://www.wenatcheeworld.com/news/local/chelan-anti-union-petitions-struck-down-in-court/article_e054ee75-8108-5717-b83f-a327bf19ffa1.html (quoting WSCCCE staff representative Tom Cash and discussing WSCCCE's involvement in the litigation). Further, unlike the Foundation, which provided legal services to support a third party such that its involvement in the litigation was not readily apparent from the face of the litigation, WSCCCE litigated in its own name and any member of the public reviewing the pleadings would understand WSCCCE's role in the litigation and position in opposing the propositions.

Fourth, there is no evidence that any person benefitted from the failure to report the expenditures. No suggestion has been made, or could be made, that any person or entity benefitted from the failure to report the legal expenditures.

Fifth, WSCCCE promptly took corrective action when its alleged noncompliance was brought to its attention. While WSCCCE did not realize the need to file C-6 reports prior to the instant complaint being filed against it, it has since filed reports fully disclosing the costs of legal fees it paid opposing the two propositions. *See* enclosed C-6 reports.

Sixth, WSCCCE is a first-time filer. While WSCCCE maintains a PAC which diligently files C-3 and C-4 reports as to its expenditures and contributions, WSCCCE itself has never before filed with the PDC and has never had complaints filed against it.

Finally, the alleged violation concerns a novel issue that had not clearly been addressed by the courts or the PDC prior to the litigation between WSCCCE, the Freedom Foundation, and the City of

Chelan. While the Washington Supreme Court ultimately ruled that expenditures supporting or opposing a ballot proposition are reportable regardless of when signatures are gathered, so long as the measure is eventually filed with an election official, that issue had never before been addressed by the PDC or the courts.

In light of each of the above-described factors, WSCCCE contends that this case is appropriate for alternative resolution pursuant to WAC 390-37-061. Should the PDC determine that it is appropriate to issue a penalty in this matter, WSCCCE requests that each of the mitigating factors discussed above be taken into consideration. If you have any questions or concerns please feel free to contact me at 206-257-6011 or via e-mail at franco@workerlaw.com.

Sincerely,

A handwritten signature in black ink, appearing to read "Danielle Franco-Malone". The signature is fluid and cursive, with a large initial "D" and a long, sweeping underline.

Danielle Franco-Malone
Counsel for WSCCCE



Reporting Form for: (check one)

Instructions on Page 3

- INDEPENDENT EXPENDITURES** (Occurring at any time) — **\$100 or more**
 INDEPENDENT EXPENDITURE ADS (Appearing within 21 days of an election) — **\$1,000 or more**
 ELECTIONEERING COMMUNICATIONS, Except Contributions (Appearing within 60 days of an election) — **\$1,000 or more**

1. Name and complete postal mailing address of sponsor: Washington State Council of County and City Employees, AFSCME, AFL-CIO PO BOX 750, EVERETT WA 98206	E-mail C2everett@council2.com Telephone 425-303-8818
--	---

2. Itemize expenditures of more than \$100 associated with the independent expenditure or electioneering communication.

Date Made	Date First Presented/ Mailed	Name and Address of Vendor or Recipient	Description of Expenditure (e.g., direct mail or newspaper, TV or radio ad)	Amount or Value (*See Below)
1/15/15	N/A	Reid, McCarthy, Ballew & Leahy, LLP 100 West Harrison St, North Tower, Ste 300 Seattle, WA 98119	Legal Fees	3,205.00
Expenditures \$100 or less not itemized above				\$ 0.00
Total this report				\$ 3,205.00
Amount or Value <small>*If no reasonable estimate can be made of value, describe activity, services, property or right furnished precisely and attach copy of item produced or distributed.</small>				Total independent expenditures and electioneering communications made during this election campaign. Include amounts shown in this report and previously submitted C-6 reports. \$ 3,205.00

3. List of candidate(s) or ballot proposition(s) identified in the advertising.				Show portion of current expense attributable to each candidate or proposition	Show total C-6 expenses related to each candidate/ proposition during election campaign
Candidate/Proposition	Office/District/ Proposition No.	Party	Check Support or Oppose		
Chelan Propositions 1& 2 (2014)			<input type="checkbox"/> Support <input checked="" type="checkbox"/> Oppose	\$ 3,205.00	\$ 3,205.00
			<input type="checkbox"/> Support <input type="checkbox"/> Oppose	\$	\$
			<input type="checkbox"/> Support <input type="checkbox"/> Oppose	\$	\$
			<input type="checkbox"/> Support <input type="checkbox"/> Oppose	\$	\$
			<input type="checkbox"/> Support <input type="checkbox"/> Oppose	\$	\$
Continued on attached sheet <input type="checkbox"/>				\$	\$

Filer Name:

4. If reporting an Electioneering Communication, it is necessary to disclose information concerning the source of funding for the communication. Select the description that applies:

- a) ___ An individual using only personal funds.
- b) ___ An individual using personal funds and/or funds received from others.
- c) ___ A business, union, group, association, organization, or other person using only general treasury funds.
- d) ___ A business, union, group, association, organization, or other person using general treasury funds and/or funds received from others.
- e) ___ A political committee filing C-3 and C-4 reports. (RCW 42.17A.205 - .240)
- f) ___ A political committee filing C-5 reports. (RCW 42.17A.250)
- g) ___ Other

If (b), (d), (f), or (g) applies, complete section 5 below. If (e) applies, also complete section 5 if the committee received funds that were requested or designated for the communication.

5. Sources giving in excess of \$250 for the electioneering communication:

Date Received	Source's Name, Address, City, State, Zip	For individuals, Employer's Name, City and State	Amount
			\$
		Occupation	
			\$
		Occupation	
			\$
		Occupation	
			\$
		Occupation	
			\$
		Occupation	
		Sub-Total	\$
		Amount from attached pages	\$
	Continued on attached sheet <input type="checkbox"/>	TOTAL FUNDS RECEIVED	\$

Sponsor of Independent Expenditure or Electioneering Communication		
<p>I certify (or declare) under penalty of perjury under the laws of the State of Washington that this expenditure was not made in cooperation, consultation, or concert with, or at the request or suggestion of, a candidate, a candidate's authorized committee, or an agent of a candidate nor does it otherwise constitute a contribution under RCW 42.17A.005. I further certify that the above information is true, complete, and correct to the best of my knowledge.</p>	Signature	Printed Name Chris Dugovich
	Street address 3305 Oakes Ave	
	City/State/Zip Everett, WA 98201	
	Date Signed	Place Signed (city and county) Everett - Snohomish
	<p>*RCW9A.72.040 provides that "(1) A person is guilty of false swearing if he makes a false statement, which he knows to be false, under an oath required or authorized by law. (2) False swearing is a misdemeanor."</p>	



Reporting Form for: (check one)

Instructions on Page 3

- INDEPENDENT EXPENDITURES** (Occurring at any time) — **\$100 or more**
 INDEPENDENT EXPENDITURE ADS (Appearing within 21 days of an election) — **\$1,000 or more**
 ELECTIONEERING COMMUNICATIONS, Except Contributions (Appearing within 60 days of an election) — **\$1,000 or more**

1. Name and complete postal mailing address of sponsor:
 Washington State Council of County and City Employees, AFSCME, AFL-CIO
 PO BOX 750, EVERETT WA 98206

E-mail
 C2everett@council2.com

Telephone
 425-303-8818

2. Itemize expenditures of more than \$100 associated with the independent expenditure or electioneering communication.

Date Made	Date First Presented/ Mailed	Name and Address of Vendor or Recipient	Description of Expenditure (e.g., direct mail or newspaper, TV or radio ad)	Amount or Value (*See Below)
3/09/15	N/A	Reid, McCarthy, Ballew & Leahy, LLP 100 West Harrison St, North Tower, Ste 300 Seattle, WA 98119	Legal Fees	15,411.15
Expenditures \$100 or less not itemized above				\$ 0.00

Amount or Value	Total this report	\$ 15,411.15
*If no reasonable estimate can be made of value, describe activity, services, property or right furnished precisely and attach copy of item produced or distributed.	Total independent expenditures and electioneering communications made during this election campaign. Include amounts shown in this report and previously submitted C-6 reports.	\$ 18,616.15

3. List of candidate(s) or ballot proposition(s) identified in the advertising.

Candidate/Proposition	Office/District/ Proposition No.	Party	Check Support or Oppose	Show portion of current expense attributable to each candidate or proposition	Show total C-6 expenses related to each candidate/ proposition during election campaign
Chelan Propositions 1 & 2 (2014)			<input type="checkbox"/> Support <input checked="" type="checkbox"/> Oppose	\$ 15,411.15	\$18,616.15
			<input type="checkbox"/> Support <input type="checkbox"/> Oppose	\$	\$
			<input type="checkbox"/> Support <input type="checkbox"/> Oppose	\$	\$
			<input type="checkbox"/> Support <input type="checkbox"/> Oppose	\$	\$
			<input type="checkbox"/> Support <input type="checkbox"/> Oppose	\$	\$
Continued on attached sheet <input type="checkbox"/>				\$	\$

Filer Name:

4. If reporting an Electioneering Communication, it is necessary to disclose information concerning the source of funding for the communication. Select the description that applies:

- a) ___ An individual using only personal funds.
- b) ___ An individual using personal funds and/or funds received from others.
- c) ___ A business, union, group, association, organization, or other person using only general treasury funds.
- d) ___ A business, union, group, association, organization, or other person using general treasury funds and/or funds received from others.
- e) ___ A political committee filing C-3 and C-4 reports. (RCW 42.17A.205 - .240)
- f) ___ A political committee filing C-5 reports. (RCW 42.17A.250)
- g) ___ Other

If (b), (d), (f), or (g) applies, complete section 5 below. If (e) applies, also complete section 5 if the committee received funds that were requested or designated for the communication.

5. Sources giving in excess of \$250 for the electioneering communication:

Date Received	Source's Name, Address, City, State, Zip	For individuals, Employer's Name, City and State	Amount
			\$
		Occupation	
			\$
		Occupation	
			\$
		Occupation	
			\$
		Occupation	
			\$
		Occupation	
		Sub-Total	\$
	Continued on attached sheet <input type="checkbox"/>	Amount from attached pages	\$
TOTAL FUNDS RECEIVED			\$

Sponsor of Independent Expenditure or Electioneering Communication		
I certify (or declare) under penalty of perjury under the laws of the State of Washington that this expenditure was not made in cooperation, consultation, or concert with, or at the request or suggestion of, a candidate, a candidate's authorized committee, or an agent of a candidate nor does it otherwise constitute a contribution under RCW 42.17A.005. I further certify that the above information is true, complete, and correct to the best of my knowledge.	Signature	Printed Name Chris Dugovich
	Street address 3305 Oakes Ave	
	City/State/Zip Everett, WA 98201	
	Date Signed	Place Signed (city and county) Everett - Snohomish
	*RCW9A.72.040 provides that "(1) A person is guilty of false swearing if he makes a false statement, which he knows to be false, under an oath required or authorized by law. (2) False swearing is a misdemeanor."	



Reporting Form for: (check one)

Instructions on Page 3

- INDEPENDENT EXPENDITURES** (Occurring at any time) — **\$100 or more**
 INDEPENDENT EXPENDITURE ADS (Appearing within 21 days of an election) — **\$1,000 or more**
 ELECTIONEERING COMMUNICATIONS, Except Contributions (Appearing within 60 days of an election) — **\$1,000 or more**

1. Name and complete postal mailing address of sponsor: Washington State Council of County and City Employees, AFSCME, AFL-CIO PO BOX 750, EVERETT WA 98206	E-mail C2everett@council2.com Telephone 425-303-8818
--	---

2. Itemize expenditures of more than \$100 associated with the independent expenditure or electioneering communication.

Date Made	Date First Presented/ Mailed	Name and Address of Vendor or Recipient	Description of Expenditure (e.g., direct mail or newspaper, TV or radio ad)	Amount or Value (*See Below)
4/16/15	N/A	Reid, McCarthy, Ballew & Leahy, LLP 100 West Harrison St, North Tower, Ste 300 Seattle, WA 98119	Legal Fees	10,306.89
Expenditures \$100 or less not itemized above				\$ 0.00

	Total this report	\$ 10,306.89
*If no reasonable estimate can be made of value, describe activity, services, property or right furnished precisely and attach copy of item produced or distributed.	Total independent expenditures and electioneering communications made during this election campaign. Include amounts shown in this report and previously submitted C-6 reports.	\$ 28,923.04

3. List of candidate(s) or ballot proposition(s) identified in the advertising.	Show portion of current expense attributable to each candidate or proposition	Show total C-6 expenses related to each candidate/ proposition during election campaign
Candidate/Proposition	Office/District/ Proposition No.	Party
Check Support or Oppose		
Chelan Propositions 1 & 2 (2014)	<input type="checkbox"/> <input checked="" type="checkbox"/>	10,306.89
	<input type="checkbox"/> <input type="checkbox"/>	\$
	<input type="checkbox"/> <input type="checkbox"/>	\$
	<input type="checkbox"/> <input type="checkbox"/>	\$
	<input type="checkbox"/> <input type="checkbox"/>	\$
Continued on attached sheet <input type="checkbox"/>	\$	\$

Filer Name:

4. If reporting an Electioneering Communication, it is necessary to disclose information concerning the source of funding for the communication. Select the description that applies:

- a) ___ An individual using only personal funds.
- b) ___ An individual using personal funds and/or funds received from others.
- c) ___ A business, union, group, association, organization, or other person using only general treasury funds.
- d) ___ A business, union, group, association, organization, or other person using general treasury funds and/or funds received from others.
- e) ___ A political committee filing C-3 and C-4 reports. (RCW 42.17A.205 - .240)
- f) ___ A political committee filing C-5 reports. (RCW 42.17A.250)
- g) ___ Other

If (b), (d), (f), or (g) applies, complete section 5 below. If (e) applies, also complete section 5 if the committee received funds that were requested or designated for the communication.

5. Sources giving in excess of \$250 for the electioneering communication:

Date Received	Source's Name, Address, City, State, Zip	For individuals, Employer's Name, City and State	Amount
			\$
		Occupation	
			\$
		Occupation	
			\$
		Occupation	
			\$
		Occupation	
			\$
		Occupation	
		Sub-Total	\$
		Amount from attached pages	\$
	Continued on attached sheet <input type="checkbox"/>	TOTAL FUNDS RECEIVED	\$

Sponsor of Independent Expenditure or Electioneering Communication		
<p>I certify (or declare) under penalty of perjury under the laws of the State of Washington that this expenditure was not made in cooperation, consultation, or concert with, or at the request or suggestion of, a candidate, a candidate's authorized committee, or an agent of a candidate nor does it otherwise constitute a contribution under RCW 42.17A.005. I further certify that the above information is true, complete, and correct to the best of my knowledge.</p>	Signature	Printed Name Chris Dugovich
	Street address 3305 Oakes Ave	
	City/State/Zip Everett, WA 98201	
	Date Signed	Place Signed (city and county) Everett - Snohomish
	<p>*RCW9A.72.040 provides that "(1) A person is guilty of false swearing if he makes a false statement, which he knows to be false, under an oath required or authorized by law. (2) False swearing is a misdemeanor."</p>	