

October 25, 2019

Public Disclosure Commission
711 Capitol Way S. #206
P.O. Box 40908
Olympia, WA 98504

Public Disclosure Commission Staff,

In accordance with RCW 42.17A.755(1) and RCW 42.17A.775, I would like to bring to your attention continuing violations of the Fair Campaign Practices Act (FCPA), Chapter 42.17A RCW, by the American Federation of State, County and Municipal Employees (AFSCME).

Based in Washington, D.C., AFSCME is a national labor union with affiliates around the country, including in Washington state. It maintains a fund called the “Special Account,” which is a “political organization” for the purposes of 26 USC § 527 and federal tax law. *See **Appendix No. 1 page 519***, a recent form 8872 the Special Account filed with the Internal Revenue Service (IRS).

Since at least 2008, the Special Account has periodically filed forms C5 with the Public Disclosure Commission (PDC) as an out-of-state political committee, though it does so simply under the name, “American Federation of State, County and Municipal Employees.”¹

In PDC Case No. 54145, the Freedom Foundation alleged that the Special Account failed to disclose \$250,000 in political expenditures made to influence Washington elections and more than \$80 million in contributions received. *See **App. 1 pgs. 522-536***, a copy of the complaint. Pursuant to a stipulation approved by the PDC, AFSCME agreed the Special Account failed to disclose the expenditures and contributions, as alleged, and was fined \$5,250 by the PDC (\$2,000 of which was suspended). *See **App. 1 pgs. 537-549***, the stipulation and final order in PDC Case No. 54145.

As a result of the previous complaint, the Special Account filed several new and amended C5 forms with the PDC disclosing its previously unreported expenditures and *some* of the unreported contributions. *See **App. 1 pgs. 550-584***, the Special Account’s new and amended C5 forms.

However, the Special Account has violated the terms of the PDC’s order and RCW 42.17A.250

¹ The Special Account’s most recently filed C5 form lists Elissa McBride as the only officer. Her contact information is listed as: 1625 L Street NW, Washington, D.C., 20036, (202) 429-1088, chui@afscme.org. Its most recently filed 8872 form also indicates Ms. McBride is the “custodian of records” for the Special Account, but the form lists Selma Golding as the “contact person.” Ms. Golding’s contact information is listed as: 1625 L Street NW, Washington, D.C., 20036, sgolding@afscme.org, (202) 429-1000. In PDC Case No. 54145, the Special Account was represented by Danielle Franco-Malone: franco@workerlaw.com.

by failing to disclose more than \$10 million in contributions it has received since 2014, including contributions from entities other than AFSCME.

As a result, the PDC should both reinstate the suspended portion of the penalty levied against the Special Account in Case 54145 and treat these egregious facts as a new and separate violation warranting further enforcement action.

Applicable Statutes and Regulations

RCW 42.17A.250 specifies the reporting requirements for out-of-state political committees:

“(1) An out-of-state political committee organized for the purpose of supporting or opposing candidates or ballot propositions in another state that is not otherwise required to report under RCW 42.17A.205 through 42.17A.240 shall report as required in this section when it makes an expenditure supporting or opposing a Washington state candidate or political committee. The committee shall file with the commission a statement disclosing:

- (a) Its name and address;
- (b) The purposes of the out-of-state committee;
- (c) The names, addresses, and titles of its officers or, if it has no officers, the names, addresses, and the titles of its responsible leaders;
- (d) The name, office sought, and party affiliation of each candidate in the state of Washington whom the out-of-state committee is supporting or opposing and, if the committee is supporting or opposing the entire ticket of any party, the name of the party;
- (e) The ballot proposition supported or opposed in the state of Washington, if any, and whether the committee is in favor of or opposed to that proposition;
- (f) The name and address of each person residing in the state of Washington or corporation that has a place of business in the state of Washington who has made one or more contributions in the aggregate of more than *twenty-five dollars to the out-of-state committee during the current calendar year, together with the money value and date of the contributions;
- (g) The name, address, and employer of each person or corporation residing outside the state of Washington who has made one or more contributions in the aggregate of more than *two thousand five hundred fifty dollars to the out-of-state committee during the current calendar year, together with the money value and date of the contributions. Annually, the commission must modify the *two thousand five hundred fifty dollar limit in this subsection based on percentage change in the implicit price deflator for personal consumption expenditures for the United States as published for the most recent twelve-month period by the bureau of economic analysis of the federal department of commerce;
- (h) The name and address of each person in the state of Washington to whom an expenditure was made by the out-of-state committee with respect to a candidate or political committee in the aggregate amount of more than *fifty dollars, the amount, date, and purpose of the expenditure, and the total sum of the expenditures; and
- (i) Any other information as the commission may prescribe by rule in keeping with the policies and purposes of this chapter.

(2) Each statement shall be filed no later than the tenth day of the month following any month in which a contribution or other expenditure reportable under subsection (1) of this section is made. An out-of-state committee incurring an obligation to file additional statements in a calendar year may satisfy the obligation by timely filing reports that supplement previously filed information.”

The corresponding regulation governing out-of-state political committees is WAC 390-16-049, which establishes out-of-state political committees are to disclose their contributions and expenditures on forms C5.

Allegation: Failure to disclose contributions received on C5 forms

In response to the Freedom Foundation’s complaint in PDC Case No. 54145, the Special Account filed two batches of C6 forms on August 16, 2019 and September 3, 2019, respectively, disclosing the \$250,000 in expenditures previously unreported. The C6 forms also disclosed \$71,005,187.76 in contributions received from AFSCME since January 2014. *See App. 1 pgs. 550-584.*

However, in 8872 forms filed with the IRS, the Special Account disclosed \$81,322,791 in contributions received during the same period. *See App. 1 pgs. 2-521*, all 8872 forms filed by the Special Account with the IRS from 2012-2018. Not all of these contributions exceeded the threshold for disclosure to the PDC on C5 forms. In response to the Freedom Foundation’s original complaint, the Special Account contended that some of the contributions it reported to the IRS reflected refunds or uncashed checks. *See App. 1 pgs. 587-588*, the Special Account’s response to the Freedom Foundation’s complaint in PDC Case No. 54145.

But even excluding contributions below the disclosure threshold set by RCW 42.17A.250(1)(g) and not counting contributions that appear to be refunds or uncashed checks² only narrows the discrepancy by \$164,157. This leaves at least \$10,153,446 in contributions received by the Special Account undisclosed on C5 forms.³ *See Appendix No. 2*, a comparison of contributions reported by the Special Account to the IRS on 8872 forms and to the PDC on C5 forms.

Most of the unreported contributions to the Special Account came from AFSCME, including:

1. An \$11,857 contribution on January 16, 2014;
2. A \$732,061 contribution on January 17, 2014;
3. A \$21,086 contribution on January 17, 2014;
4. A \$19,160 contribution on January 17, 2014;
5. A \$14,170 contribution on January 17, 2014;
6. A \$582,334 contribution on January 22, 2014;
7. A \$290,658 contribution on January 22, 2014;

² It is not clear that the expenditure of funds later refunded should *not* be disclosed on C5 forms just as the Special Account disclosed them on its 8872 forms. Refunds are excluded from this calculus merely to give the Special Account the benefit of the doubt.

³ \$81,322,791 in 8872 contributions - \$164,157 refunded/under threshold contributions - \$71,005,187.76 disclosed on C5 forms = \$10,153,446 in contributions *not* disclosed on C5 forms.

8. A \$177,114 contribution on January 22, 2014;
9. An \$89,787 contribution on January 22, 2014;
10. An \$87,836 contribution on January 22, 2014;
11. A \$53,066 contribution on January 22, 2014;
12. A \$33,945 contribution on January 22, 2014;
13. A \$31,355 contribution on January 22, 2014;
14. A \$25,943 contribution on January 22, 2014;
15. A \$335,050 contribution on January 23, 2014;
16. A \$701,167 contribution on February 4, 2014;
17. A \$138,367 contribution on February 12, 2014;
18. A \$357,192 contribution on February 18, 2014;
19. A \$398,302 contribution on February 24, 2014;
20. A \$301,025 contribution on February 25, 2014;
21. A \$677,896 contribution on February 28, 2014;
22. A \$499,525 contribution on March 4, 2014;
23. A \$468,787 contribution on March 18, 2014;
24. A \$339,788 contribution on March 18, 2014;
25. A \$78,905 contribution on March 31, 2014;
26. A \$60,312 contribution on March 31, 2014;
27. A \$42,299 contribution on March 31, 2014;
28. A \$548,583 contribution on June 10, 2014;
29. A \$390,997 contribution on June 10, 2014;
30. A \$302,962 contribution on June 10, 2014;
31. A \$168,662 contribution on June 10, 2014;
32. A \$129,158 contribution on June 10, 2014;
33. A \$479,102 contribution on June 30, 2014; and,
34. A \$109,006 contribution on June 30, 2014.

Additionally, several unreported contributions came from outside entities, including a contribution from “Michigan for All” in the amount of \$21,000 on April 10, 2015, and a contribution from “AFSCME SEIU Florida” on February 8, 2018 in the amount of \$11,609.

In its response to the Freedom Foundation’s original complaint, the Special Account claimed,

“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.”

See App. 1 pgs. 587.

However, in the case of Michigan for All, the Special Account’s 8872 forms disclose that it made: (i) a \$250,000 expenditure to Michigan for All on September 4, 2014; (ii) a \$200,000 expenditure on September 12, 2014; (iii) a \$250,000 expenditure on October 17, 2014; and (iv) a \$50,000 expenditure on October 28, 2014. *See App. 1 pgs. 215, 227, 245, and 256*, respectively. Accordingly, Michigan for All’s \$21,000 contribution to the Special Account on April 10, 2015

does not correspond to any previous expenditure by the Special Account and does not appear to be simply the reflection of an uncashed or voided check. See **App. 1 pgs. 2-521**. Instead, while the Special Account characterizes the \$21,000 contribution as a “partial refund,” it reflected an actual deposit of funds into the Special Account from an outside source. As such, it should have been, but was not, disclosed on the Special Account’s C5 forms, either originally or subsequent to the Freedom Foundation’s first complaint.

Regarding AFSCME SEIU Florida, the Special Account’s 8872 forms record several *in-kind* expenditures to AFSCME SEIU Florida: (i) \$17,500 on August 11, 2017; (ii) \$15,000 on August 16, 2017; (iii) \$15,877 on August 17, 2017; (iv) \$30,872 on September 15, 2017; and (v) \$900 on September 28, 2017. See **App. 1 pgs. 414, 421, 421, 420, and 396**, respectively. However, the 8872 forms reflect no cash contributions to AFSCME SEIU Florida prior to the Special Account’s receipt of an \$11,609 cash contribution from AFSCME SEIU Florida on February 8, 2018. See **App. 1 pgs. 2-521**. As such, the contribution appears to reflect an actual deposit of funds into the Special Account from an outside source and should have been, *but was not at any time*, disclosed by the Special Account on its C5 forms.

The prior stipulation and final order in PDC Case 54145

Unfortunately, the stipulation and final order in PDC Case 54145, approved without any PDC investigation, appear to have taken AFSCME’s reply to the original complaint and late filed C5 forms at face value. Consequently, they incorporate material errors of fact and obscure continued lack of compliance with the FCPA by AFSCME’s Special Account.

First, the stipulation lists as a “mitigating factor” that the “late reported total contributions received consisted entirely of transfers from AFSCME International into AFSCME’s own segregated account.” See **App. 1 pg. 539**. Likewise, the PDC’s final order states the “late-reported total contributions received involved transfers from AFSCME International into AFSCME’s own segregated account.” See **App. 1 pg. 546**.

While it is true that all the late *reported* contributions received by the Special Account came from AFSCME, the Special Account still has yet to disclose receipt of at least two contributions from external sources during the period in question that exceed the threshold for disclosure on C5 forms, as explained above.⁴

Second, even the stipulation and the PDC’s final order implicitly acknowledge that *not all* of AFSCME’s contributions to the Special Account were disclosed in response to the first complaint.

Both the stipulation (signed by AFSCME) and the PDC’s final order correctly note that the Special Account failed to disclose more than \$81 million in contributions received (paragraphs

⁴ According to its 8872 forms, the Special Account received additional contributions from outside entities that do not appear to be simply uncashed/voided checks or refunds but do not exceed the monetary threshold for disclosure on C5 forms. See **App. 2**. Still, these contributions contradict the Special Account’s assertion that it “is entirely funded by AFSCME.” See **App. 1 pg. 586**.

12 and 10, respectively). *See App. 1 pgs. 539, 546.* This is the amount the original complaint alleged the Special Account failed to disclose.

However, the late-disclosed contribution amounts listed in the findings of fact included in both the stipulation and final order do not add up to the total \$81 million in contributions not disclosed. According to the findings of fact in the stipulation and final order, AFSCME late reported (after the original complaint was filed):

- \$29,368,240 in contributions received from January through October 2014 (paragraph 7 in the stipulation and 6 in the final order);
- \$1,345,757 in contributions received from January through July 2015 (paragraphs 8 and 7, respectively);
- \$7,485,733 in contributions received from January through December 2015 (paragraphs 9 and 8, respectively); and,
- \$14,232,354 in contributions received from January through August 2018 (paragraphs 10 and 9, respectively).

This totals to \$51,086,327⁵ — far short of the \$81 million AFSCME stipulated to failing to disclose as alleged.

Part of the discrepancy can be explained by the fact that both the stipulation and findings of fact failed to note that the Special Account filed a C5 report on August 14, 2019 disclosing contributions received from AFSCME from January through September 2016 totaling \$19,918,861. *See App. pgs. 564-567.*

Thus, following the first complaint, the Special Account actually reported (albeit, late) \$71,005,188 in contributions received from AFSCME. At the same time, however, the Special Account disclosed receiving \$81 million to the IRS and signed a stipulation with the PDC agreeing it had failed to disclose the same amount. *See App. 2.*

In short, the Special Account has, to this day, failed to disclose more than \$10 million in contributions it received since 2014, including several contributions it received from external sources.

The portion of the penalty suspended in the original complaint should be assessed against the Special Account

The PDC's final order in Case No. 54145 imposed on the Special Account a civil penalty of \$5,250, of which \$2,000 was suspended subject to the following conditions:

“a. The Respondent is not found to have committed any further violations of Chapter 42.17A RCW or Title 390 WAC within four years of the date of this Final Order. The suspended penalty shall not be assessed based solely upon any remediable violation,

⁵ \$29,368,240 + \$1,345,757 + \$7,485,733 + \$14,232,354 = \$52,432,084 – \$1,345,757 in double-counted contributions received from January through July 2015 = \$51,086,327.

minor violation, or error classified by the Commission as appropriate to address by a technical correction.

b. The Respondent remains in full compliance with all PDC reporting requirements.

c. The non-suspended portion of the penalty (\$3,250) is paid by the Respondent within 30 days of the date of this Final Order.”

See App. 1 pg. 547.

Paragraph (b) presumes that AFSCME’s late-filed C5 reports fully disclosed the previously unreported contributions and expenditures. As discussed above, they do not. Accordingly, the Special Account *still* is not “in full compliance” with the FCPA.

The order further noted that, “...the suspended portion of the penalty will come due without further action of the Commission if the Respondent fails to comply with any of the conditions of the Commission's Order...”. *See App. 1 pg. 544.*

The Special Account’s failure to comply with the PDC’s order in Case No. 54145 by not disclosing more than \$10 million in contributions received should, at a minimum, result in the immediate assessment of the suspended portion of the penalty.

The Special Account’s failure to disclose \$10 million in contributions should be treated as a further violation

RCW 42.17A.755(1) provides that, when presented with a citizen complaint, the PDC “must” either: (1) dismiss it or otherwise resolve it as a remedial or technical violation; (2) initiate an investigation, conduct hearings and take enforcement action; or, (3) refer the complaint to the attorney general.

1. The PDC should not dismiss the complaint as the allegations are not “obviously unfounded or frivolous.”

WAC 390-37-005(2)(a) and WAC 390-37-060 provide the PDC may dismiss a complaint if it is “obviously unfounded or frivolous, or outside of the PDC’s jurisdiction.”

There can be no disputing the PDC’s jurisdiction over the present complaint against AFSCME, as a matter of law. Similarly, given that the documentation for the complaint relies upon 8872 forms submitted by AFSCME to the IRS under penalty of perjury and statements of fact previously agreed to by AFSCME in its stipulation with the PDC, the complaint is not “obviously unfounded or frivolous.”

2. The allegations against AFSCME involve “violations,” not “remedial violations,” “minor violations” or “requests for technical correction.”

RCW 42.17A.005(53) defines a “violation” as one “that is not a remediable violation, minor violation, or an error classified by the commission as appropriate to address by a technical correction.” Since AFSCME’s continued failure to disclose contributions received by the Special

Account involves neither “remedial violations,” “technical corrections,” nor “minor violations” (as further detailed below), it involves, by definition, substantive “violations.”

a. AFSCME’s violations were not “remedial.”

As defined by RCW 42.17A.005(45), a “remedial violation” is one that meets *all* the following criteria:

- “(a) Involved expenditures totaling no more than the contribution limits set out under RCW 42.17A.405(2) per election, or one thousand dollars if there is no statutory limit;
- (b) Occurred:
 - (i) More than thirty days before an election, where the commission entered into an agreement to resolve the matter; or
 - (ii) At any time where the violation did not constitute a material violation because it was inadvertent and minor or otherwise has been cured and, after consideration of all the circumstances, further proceedings would not serve the purposes of this chapter;
- (c) Does not materially affect the public interest, beyond the harm to the policy of this chapter inherent in any violation; and
- (d) Involved:
 - (i) A person who:
 - (A) Took corrective action within five business days after the commission first notified the person of noncompliance, or where the commission did not provide notice and filed a required report within twenty-one days after the report was due to be filed; and
 - (B) Substantially met the filing deadline for all other required reports within the immediately preceding twelve-month period; or
 - (ii) A candidate who:
 - (A) Lost the election in question; and
 - (B) Did not receive contributions over one hundred times the contribution limit in aggregate per election during the campaign in question.”

The largest contribution limit specified in RCW 42.17A.405(2) and updated by WAC 390-05-400 is \$2,000 for state and special purpose district elections. The more than \$10 million in unreported contributions to the Special Account exceeds this threshold by several orders of magnitude, so prong (a) above is not satisfied.

Given that the primary purpose of the FCPA is to ensure “that political campaign... contributions and expenditures be fully disclosed to the public,”⁶ AFSCME’s failure to disclose more than \$10 million in contributions received materially affected the public interest. Accordingly, prong (c) is not satisfied.

AFSCME has not yet been confronted about its continued noncompliance by the PDC

⁶ RCW 42.17A.001(1).

so (d)(i)(A) cannot yet be evaluated. AFSCME is not a candidate, so (d)(ii) is inapplicable.

In short, the magnitude of AFSCME’s continued violations easily surpasses the criteria to be considered “remedial.”

b. AFSCME’s violations did not involve “requests for technical corrections.”

RCW 42.17A.005(51) defines “technical correction” as:

“...a minor or ministerial error in a required report that does not materially impact the public interest and needs to be corrected for the report to be in full compliance with the requirements of this chapter.”

AFSCME’s violations do not meet this definition.

First, given that the primary goal of the FCPA is to ensure “that political campaign... contributions and expenditures be fully disclosed to the public,”⁷ AFSCME’s failure to disclose receipt of at least 36 contributions from at least three out-of-state contributors totaling more than \$10 million had a materially negative impact on the public interest.

Second, complete and continued failure to report these contributions received is not a “minor or ministerial error,” as the reporting of contributions and expenditures is the heart and soul of the FCPA’s disclosure regime.

AFSCME’s violations most certainly do not meet the definition of “technical correction.”

c. AFSCME’s violations were not “minor.”

While “critical information” for the purposes of WAC 390-37-061 is not defined, it would be unreasonable to conclude that AFSCME’s failure to disclose 36 separate contributions from three contributors *totaling more than \$10 million* did not consist of “critical information” and did not “materially affect the public interest.” This is especially so in light of the FCPA’s goal “that political campaign... contributions and expenditures be fully disclosed to the public.”⁸

3. The PDC should initiate enforcement action against AFSCME for its violations.

Because AFSCME’s continued reporting failures cannot be considered remedial violations, technical corrections, or minor violations, they are, by definition “violations.” Accordingly, the PDC should initiate an investigation, conduct hearings and take enforcement action as required by RCW 42.17A.755(1)(b).

⁷ *Ibid.*

⁸ RCW 42.17A.001(1).

As has already been established in Case No. 54145, AFSCME is a massive political organization with no shortage of resources or expertise at its disposal. It has no excuse for its consistent noncompliance with the FCPA, particularly after already being subject to sanctions.

Whether the result of willful noncompliance or carelessness, the Special Account's continued failure to fully disclose millions of dollars of contributions *even after being caught and penalized* shows AFSCME simply does not take compliance with Washington's campaign finance laws seriously.

As is now apparent, the PDC was exceedingly lenient in its resolution of Case No. 54145. The \$3,250 that the Special Account paid in penalties was a tiny fraction of the \$250,000 in expenditures and more than \$81 million in contributions it failed to disclose. AFSCME's continued flouting of Washington laws – as proven by its apparent misrepresentations to the PDC in response to the original complaint and its failure to comply with the PDC's order – should foreclose similar indulgence in the present case.

Fundamentally, AFSCME's pattern of disregard for Washington law stands in direct defiance of the FCPA's proclamation that "political campaign and lobbying contributions and expenditures be fully disclosed to the public and that secrecy is to be avoided."⁹ Undoubtedly, failure to hold the Special Account accountable will send a message to other large, out-of-state political organizations that they can be violate Washington state law with impunity, since the penalty (if any) for doing so is negligible at best.

Accordingly, we again respectfully request that the PDC undertake a thorough investigation into these allegations and either initiate an enforcement action against the Special Account or refer the matter to the Attorney General for prosecution.

Please do not hesitate to let me know if I can be of any further assistance. Thank you for your consideration and for your attention to this matter.

Sincerely,



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⁹ *Ibid.*