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*Original via US First Class mail
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May 21, 2021

Tabatha Blacksmith
Compliance Coordinator
Washington State Public Disclosure Commission
711 Capitol Way S #206
Olympia, WA 98504

Re: Washington Federation of State Employees (Freedom Foundation Complaint)
PDC Case No. 89278
Our File No. 3389-007

Dear Ms. Blacksmith:

We are writing in response to the e-mail the PDC sent to Leanne Kunze, Executive Director of Washington Federation of State Employees (WFSE), on April 21, 2021, relating to a complaint filed against WFSE by the Freedom Foundation (Foundation) on or about April 14, 2021. The undersigned is legal counsel for WFSE in this matter. The following is a brief summary of WFSE's position regarding this matter. We are happy to provide additional information and analysis upon your request.

The Foundation's complaint alleges that WFSE was or is obligated to register and report to the PDC as a political committee. The complaint is identical in many key respects to the meritless complaints the Foundation filed against WFSE on January 17, 2017 (PDC Case Number 14266) and January 2, 2020 (PDC Case No. 62411).

In particular, the Foundation's new complaint again focuses on a September 9, 2016, transaction involving \$200,000 that was transmitted from the American Federation of State, County and Municipal Employees (AFSCME)'s "Special Account" to WFSE. Rather than arguing, as it did in its most recent complaint, that this is evidence that WFSE's separate segregated fund (SSF) received money from a source other than WFSE, i.e., AFSCME's Special Account (an argument that the PDC has previously rejected), the Foundation now claims that WFSE itself received this money for electoral political purposes. However, there is no evidence that WFSE received or spent the money for electoral political purposes, and that in fact did not happen. Despite its penchant for conjecture and hyperbole, the Foundation cannot point to any connection between the AFSCME money received by WFSE and any political expenditures or contributions subsequently made by WFSE. Thus, the claim that WFSE received this money from AFSCME for electoral political purposes must be rejected as lacking any factual basis.

In addition, the Foundation focuses on \$15,000 received by WFSE from AFSCME in late August of 2018, money which WFSE transmitted to the Retired Public Employees Council of Washington (RPEC), a Section 501(c)(4) social welfare organization, which was subsequently deposited into the Retired Public Employee Council of Washington PAC, a Section 527 political organization.¹ In this case, the Foundation's confusion is at least somewhat explicable; it is true, as the Foundation claims, that WFSE received this money from AFSCME, gave it to RPEC (the 501(c)(4) organization), and that this money was reported on September 4, 2018, by the Retired Public Employee Council of Washington PAC (RPEC's PAC). See <http://web.pdc.wa.gov/rptimg/default.aspx?repno=100856509> as funds received.

However, WFSE never intended the \$15,000 that it had received from AFSCME to go into RPEC's PAC. Under WFSE's longstanding policies and practices, WFSE does not make contributions to candidates for state or local office, or political committees that support or oppose such candidates directly out of its general funds. Instead, as the PDC is aware, WFSE expects and intends that *all* such contributions be made, if at all, by WFSE's SSF, which WFSE funds out of its general funds. WFSE does occasionally grant money directly to social welfare organizations out of its general funds, however, which is precisely what occurred here.

Consistent with the foregoing, WFSE did not make out its check to the name of the PAC, Retired Public Employee Council of Washington. Instead, it wrote its check out simply to "RPEC," which is the customary abbreviation for the social welfare organization, not to Retired Public Employee Council of Washington PAC.

Regrettably, RPEC appears to have misunderstood the intended recipient of these funds, and deposited the \$15,000 into its PAC. Be that as it may, this circumstance in no way establishes, as alleged by the Foundation, that WFSE intentionally received funds from AFSCME for electoral political purposes. The truth, instead, is that WFSE received money that was not earmarked for electoral political activity related to candidates, and at no time intended to spend that money for such purposes. Instead, it intended and attempted to provide this money to RPEC to support that entity's social welfare mission. Although RPEC seems to have provided this money to Retired Public Employee Council of Washington PAC, which in turn reported it as a political contribution received, that in no way establishes the factual predicate of the Foundation's claim, absent evidence that WFSE received the \$15,000 with the expectation that it would be used to make a political contribution, or in fact treated those funds in this manner. Because there is no evidence supporting either of those allegations, this portion of the Foundation's complaint should also be dismissed.

Finally, the Foundation regurgitates a claim it has made on many prior occasions in relation to other unions, to the effect that because WFSE spends money on electoral political activity, and that money, once spent, is reported to the PDC, the FEC, or the IRS, and information about those expenditures is therefore publicly available, then WFSE's members have "actual or constructive knowledge" or "should know, if reasonably observant," that their dues

¹ Note that the name of the PAC appears to be slightly different from the name of the social welfare organization; the name of the PAC includes the word "Employee," while RPEC uses the plural form of the noun, "Employees." https://web.pdc.wa.gov/rptimg/default.aspx?filerid_election_year=RETIPE%20501%3A%7C%3A2018

money is being spent in that manner, leading to the conclusion that payment of membership dues constitutes a “contribution” under state law, and that WFSE, as the receiver of these contributions, is therefore a political committee.

The PDC should reject that that argument here, as it has before, on the grounds that this analysis is (among other things) flatly inconsistent with the Supreme Court’s decision in *State ex rel. Evergreen Freedom Foundation v. Washington Educ. Ass’n*, 140 Wn.2d 615, 631 (2000) (“*EFF I*”), which held that in Washington, “general membership dues of a labor organization may be used as a source for political contributions,” without those dues thereby themselves being transformed into political contributions. *Accord*: WAC 390-16-330(1)(c)(i) (confirming that a labor union can receive funding from “regular and predetermined membership dues,” and also make political expenditures, without thereby becoming a political committee).

The argument is also inconsistent with prior PDC policy guidance. As far back as 1995, at least, the PDC has advised the legal representatives of labor organizations that the employers with whom they have collectively bargained agreements are not required by the statute or WAC 390-17-100 to obtain written authorization from employees prior to withholding or diverting a portion of the employees’ wages for dues. As was stated by then-Assistant Director for Public Information and Policy Development Vicki L. Ripple on January 26, 1995:

Wages and salaries that are withheld for purposes other than those contained in 42.17.680 [now RCW 42.17A.495(3)], as clarified by WAC 390-17-100, for legitimate dues deductions, for instance, are not subject to the requirements specified in that section of the law, even though a portion of the dues may ultimately be used to make a political contribution.

The contemporaneous construction placed on a statute by the agency charged with enforcement is, of course, accorded great weight. *In re Schome Park Care Ctr., Inc.*, 127 Wn.2d 774, 780 (1995); *Green River Community College, Dist. No. 10 v. Higher Educ. Personnel Bd.*, 95 Wn.2d 108, 118 (1980).

This conclusion is also compelled by judicial decisions issued subsequent to *EFF I* dealing with whether or not a labor organization is, or might be, a political committee obligated to register as such with the PDC. In *State ex rel. Evergreen Freedom Foundation v. Washington Educ. Ass’n*, 111 Wn. App. 586, 603 (“*EFF 2*”), the plaintiff asserted, inter alia, that the Washington Education Association was a “receiver of contributions” for political purposes. The Court, adopting the analysis of a 1973 Attorney General Letter Opinion, held that where a union’s members “paid dues into the [union’s] general fund, which was not segregated in any manner for political expenditures,” the members had no actual or constructive knowledge that their particular membership dues would be used for electoral political activity and, “[t]hus, those dues were not ‘contributions’ as defined under the Act” and the union in question was not a political committee as a receiver of contributions. *Id.* at 603.

In light of the foregoing, the Foundation, in arguing that receiving membership dues and then making political expenditures transforms WFSE into a political committee, is beating a horse that is not merely dead, but long-ago turned into glue.

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If you have any follow-up questions on this matter, please do not hesitate to contact the undersigned.

Sincerely,

A handwritten signature in black ink, appearing to read "Dmitri Iglitzin". The signature is fluid and cursive, with a long horizontal stroke at the end.

Dmitri Iglitzin
Danielle Franco-Malone
Counsel for WFSE

cc: Leanne Kunze