



STATE OF WASHINGTON
PUBLIC DISCLOSURE COMMISSION

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MEMORANDUM

Date: February 1, 2017
To: Public Disclosure Commission Members
From: Kurt Young, PDC Compliance Officer
Subject: 45-Day Citizen Action Complaint
Service Employee's International Union 775 (SEIU 775)
PDC Case 12270

I. Background, Complaint Allegations, Request for PDC Review and Statutes/Rules

The Service Employee's International Union 775 (SEIU 775) is a local labor organization that is affiliated with the Service Employees International Union. SEIU 775 is a Lobbyist Employer that has been registered with the PDC since 2004, and also has a political action committee.

On October 4, 2005, SEIU Local 775 Separate Segregated Fund filed a Committee Registration (C-1pc report), registering as a new political action committee, selecting the Full Reporting option and listing David Rolf as Treasurer.

On August 29, 2007, SEIU Healthcare 775NW Separate Segregated Fund filed an amended C-1pc report, listing Adam Glickman-Flora as the Campaign Manager and Suzanne Wall as Treasurer.

On February 8, 2012, Service Employees International Union Healthcare 775NW Quality Care Committee filed a C-1pc report

On December 15, 2016, a 45-day Citizen Action Letter (Complaint) was filed by The Freedom Foundation (FF) pursuant to RCW 42.17A.765(4) with the Washington State Attorney General, Clark County Prosecuting Attorney, Ferry County Prosecuting Attorney, Lewis County Prosecuting Attorney, Lincoln County Prosecuting Attorney, King County Prosecuting Attorney, and Thurston County Prosecuting Attorney. FF alleged that SEIU 775 have violated provisions of RCW 42.17A by failing to register and report as a political committee for their combined support of candidates and ballot propositions in Washington State during calendar year 2016.

Exhibit #1.

The Citizen Action Letter was received by the Washington State Attorney General's Office (AGO) on December 15, 2016, and the Complaint was referred to the PDC by the AGO for investigation on January 5, 2017.

RCW 42.17A.005(39) defines "political committee" as "any person (except a candidate or an individual dealing with his or her own funds or property) having the expectation of receiving contributions or making expenditures in support of, or opposition to, any candidate or any ballot proposition."

RCW 42.17A.205 require political committees to register with the PDC if they have the expectation of receiving contributions or making expenditures in support a statewide ballot proposition.

RCW 42.17A.235 states that **RCW 42.17A.240** require political committees, including bona fide political party committees, to timely and accurately file reports of contributions and expenditures, including the disclosure of contributions made to candidates for public office. Under the full reporting option, until five months before the general election, Summary Contribution and Expenditure Reports (C-4 reports) are required monthly when contributions or expenditures exceed \$200 since the last report. C-4 reports are also required 21 and 7 days before each election, and in the month following the election, regardless of the level of activity. Monetary Contribution reports (C-3 reports) are required to be filed weekly beginning June 1st of an election year, on the Monday following the date of deposit, and monetary contributions must be deposited within five business days of receipt.

PDC Interpretation 07-02, *Primary Purpose Test Guidelines*, distills relevant case law and other legal guidance (AGO 1973 no. 14, *State v. Dan Evans Committee*, and *Evergreen Freedom Foundation v. Washington Education Association*) concerning the definition of "political committee" in RCW 42.17.020(39). As discussed in the Interpretation, a person is a political committee if that person becomes a "receiver of contributions" to support or oppose candidates or ballot propositions, or if expenditures to support or oppose candidates or ballot propositions become one of the person's primary purposes.

II. Complaint

The 45-day letter alleges that the SEIU 775 as a labor organization, engaged in political activities, and those activities indicate that a primary purpose of the union is to influence elections. Therefore, the union needs to report all activities as a political committee and not just contribution and expenditure activities undertaken by a political committee.

As part of the complaint filed with the PDC, FF provided 65 exhibits containing thousands of pages of documents (Note: none of the exhibits are attached to staff's Investigative Review), that included the following:

- Multiple copies and amendments of US Department of Labor Forms LM-2 filed by SEIU 775 for calendar years 2010, 2011, 2012, 2013, 2014 and 2015.
- Copies of C-4 report and amended C-4 reports filed by SEIU 775 PAC for calendar years 2012-2016.

- A multi-page printout from the Working Washington website.
- An amended copy of IRS Form 990 for calendar year 2012.
- A copy of an SEIU 775 Membership Application.
- A printout from the SEIU 775 website entitled "About Us."
- A copy of SEIU 775 Constitution and By-laws.
- An SEIU 775 "Notice to Represented Members."
- A copy of SEIU 775 "Join Today" communication sent to non-members.
- A copy of an SEIU 775 email sent to members.
- Copies of SEIU 775 2012 and 2016 candidate endorsements.
- A copy of a 2016 SEIU 775 Candidate Guide.
- A copy of 2016 Initiative recommendations.
- A copy of a 2016 post-election email communication sent to members.
- A copy of a 2012 Jay Inslee C-3 report.
- Copies of 2016 I-1501: Campaign to Prevent Fraud and Protect Seniors C-3 reports.
- A copy of a 2016 Seattle Times article concerning SEIU and their participation in the 2016 election cycle.
- 720 pages of C-3 reports filed by candidates and political committees dating back to CY 2010, disclosing contributions that had been received from SEIU 775.
- 263 pages of C-4 reports
- Multiple copies of C-3 reports filed by candidates disclosing contributions received from SEIU 775.

III. Staff Investigative Review and Analysis

A. Records and Database Information

PDC staff reviewed the following documents:

- December 15, 2016, a 45-day Citizen Action Letter (Complaint) was filed by The Freedom Foundation (FF) against SEIU 775, and the multiple attachments included as part of the Complaint.
- SEIU 775 monetary and in-kind contributions, and expenditures listed in the PDC contribution and expenditure database.
- C-3, C-4 and Independent Expenditure reports (C-6 reports) filed by SEIU 775 PAC, Monthly Lobbyist Expense reports (L-2 reports) filed by SEIU 775 registered lobbyists, and Annual Lobbyist Employers reports (L-3 reports) filed by SEIU 775.
- PDC staff Executive Summary and Analysis of PDC Case 15-70 concerning a similar Complaint filed against SEIU 775 by the FF. **(Exhibit #2)**
- January 6, 2017, response letter from Dmitri Iglitzin, an attorney with Schwerin, Campbell, Barnard, Iglitzin & Lavitt, LLP, on behalf of SEIU 775 that was sent to Linda Dalton, Senior Assistant Attorney General and forwarded to PDC staff. **(Exhibit #3)**

B. PDC Staff Investigative Review Findings and Analysis

The scope of PDC staff's review of SEIU 775 activities is limited by the Citizen Action letter to potential alleged violations that occurred within two years from the date the Complaint was filed. PDC staff reviewed activities undertaken by SEIU 775, as a local union, and the SEIU 775 Quality Care PAC for calendar year 2016.

Summary of PDC Interpretation #07-02 "Primary Purpose Test Guidelines"

On May 2, 2007, the Commission adopted PDC Interpretation #07-02, which is based on a formal Attorney General's Opinion (AGO) and two court cases that were decided after Initiative 276 was approved by voters in 1972. The interpretation describes a "primary purpose" test or analysis that is used to assist in determining when an entity may become a political committee and be required to register and report in accordance with the disclosure requirements. See Exhibit #3.

Specifically, the interpretation referenced the trial court's decision in *Evergreen Freedom Foundation v. Washington Education Association* which adopted a standard for determining "one of the primary purposes" of an entity, and applied it by stating:

An organization is a political committee if one of its primary purposes is to affect governmental decision making by supporting or opposing candidates or ballot propositions, and it makes or expects to make contributions in support of or in opposition to a candidate or ballot measure.

The interpretation discussed two possible prongs or scenarios under which an entity (person) may become a political committee. The two prongs include: (1) Having the expectation to receive or receiving contributions that are used to support or oppose candidates or ballot propositions; or (2) Having the expectation of making expenditures to further the electoral political goals of an organization.

When the evidence indicates that one of an organization's primary purposes is electoral political activity during a specific period of time, the organization may be a political committee and be required to comply with the appropriate disclosure requirements.

Staff Review Findings

Mr. Igliztin stated in the response that the most recent complaint filed by the FF against SEIU 775 was "very similar, if not identical" to the allegations that were filed by FF against SEIU 775 on July 22, 2015. He went on to state that "Those allegations were carefully investigated by the Washington State Public Disclosure Commission ("PDC") in PDC Case No. 15-070, which issued an Executive Summary and Staff Analysis on or about September 22, 2015, which found the charges lacking in merit. On September 24, 2015, the Washington State Attorney General's Office then reached the same conclusion, effectively adopting both the analysis and the conclusions of the Commission."

Mr. Iglitzin stated that SEIU 775 was not a political committee required to register with PDC under the "contributions" prong because there is no evidence that it had "the expectation of receiving contributions" in support of, or opposition to, any candidate or ballot proposition.

Concerning FF's new allegations, Mr. Iglitzin provided the following:

- The first charge provides no evidence that the funds SEIU 775 received from SEIU International (SEIU) were either solicited or used for the purpose of supporting or opposing any candidate or ballot proposition. SEIU 775's LM- 2 report (see Exhibit's A and B) disclosed that a sum of money was provided to SEIU 775 by SEIU for "political advocacy," and showed that SEIU 775 received money from SEIU, but provided no evidence that the money was intended to be used for electoral political activity.
- The second argument makes "the same error or misunderstanding that flawed" FF's 2015 Complaint against SEIU 775 since the allegations fails to understand that the provision by SEIU 775 of providing staff time to other entities and then being reimbursed for such staff time is not a contribution. Mr. Iglitzin further stated that expenditures made to SEIU 775 by a political committee are a reimbursement and not a contribution, such as the example provided concerning Working Washington. The funds were not provided by SEIU 775 for the purpose of supporting or opposing a candidate or ballot proposition, but were paid for staff services provided by SEIU 775 to Working Washington.
- He noted that FF uses the same logic concerning the allegation that the funds paid, which were actually reimbursements made to SEIU 775 by SEIU 775 Quality Care PAC, were "to purchase staff time from SEIU 775 (Complaint Exhibits C, J, and K) and were not a contribution being made to SEIU 775 for electoral political purposes."
- The third argument, that "SEIU 775's activities during the two-year period covered by the Complaint were 'designed to raise money for SEIU COPE render SEIU 775' as a political committee under the 'contributions' prong of the primary purpose test for a political committee" is detailed below.

SEIU 775 as a Receiver of Contributions Prong

The complaint alleged that SEIU 775 is a political committee because it has an expectation of receiving contributions, and is a receiver of contributions. The complaint based that fact on an SEIU 775 Membership Application in which the union asks individuals who are not currently SEIU 775 members to become full union members. Once a member has joined the union and authorized their employer to withhold a designated monthly amount from their pay as dues, a portion of those dues monies are withheld as a contribution and forwarded to SEIU COPE, a federal political committee in Washington DC.

Based on the membership application, SEIU 775's role in these transactions is to ask non-members to become full members and to authorize payroll deductions for contributions to SEIU COPE. In soliciting contributions to a federal political committee, SEIU 775 was not a receiver of contributions under RCW 42.17A.

Nor do these actions demonstrate an expectation of receiving contributions reportable under RCW 42.17A. These activities do not make SEIU 775 a political committee.

Mr. Iglitzin stated that this allegation was previously investigated and rejected by the PDC in PDC Case 15-070, as noted by PDC staff in the Executive Summary and Staff Analysis. In addition, PDC staff noted additional factors that were discussed in the PDC Case 15-070, which were used to determine if SEIU 775 was a political committee as detailed below.

Primary Purpose Test Prong

The complaint also alleged that SEIU 775 is a political committee because one of its primary purposes is to support or oppose candidates or ballot propositions. To address this allegation, PDC staff reviewed evidence relevant to the analysis recommended by the *EFF v. WEA* court. SEIU 775's stated mission is to "unite the strength of all working people and their families, to improve their lives and lead the way to a more just and humane world." Its stated goals, as noted in the prior Complaint (PDC Case 15-070) included the following:

- Lift caregivers out of poverty.
- Build worker organizations that are powerful, sustainable, and scalable.
- Transform health and long-term care to ensure quality and access for all.
- Increase prosperity and reduce inequality for working people.

SEIU 775 has eight stated strategies to assist the union in achieving its goals which include: (1) Build worker leadership and activism; (2) Help workers form unions and other powerful organizations; (3) Hold politicians accountable; (4) Bargain strong contracts and provide quality services and benefits; (5) Advance pro-worker policy through influencing government, industry, and public opinion; (6) Build strategic partnerships; (7) Govern the Union democratically and use our resources responsibly; and (8) Adapt, innovate, and create.

Staff's assessment is that only two of the strategies, #3 and #5 may include an aspect involving electoral political activities. No evidence was submitted to contradict SEIU 775's public statements concerning the union's mission, goals and strategies to achieve its goal, and there was no evidence provided demonstrating that SEIU 775 has merely restated its primary political purpose in broad non-political terms.

Staff did not find any financial evidence showing that supporting candidates or ballot proposition campaigns was a top priority for SEIU 775 during calendar year 2016.

Staff found that SEIU 775's electoral political activity, described by its strategy to "hold politicians accountable," may have furthered its stated goals and mission, as well as possibly the strategy to advance pro-worker policy through influencing government.

However, no evidence was found that SEIU 775 has substantially achieved its stated goals and mission through a favorable outcome in an election, nor was a specific election campaign cited in the allegations. It is clear that SEIU 775 uses means other than electoral political activity to achieve its stated goals.

Mr. Iglitzin noted in his response that the AG's Office reviewed SEIU 775's expenditures prior to CY 2016, which included a portion of CY 2015, and concluded in September of 2015 that "[t]he records and the analysis do not support a conclusion that one of the primary purposes of SEIU 775 is campaign activities." He stated that the AG's Office previously reviewed SEIU 775's expenditures and "found, properly, that such expenditures do not convert SEIU 775 into a political committee, this letter need focus only on SEIU 775's 2016 expenditures, which similarly do not have that result."

Mr. Iglitzin provided the 2016 expenditures for SEIU 775, which included both cash and in-kind contributions made during the year. He stated that all of the contributions were properly reported by SEIU 775 on the Monthly Lobbyist Expense Reports (L-2 reports) filed by Adam Glickman, and included the following:

- \$1,585,000 contributed to the Campaign to Prevent Fraud and Protect Seniors.
- \$208,236.40 contributed to Raise Up Washington.
- \$58,763 contributed to the SEIU 775 Quality Care Committee
- \$2,500 contributed to Washington Won't Discriminate.
- \$151,249.70 contributed to Yes on I-125

Mr. Iglitzin stated that SEIU 775 has not completed its annual financial statements for CY 2016 that are to be submitted to the Internal Revenue Service (IRS). He stated that it was not possible to conduct a detailed analysis of the actual total expenditures for "electoral political activity" during CY 2016 and SEIU 775's 2016 total expenditures. He went on to state the following:

[W]e have determined that SEIU 775's total expenditures in 2016 will exceed its 2015 expenditures. The IRS Form 990 filed by SEIU 775 for calendar year 2015 reveals that SEIU 775 spent a total of \$25,259,216 in that year. Using that sum as the absolute minimum level of SEIU 775 expenditures in 2016, the amount of money spent by SEIU 775 on electoral political activity in 2016 will be less than 8% of its entire budget."

While this is a slightly higher percentage that was the case in prior years, it remains true, as the PDC found in its 2015 Executive Summary and Staff Analysis ... this amount is clearly less than a majority of SEIU 775's expenditure activity, considered an important part of the balancing of factors recommended by the *EFF v. WEA* court.

Looking at the expenditures made by SEIU 775 on electoral political activity during the two-year period covered by the Letter, for example - i.e., combining the amount spent in 2016 with the \$79,000 the PDC determined SEIU 775 spent in 2015 (see 2015 Executive Summary and Staff Analysis, page 5, third paragraph), and assuming the

same number for overall annual expenditures, \$25,259,216, for each of the two years covered - one can determine that during the relevant time period, SEIU 775 spent slightly less than 4% of its budget on electoral political activity - again, dramatically less than a majority of its expenditure activity.

No evidence was submitted to contradict SEIU 775's public statements concerning the union's mission, goals and strategies to achieve its goals. No evidence was provided demonstrating that SEIU 775 has merely restated its primary political purpose in broad nonpolitical terms. No non-financial evidence was provided showing that supporting candidates or ballot proposition campaigns was a top priority for SEIU 775 during either of the two years' subject to the Citizen Action Notice.

Finally, as part of PDC staff's 2015 Executive Summary and Analysis, Mr. Iglitzin stated the following:

2015 SEIU 775 is required to produce audited financial reports detailing its "chargeable" and "nonchargeable" expenditures to show how the union calculates its agency fee that must be paid by nonmembers in lieu of paying full membership dues. Chargeable expenses are for activities supporting its collective bargaining work, while non-chargeable expenditures are those expenditures that do not relate to negotiating and administering a collective agreement and in adjusting grievances and disputes. The agency fee for workers who are not full union members is equal to the full union dues multiplied by the percentage of chargeable expenditures to total expenditures."

PDC Staff Review of SEIU 775 Quality Care PAC & SEIU 775 Activities

Staff reviewed the PDC contribution and expenditure database, Monetary Contributions reports (C-3 reports), Summary Contribution and Expenditure reports (C-4 reports) filed by SEIU 775 Quality Care PAC, and Independent Expenditure/Electioneering Communications (C-6 reports) for the political activities undertaken during calendar years 2016.

Staff's review found the following:

I-1501: Campaign to Prevent Fraud and Protect Seniors: The PDC reports filed by the Pro-I 1501 Committee disclosed that SEIU 775 contributed a total of \$1,593,527 in support of the initiative which included \$1,535,000 in monetary contributions and \$58,527 for in-kind contributions for signature gathering (\$50,000), staff services, phone banking and postage.

I-1433: Raise Up Washington: The PDC reports filed by the Pro I-1433 Committee disclosed that SEIU 775 contributed a total of \$207,927 in support of the initiative which included \$173,000 in monetary contributions and \$34,927 for in-kind contributions for staff services, phone banking and postage.

I-1515: Washington Won't Discriminate: The PDC reports filed by the Anti I-1433 Committee disclosed that SEIU 775 contributed \$2,500 in monetary contributions to oppose the initiative.

I-125: Yes on I-125 Committee: (A 2016 City of Seattle ballot measure concerning Protecting Workers Rights) The PDC reports filed by the Pro I-125 Committee disclosed that SEIU 775 contributed a total of \$167,100 in support of the initiative which included \$120,000 in monetary contributions and \$47,100 for in-kind contributions for opinion research, and legal and staff services.

Contributions to SEIU 775 Quality Care Committee: The PDC reports filed by SEIU's 775 PAC disclosed that SEIU 775 contributed a total of \$58,912 which included a \$50,000 monetary contribution made on October 9, 2016, and \$8,912 for in-kind contributions for staff and overhead services.

SEIU 775 Quality Care PAC

The C-3 and C-4 reports filed by the PAC disclosed that the committee received \$816,665 in monetary contributions received and made \$737,318 in expenditures during CY 2016.

The monetary contributions received included \$674,321 in total contributions from the SEIU Political Education and Action Fund out of Washington DC, and the \$58,912 list above which included a \$50,000 monetary contribution made on October 9, 2016, and \$8,912 for in-kind contributions. The \$737,318 in committee expenditures in CY 2016 included contributions to political committees, candidates, and independent expenditures, that included the following:

- A \$200,000 in monetary contributions made to the Truman Fund (a caucus related political committee).
- A \$150,000 in monetary contributions made to the Kennedy Fund (another caucus related political committee).
- A \$50,000 monetary contribution made to the Washington State Democratic Central Committee.
- A \$50,000 monetary contribution made to New Directions PAC, an independent expenditures political committee.

IV. Conclusion

A review of the PDC database showed that SEIU 775 made campaign contributions during calendar year 2016 totaling \$2,029,966. While SEIU 775 has not completed IRS Form 990 for 2016, Form 990 filed by SEIU 775 for calendar year 2015 indicated that SEIU 775 spent a total of \$25,259,216.

Using 2015 annual expenditures of \$25,259,216 as a benchmark, the \$2,029,966 in political expenditures made during calendar year 2016 represented 8.03% of total projected expenditures.

This is clearly less than a majority of SEIU 775's expenditure activity, considered an important part of the balancing of factors recommended by the *EFF v. WEA* court.

SEIU 775 acknowledged that it made expenditures during the period covered by the complaint to its PAC, and in support of or opposition to ballot propositions, but denied that the primary, or one of the primary, purposes of SEIU 775 is to affect, directly or indirectly, governmental decision making by supporting or opposing candidates or ballot propositions, such that SEIU 775 is a political committee subject to the Public Disclosure Act's disclosure requirements.

1. Based on the factors identified in staff's investigation and described above, staff has determined that SEIU 775 does not appear to be a political committee with a requirement to register and report with the PDC. SEIU 775 did not violate RCW 42.17A.205, .235, and .240 because: (1) It is not a "receiver of contributions" in support of, or in opposition to candidates or ballot propositions; and (2) Supporting candidates or ballot propositions is not one of its primary purposes.

Investigative Review Exhibits

- Exhibit #1** December 15, 2016, 45-day Citizen Action Letter (Complaint) filed by The Freedom Foundation against SEIU 775. (Note – excluding thousands of pages of exhibits)
- Exhibit #2** PDC staff Executive Summary and Analysis of PDC Case 15-70, a 2015 Complaint filed against SEIU 775 by the Freedom Foundation.
- Exhibit #3** January 6, 2017, response letter from Dmitri Iglitzin, an attorney with Schwerin, Campbell, Barnard, Iglitzin & Lavitt, LLP, on behalf of SEIU 775.



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December 14, 2016

Bob Ferguson
Washington Attorney General
1125 Washington Street SE
P.O. Box 40100
Olympia, WA 98504-0100

Dear Messr. Ferguson,

Pursuant to RCW 42.17A.765(4), I write to report violations of the Public Disclosure Act ("PDA"), RCW 42.17A, by Service Employees International Union Healthcare 775NW (hereinafter "SEIU 775" or "union"), and by David Rolf, Adam Glickman, and Sterling Harders in their respective capacities as President, Secretary-Treasurer, and Vice President of SEIU ("the SEIU officers").

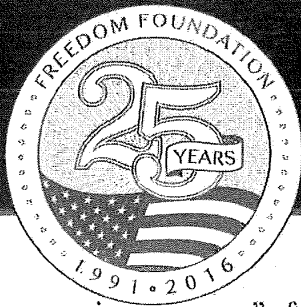
Summary of violation. SEIU 775 is a political committee pursuant to RCW 42.17A.005(37). The union both expects to receive contributions and make expenditures to support or oppose candidates or ballot propositions in elections. *See Utter v. Bldg. Indus. Ass'n of Washington*, 182 Wn.2d 398, 427, 341 P.3d 953 (2015). Thus, SEIU 775 has failed to file with the Public Disclosure Commission ("PDC") a "statement of organization" required by RCW 42.17A.205(1). Additionally, SEIU 775 has failed to meet any of the reporting requirements for political committees set forth in RCW 42.17A.235 and RCW 42.17A.240.

Violations of RCW 42.17A.205, RCW 42.17A.235, & RCW 42.17A.240.

SEIU 775 is purportedly a labor organization. However, by its own admissions, it is **also** a political committee as defined by Washington law. RCW 42.17A.005(37) sets forth the definition of a political committee:

"Political committee" means any person (except a candidate or an individual dealing with his or her own funds or property) having the expectation of receiving contributions or making expenditures in support of, or opposition to, any candidate or any ballot proposition.

An organization may constitute a political committee under either the contributions prong or the expenditures prong. In *Utter*, 182 Wn.2d at 427, the Washington Supreme Court adopted an additional "purpose" test to the expenditures prong that an organization must satisfy to be a "political committee" for PDC reporting purposes. The Court held that an organization is a political committee under the expenditures prong and subject to the PDA's reporting requirements if "a



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primary purpose” of the organization is “electioneering[.]” *Utter*, 182 Wn.2d at 426.¹

SEIU 775 is a political committee under both the contributions prong and expenditures prong for the reasons detailed in the text below and the numerous exhibits.

If an organization meets the definition of a political committee under either the contributions prong or the expenditures prong, it must file a statement of organization with the PDC, RCW 42.17A.205, and file regular monthly reports with the PDC detailing each contribution it receives and each expenditure it makes, RCW 42.17A.235. RCW 42.17A.240. SEIU 775 has failed to do so.

I. SEIU 775 is a political committee under the contributions prong.

SEIU 775 is a labor organization and exclusive bargaining representative for approximately 40,000 individuals, the vast majority of which (approximately 34,000) are Washington Individual Providers who are public employees “solely for the purposes of collective bargaining.” RCW 74.39A.270. However, SEIU 775 is also a political committee.

The first test that must be met in order to prove an organization is a political committee is to show that an organization expects to receive contributions “in support of, or opposition to, any candidate or any ballot proposition.” RCW 42.17A.005(37). SEIU 775 does in fact receive contributions from various political, union, and other organizations with the expectation of supporting and/or opposing candidates and/or ballot propositions.

A. SEIU 775 expects to receive contributions in support of or opposition to any candidate or a ballot proposition. (Independent Argument #1.)

PDC records, United States Department of Labor LM-2 reports (“LM-2 reports”), and Internal Revenue Service Return of Organization Exempt from Income Tax forms (“990 forms”) indicate that from 2010 to 2015 SEIU 775 received approximately \$9,755,698 from Service Employees International Union (“SEIU International”), Working Washington, and SEIU 775’s own Political Action Committee (“SEIU 775 PAC”). See **Exhibits A-C**. Records from those various reports show that this money was given to SEIU 775 specifically for the purpose of engaging in political activity.

In 2010, SEIU International’s LM-2 records show it gave SEIU 775 \$634,647. This transaction is recorded in Schedule 16, which designates money give to groups or individuals for “Political Activities and Lobbying.” See **Exhibit D**. Similarly, in 2012, SEIU International’s Schedule 16 of its LM-2 report shows a donation to SEIU 775 in the amount of \$610,706. See

¹ “Political activity” and “electoral political activity” are also used in this letter. For the purposes of this letter, they are synonymous with “electioneering.”



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Exhibit E. Finally, between 2014 and 2015, SEIU International's Schedule 16 shows it gave another \$1,284,252 to SEIU 775. *See Exhibit F.* In total, between 2010 and 2015, SEIU International gave SEIU 775 \$2,529,605 *specifically for political activities and lobbying.*

In addition to receiving funds from SEIU International expressly for political activities, SEIU 775 also has the expectation of receiving contributions from politically motivated groups in Washington State. Working Washington, a political organization created and funded by SEIU 775, has as its mission to "build a powerful workers movement that can not only dramatically improve wages and working conditions, but can also change the local and national conversation about wealth, inequality, and the value of work." *See Exhibit G.* Working Washington accomplishes its mission by supporting and opposing candidates and ballot propositions. In its first 990 form from 2012, Working Washington states it works to "push corporations and politicians to invest in our communities and create good jobs." *See Exhibit H.* Between 2011-2015, Working Washington, also an explicitly political organization, gave SEIU 775 approximately \$3,632,335 to use for political activities. *See Exhibit I.* SEIU 775 designated Working Washington's contributions as "Cost Reimbursements for Labor/Community Coalition. *Id.*

Also, between 2012-2016, SEIU 775's own political action committee, SEIU 775 PAC, gave SEIU 775 \$95,016 as independent expenditures for political activities such as staff time doorbelling to support Jay Inslee, a gubernatorial candidate, and opposing Rob McKenna, Inslee's opponent. *See Exhibit J.* Further, SEIU 775 PAC's independent expenditures were given for staff time devoted to campaigning and running phone banks for Ed Murray, who was at the time running for a position as Seattle's mayor. *See Exhibit K.*

Finally, the SEIU 775's Membership Application given to members at SEIU trainings and orientations solicits funds from its members in addition to regular dues by asking them to give donations to the SEIU Committee on Political Education ("SEIU COPE"). The language reads:

Hold Politicians Accountable to Working Families. Yes! I want to hold politicians accountable to working families and I know we can only do that if we stand together. I hereby authorize my employer to withhold the indicated amount per month to forward to SEIU Healthcare 775NW as a contribution to SEIU Committee on Political Education (SEIU COPE).

Exhibit L.

Although these examples are not exhaustive, they clearly point to the fact that SEIU 775 expects to receive contributions for the purpose of engaging in political activity.



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B. The membership dues collected by SEIU 775 also constitute contributions in support of or opposition to any candidate or ballot proposition. (Independent Argument #2.)

SEIU 775 expects to receive such contributions as previously mentioned because union dues from Individual Providers constitute such contributions. Union dues constitute such contributions, "...if the members are called upon to make payments that are segregated for political purposes and the members know, or reasonably should know, of this political use." *State ex rel. Evergreen Freedom Found. v. Washington Educ. Ass'n*, 111 Wn. App. 586, 602-03, 49 P.3d 894 (2002) ("*Freedom Foundation*"). Union dues are political "contributions" under RCW 42.17A.005(37) "if the organization's members intend or expect their dues to be used for electoral political activity." *Id.* Union members need only "actual or constructive knowledge that their membership dues would be used for electoral political activity," *id.* at 603, and the organization must be "setting aside funds to support or oppose a candidate or ballot proposition." *Id.* at 602. The segregation of funds can occur in "any manner." *Id.* at 602-03. Further, "the ultimate disposition of the funds does not answer the contribution question; the expectation is what matters." *Utter*, 182 Wn. 2d at 416-17.

1. SEIU 775 members possess actual and/or constructive knowledge that SEIU 775 spends union dues on electoral political activity.

SEIU members must possess either actual or constructive notice that union dues are used for electoral political activity. Either will suffice. SEIU members possess both.

a. SEIU members possess actual knowledge SEIU spends union dues on electoral political activity.

A short survey of SEIU members will easily reveal that they have knowledge that SEIU spends union dues on electoral political activity. The evidence above and below regarding contributions and expenditures shows this. SEIU members receive SEIU mailers, emails, phone calls, and advertisements which portray electoral political activity on a regular basis, many of which are documented in this letter. Further, many SEIU members attend SEIU's yearly convention where SEIU officers speak on electoral political activities and SEIU's extensive involvement in electoral political activities. Many of these speeches are documented in this letter. Clearly, SEIU members possess actual knowledge that SEIU spends union dues on electoral political activities.

b. Alternatively, SEIU members possess constructive knowledge SEIU spends union dues on electoral political activity.

SEIU 775 gives its members constructive knowledge that union dues will be spent on



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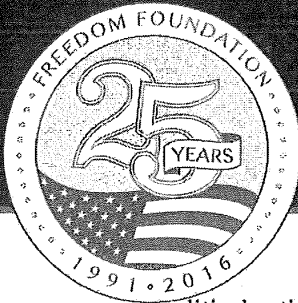
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electoral political activities. As detailed in Exhibits L-Y below, SEIU 775 does so through documents such as SEIU 775's constitution, bylaws, and membership packets, as well as activities such as orientations, trainings, speeches, mailers, public relations activities, news interviews, speeches at its conventions, and door-to-door campaigns. As the exhibits show, SEIU 775 members know or should know that SEIU 775 spends union dues on electoral political activity.

SEIU 775's own words give SEIU 775 members constructive knowledge union dues are spent on electoral political activities. Union dues go towards funding SEIU 775's stated mission, which is to "unite the strength of all working people and our families, to improve our lives and lead the way to a more just and humane world." See **Exhibit M**. Further, in its bylaws, SEIU 775 states its mission is to "lift caregivers out of poverty," "build worker organizations that are powerful, sustainable, and scalable," "transform health and long-term care to ensure quality and access for all," and "increase prosperity and reduce inequality for working people." See Art. 1.5 of SEIU 775's Constitution and Bylaws, 3-4 (**Exhibit N**). Two of its primary strategies to achieve the previously stated goals are to "[h]old politicians accountable" and "[a]dvance pro-worker policy through influencing government..." See SEIU 775 Bylaws, Art. 1.6(.). Additionally, SEIU 775's bylaws mandate that it is the responsibility of every SEIU member to "help build a political voice for working people..." See SEIU 775 Bylaws, Art. 2.10 (*Id*). The purpose of the entire organization is inherently political.

Further, a membership packet dated December of 2014 indicates SEIU 775 does give members actual or constructive knowledge their union dues will go to support SEIU 775's political activities. The packet delineates how SEIU 775 spends union dues, which are divided into two distinct categories, chargeable and non-chargeable, which constitute approximately 60% and 40% of union dues respectively. Those activities that pertain to collective bargaining are considered chargeable and those that are not germane to collective bargaining are non-chargeable. Prior to the Supreme Court ruling *Harris v. Quinn*, 134 S.Ct. 2618 (2014), and in some cases after *Harris*, SEIU 775 members have the option to become agency fee payers, meaning they can choose not to pay the "non-chargeable" portion of membership dues.

Although some members of SEIU 775 can now refuse full payment of union dues without losing their jobs, the chargeable and non-chargeable portions of union dues remain for many, especially those paying full dues. Approximately 40% of activities union dues are spent on activities which have nothing to do with collective bargaining, many of which constitute electoral political activities. According to a document entitled "Notice to SEIU Healthcare 775NW Represented Employees in Home Care and Adult Day Health Bargaining Units Subject to Union Security Obligations", some of those non-chargeable activities include, "(1) Voter registration, get-out-the-vote efforts, and political campaigning; (2) supporting and contributing to not-for-profit or charitable organizations; (3) supporting and contributing to political organizations and candidates for public office; (4) supporting and contributing to ideological causes and committees, including ballot measures." See **Exhibit O**. The above-stated quote from a portion of an SEIU 775 member packet clearly shows that members have constructive knowledge their dues go to



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support political activity.

SEIU 775's LM-2 forms from 2010-2015 further indicates to its members and the public in general that it spends union dues on electoral political activity. From 2010-2015 respectively, SEIU 775 gave \$2,398,634, \$3,280,404, \$3,027,063, \$2,652,097, \$2,654,218, and \$4,450,038 in cash disbursements specifically for "Political Activities and Lobbying." See **Exhibit P**. In total, SEIU 775 used \$18,462,454 in member dues for the specific purpose of engaging in electoral political activity.

SEIU 775's website, which is frequented by members and non-members alike, states on its "Join SEIU 775 Today" page, "As an SEIU 775 member, you're part of one of the most influential organizations lobbying in Olympia today." See **Exhibit Q**. Further, SEIU 775's "About Us" page brags, "We represent more than 40,000 long-term care workers providing quality in-home care, nursing home care and adult day health services in Washington State and Montana. We have successfully held politicians accountable and have become one of the most powerful advocacy organizations in the region." See **Exhibit R**.

SEIU 775 also publically endorses candidates and ballot initiatives, indicating to its members and the wider public that it spends union dues on electoral political activities. Public endorsement is further proof that members possess constructive knowledge SEIU 775 engages in political activities.

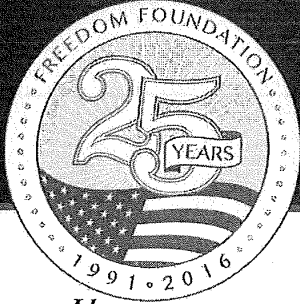
Examples of the specific candidates and ballot initiatives SEIU 775 supports abound. In an e-mail to members in 2015, SEIU 775 states:

Caregivers' voices are a critical part of our democracy. It's how we elected candidates who funded our [Independent Provider] contract, passed a nursing home staffing law, and supported healthcare access for all. Your voice is your vote. Click here to see who SEIU 775 members have endorsed in your area. Please mail in your ballot today, and vote for candidates and policies that will help caregivers and all working families! Adam Glickman.

Exhibit S.

In an advertisement within the e-mail, SEIU 775 continues:

No on Tim Eyman's I-1366! Tim Eyman wants to dismantle state funding for vital services. He and his wealthy friends designated initiative 1366 to force lawmakers to either allow a handful of extreme legislators to dictate the agenda for the whole state, or face \$8 billion in harmful cuts to essential services over six years in our state budget. Vote and mail in you ballot by Tuesday, November 3!



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Id.

SEIU 775 also encourages members on its website to support a comprehensive list of candidates and ballot initiatives approved by SEIU 775. The 2012 endorsement list includes national commendations for President, U.S. Senate, and House of Representatives. It also includes endorsements for Washington State Governor, Attorney General, Supreme Court, and state legislative races to name a few. The 2016 list includes many of the same endorsements mentioned previously, but adds specific ballot initiatives SEIU 775 believes members should vote on. *See Exhibit T-U.*

Perhaps the most glaring example that SEIU 775 gives supporters constructive knowledge their union dues are supporting SEIU 775's larger electoral political agenda comes from the President of SEIU 775, David Rolf. Every year, SEIU 775 hosts a convention for its members to gather and hear from leadership regarding the progress of the union in the previous year. At the September 5, 2014 Convention, Rolf states:

We said we were going to get the ability to win ballot measures and take on and hold politicians accountable. We even stopped the state of Washington from giving a \$300 million dollar subsidy to the NBA to build a new stadium, we forced the state to adopt the training program we'd envisioned all via ballot measures. We elected in the two states, uh, we elected governors that would not have held office without the strength and political power of our union.²

Exhibit NNN.

Rolf continues,

That's not all we did. Our union, with others, in the community and with other unions, our union played a leadership role, perhaps the leadership role, in many ways, in winning a \$15 wage for workers in SeaTac, uh, SeaTac airport and hotels and rental cars, uh, parking lots, the transportation and hospitality industry in SeaTac. Now the last time I checked, there were no nursing homes operating in SeaTac airport, so why did we, why did we take the leadership on this? You will remember a couple years ago when we were down in SeaTac, with DoubleTree marching with airport workers and a big protest at the airport. But, we did it because someone had to do it because it is the right thing to do. And, we're not a union that is just about us, we're a union that is about justice for all, and those airport workers, those airport workers who made good union jobs with benefits back in the 1970's, but today make minimum wage...But, that's not all we did. We actually had this

² Available on attached CD.



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other little project, where getting in late 2012, we started committing some of our resources to organizing fast-food workers. Not into a traditional union, but to stand up for themselves and demand \$15 and right to organize and we saw the first strike on May 29, 2013. We had a summer of action; candidate forms, boycotts, sit-ins, marches, rallies, and turned, in many ways, turned the election in Seattle, in many ways to a referendum on a \$15 an hour minimum wage. And, our union, not in our own name, because we're long-term caregivers, through our allies with Working Washington and working in coalition with others, played the most decisive leadership role in building that fast-food workers' campaign and then joined with our new mayor, Ed Murray, and a coalition of other unions and progressive organizations, progressive-minded businesses, and negotiated over four months, a new minimum wage policy for the City of Seattle, that, once complete, will get every to \$15 and then escalate on inflation and by the year 2025, every worker in Seattle will be making \$18.13 and get a raise every year thereafter.³

Id.

As the president of SEIU 775, Rolf holds all authority over the direction and mission of the union and how it designates resources and membership dues. According to SEIU 775 Bylaws, David Rolf has full authority to "decide, determine, and take charge of all legislative, public policy and political positions and actions of the Union, without limitation, and to establish, maintain, direct, and administer all political funds, political action committees, and other political or legislative accounts." *See* SEIU 775 Bylaws, Art. 4.5 (**Exhibit V**).

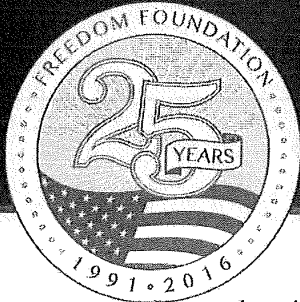
Rolf is only able to achieve this mission by spending significant amounts of union time, energy, and membership dues on electoral political activity—which is exactly what a political committee does. At SEIU 775's 2014 Convention, in referencing efforts to unionize airport workers in SeaTac, which were ultimately rejected, and SEIU 775's work to enact the \$15 minimum wage, Rolf stated:

[Y]ou don't want to recognize our union, you don't want to negotiate a fair contract, we have a better idea, we'll just write the union contract into the city law. And, we'll do \$15 an hour, we'll do paid sick-leave, we will make sure you have to offer full time work instead of part time work and we're gonna make sure that servers in the hotels get to keep their tips and if you break the law, we can sue you in court.⁴

Id.

³ Available on CD.

⁴ Available on CD.



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He continued:

We were backed into the initiative by [Alaskan Airline's] and the [Port of Seattle's] intransigence... We put 400 professional union organizers on the doorsteps that day and for the next five days—eight-hour shifts. We targeted people who never voted or only voted in presidential elections, but who had family, friends, someone they knew who worked at the airport. The organizers each had a list of 25 voters; they went back to each initiative supporter's house repeatedly until they saw they actually mailed the ballot.⁵

Id.

At SEIU 775's 2015 Convention, Rolf gave more examples of the union's involvement in political activities:

There are some more victories. The same week that happened, a different court, the Washington State Supreme Court, unfroze the long awaited \$15 for SeaTac airport workers that we [SEIU 775] helped lead the fight for back in 2011, 12, and 13. And, meanwhile, here in Seattle, we [SEIU 775] are on a march for \$15 for everybody over the next few years as a result of the work this union did in passing the nation's first true \$15 minimum wage... We have now led the campaign to bring a \$15 minimum wage to Seattle and SeaTac and the airport industry... So, if anyone says to me, 'Why are you out fighting for airport workers, why are you putting our union resources behind the fast food worker strikes?' Someone did it for us. And we are gonna do it for someone else.⁶

Exhibit 000.

David Rolf isn't the only figure in SEIU 775 leadership that gives members constructive knowledge their dues support the union's larger electoral political agenda. Mary Kay Henry, President of the National SEIU, attended SEIU 775's 2014 Convention as a guest speaker and stated in front of SEIU 775 members:

And you [SEIU 775] fought for the right politicians here in Washington and I heard from one of them [the "right" politicians] this morning and that Gov. Jay Inslee could deliver the same talk [that I am]... We have this greater organization [SEIU 775] to thank for being a catalyst and making sure everybody in the progressive movement in this state got behind his [Governor Inslee's] election... You [SEIU 775] stood with workers in SeaTac to fight for Prop 1, and you helped raise the

⁵ Available on CD.

⁶ Available on CD.



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minimum wage to \$15, yeah! for airport workers in a race that was decided by 100 votes.⁷

Exhibit PPP.

Jay Inslee, Washington State Governor, elected largely through the efforts of SEIU 775, also attended SEIU 775's 2014 Annual Convention and Leadership Conference. In speaking of the benefits of individual providers in Washington State, Inslee stated:

You have helped us [Washington State] financially as well. You know, the savings that you have created because of your efficiency goes right back to the care. And, because we've used our funding wisely, AARP ranks us as one of the most generous states in the nation in providing personal care, and we're able to do that because of your dedication and your efficiency. For these reasons, I am very glad that in my first term as governor, I've been able to fully support your new contract and agency parody, which led to your first wage increase since 2008...As these negotiations are complete, I hope you'll stand with me to make sure that this contract is indeed funded by the legislature in the next year.⁸

Exhibit QQQ.

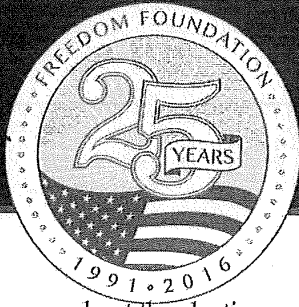
Each year, SEIU 775 holds conventions in which it brags about accomplishments made for caregivers and the State of Washington, including electoral political activities funded by union member dues. Speeches made by David Rolf and guests clearly indicate SEIU 775 spends money obtained from monthly union deductions to support SEIU's larger electoral political agenda, and further supports the claim that members have constructive knowledge their dues are used for such activities. Additionally, videos of all these speeches are, or have been, available on SEIU 775's website.

SEIU 775's public endorsements of candidates and ballot initiatives also give union members actual or constructive knowledge their dues go to support political activities. In a mailer sent to members this last fall, SEIU 775 recommends Washington State candidates such as Patty Murray, Jay Inslee, and Cyrus Habib. *See Exhibit W.* In a separate flyer, SEIU 775 endorses statewide initiatives it has a hand in financially and publically supporting, such as Initiative 1433, a ballot proposition to increase the minimum wage, and Initiative 1501, an act designed to stop the Freedom Foundation from contacting state-paid public employees about their constitutional rights. *See Exhibit X.*

After the election in November 2016, SEIU 775 sent an e-mail to members updating them

⁷ Available on CD.

⁸ Available on CD.



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about the election results. Of importance, the e-mail states:

Overall, caregivers and working families won big here in Washington State. We are on track to protect caregiver privacy, raise the minimum wage, re-elect our pro-worker Governor and elect new pro-worker legislators who will support lifting caregivers out of poverty and support quality care.

Exhibit Y.

In reference to Governor Inslee's re-election and the passage of I-1501 and I-1433, the e-mail also declares, "In Washington State, we [SEIU 775] wanted to elect candidates who fight for caregivers. And we did that." *Id.*

In an October 22, 2011 Seattle Times article entitled "Initiative 1163 latest dispute between Services Employees Union, legislators," Adam Glickman, Secretary-Treasurer of SEIU 775, states, "if the union was as powerful as some people say, *we* [SEIU 775] wouldn't have had to do this initiative." Available at <http://www.seattletimes.com/seattle-news/initiative-1163-latest-dispute-between-services-employees-union-legislators/> (last visited October 26, 2016). (Emphasis added.) In claiming that Initiative 1163 was a way to bargain more effectively for higher wages and better benefits, he stated, "We are not ashamed of saying that at all." *Id.* Finally, in speaking on "holding politicians accountable," Glickman said SEIU 775 helped unseat two senators in Snohomish County and stated that SEIU 775 would have targeted State Senator Ken Jacobson in a re-election campaign because Jacobson was "a reliable vote against long-term care workers." *Id.*

PDC reports indicate between 2010 to the present, SEIU 775 gave approximately \$4,667,425 in contributions to candidates, ballot initiatives, and other political action committees. The fact that these donations are publicly recorded and publically accessible adds further proof that union members have constructive knowledge their dues support electoral political causes.

As the above exhibits show, SEIU 775 receives contributions for the purpose of supporting and/or opposing candidates and/or ballot propositions, members have actual or constructive knowledge SEIU is spending dues to support and/or oppose those candidates and ballot initiatives, and SEIU makes frequent and clear endorsements to its members and the wider public of candidates and ballot propositions it supports. Finally, SEIU engages in electoral political activities using funds acquired from the union dues of its members, and openly boasts of the achievements that came as a result of supporting and/or opposing candidates and/or ballot initiatives. These activities are clear indications that SEIU expects to receive contributions in order to engage in political activities, and is a political committee under the contributions prong.

2. SEIU 775 members also intend and/or expect their dues to be used for electoral political activity.



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The preceding analysis has been of one of the two tests for a “contribution”—that union members have “actual or constructive knowledge that their membership dues would be used for electoral political activity[.]” *Freedom Foundation*, 111 Wn. App. at 603. An alternate test⁹ is “if the organization’s members intend or expect their dues to be used for electoral political activity.” *Id.*

For all the same reasons described above that SEIU 775 members have actual or constructive knowledge that their dues are used for electoral political activity (**Exhibits L-X**), those members similarly intend or expect their dues to be used for such purposes. They have repeatedly been told this by SEIU 775. *See Exhibits L-Y* and provided links. It would be unreasonable for a member of SEIU 775 to expect otherwise.

3. SEIU 775 sets aside funds to support or oppose a candidate or ballot proposition.

Political activity requires money. Given all of SEIU 775’s statements about how it spends money on electoral political activity, SEIU 775 must set aside funds to spend on such activity. The segregation of funds can occur in “any manner.” *Freedom Foundation*, 111 Wn. App. at 602-03. There is reason to believe SEIU 775 sets aside funds for electoral political activities.¹⁰

SEIU 775 sets aside funds for electoral political activities. Each year, SEIU 775 spends millions of dollars specifically on political activities. LM-2 reports from 2010 to 2015 clearly show the trend of devoting financial resources of between \$2 million and \$4.5 million to use for its political agenda in Washington State. *See Exhibit Z*. PDC reports further indicate SEIU 775’s yearly commitment to financially supporting partisan candidates and initiatives such as Governor Inslee and Initiative 1501. *See Exhibit AA-BB*. A *Seattle Times* article, written by Jim Brunner, also recognizes SEIU 775’s long-time history of dedication to spending its resources to elect partisan candidates. Brunner states:

The influential union, pivotal in the push for Seattle’s \$15 minimum wage...has poured more than \$1 million into Democrats’ campaign committees...It’s another measure of clout for SEIU 775, which has turned the combined dues of thousands of lower-wage workers into a political powerhouse in state politics over the past 15 years.

Exhibit CC. LM-2 reports from 2010 to 2015 show that SEIU 775 was stockpiling millions of dollars in cash in preparation for the 2016 election. *See Statement A, Assets*

⁹ This test is an alternate argument to the argument in § I(B)(1). Thus, it is not an additional requirement.

¹⁰ Additionally, RCW 42.17A.270 requires a political committee receiving a contribution earmarked for the benefit of a candidate or another political committee to report the contribution as outlined in RCW 42.17A.235 and 42.17A.240.



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and Liabilities, of SEIU 775's 2010 LM-2 report which shows it had saved \$1,282,303 in cash by the end of the year (**Exhibit DD**). At the end of next four years respectively, SEIU 775 had merely \$126,097, \$35,219, \$2,029,278, and \$5,524,839. *See Exhibits EE-HH*. After a steady increase for four years, SEIU 775 managed to save an astounding \$11,459,372 by the end of 2015. *See Exhibit II*. Not only did SEIU 775 set-aside money each year for electoral political activities, SEIU 775 especially did so in anticipation of the 2016 election cycle.

Finally, further discovery and inquiries will reveal that documents, correspondence, records, statements, budgets, meeting minutes and notes, and bank accounts show SEIU 775 sets aside funds in "any manner" for electoral political activity.

II. SEIU 775 is a political committee under the expenditures prong.

An alternative means to determine if an organization is a political committee is if it expects to make expenditures in support of and/or opposition to candidates and/or ballot propositions, RCW 42.17A.005(37), and has electoral political activity as a primary purpose.

A. SEIU 775 expects to make expenditures in support of and/or opposition to candidates and/or ballot propositions.

Between 2010 to the present, SEIU 775 has given approximately \$4,667,425 to support candidates, initiatives, and other political committees. *See Exhibit JJ*. In addition, SEIU 775 has donated \$921,036 in in-kind contributions to many of those same groups. *See Exhibit KK*. To its own political action committee, SEIU 775 has given a combined total of \$1,567,188 in cash and in-kind contributions. *See Exhibit LL-MM*. These expenditures constitute political activity and direct support of candidates and/or ballot initiatives, further indicating SEIU 775 is a political committee and needs to submit required reports to the PDC. *See RCW 42.17A.235 & .240*.

PDC reports show SEIU 775 makes expenditures in support of candidates, political action committees, and initiatives. *See Exhibits JJ-MM*. Over the years, SEIU 775 has financially supported legislative candidates such as Tami Green, Mike Sells, and Seattle City Council candidate Tim Burgess to name a few. *See Exhibit NN-PP*. In 2010, SEIU 775 gave \$160,000 to Washingtonians for Education, Health, and Tax Relief. *See Exhibit QQ*. Further, in 2012, SEIU 775 donated \$25,000 to the Harry Truman Fund, which is a Washington State legislative PAC. *See Exhibit RR*. SEIU 775 also gives to partisan groups such as the 5th District Democrats Non Exempt, as well as the Washington State Democratic Committee. *See Exhibit SS-TT*. Finally, in 2016 alone, SEIU 775 gave \$1,575,00 in cash to the Campaign to Prevent Fraud and Protect Seniors, which was the campaign in support of Initiative 1501. *See Exhibit UU*.

Examples of in-kind contributions further indicate SEIU 775 makes expenditures in



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support of candidates, political action committees, and ballot propositions. In 2013, SEIU 775 gave an estimated total of \$302,000 in staff time, payments for meals, lodging, and other services for the YES! for SeaTac Campaign. *See Exhibit VV.* SEIU 775 also gave a \$13,562 in-kind contribution to the Raise Up WA campaign for staff services. *See Exhibit WW.* Finally, SEIU 775 donated approximately \$56,300 in in-kind contributions to the Campaign to Prevent Fraud and Protect Seniors campaign for staff time devoted to activities such as signature gathering in support of Initiative 1501. *See Exhibit XX.*

Finally, SEIU 775 regularly gives money to its own political action committee, SEIU 775 PAC. Cash contributions to its PAC equal approximately \$1,500,000 from 2010 to present. *See Exhibit YY.* In-kind contributions to SEIU 775 PAC total \$35,000 for services such as doorbelling, phone-banking, and staff overhead for activities related to supporting campaigns and political action committees. *See Exhibit ZZ.*

SEIU 775 has clearly established a pattern of conduct wherein it makes expenditures in support of, or opposition to, candidates and/or ballot initiatives. It is clear, not only from its own words (cited elsewhere in this letter), but also from its own expenditures that SEIU 775 expects to consistently and continually expend funds in support of, or opposition to, candidates and/or ballot initiatives.

B. SEIU 775 has electoral political activity as a primary purpose.

As previously noted, to be a political committee, "The organization making expenditures must have as its "primary or one of its primary purposes ... to affect, directly or indirectly, governmental decision making by supporting or opposing candidates or ballot propositions ..."*Freedom Foundation*, 111 Wn. App. at 599 (citation omitted). Courts consider the following nonexclusive factors when determining the primary purpose of an organization (no single factor is necessarily required, and other factors are considered):

- 1) the content of the stated goals and mission of the organization;
- 2) whether the organization's actions further its stated goals and mission;
- 3) whether the stated goals and mission of the organization would be substantially achieved by a favorable outcome in an upcoming election;
- 4) whether the organization uses means other than that electoral political activity to achieve its stated goals and mission.

Id., at 600. In addition to the evidence cited below, the evidence cited above and the "contributions prong" section of this letter also serves as evidence to support the fact that SEIU 775 has electoral political activity as a primary purpose.



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One way to test if a primary purpose of SEIU 775 is to affect governmental decisions by supporting and/or opposing candidates and/or ballot propositions is to examine its own words. If the stated goals and mission are achieved by a favorable outcome in elections, SEIU 775's own words can serve as evidence to prove it is a political committee.

Collective bargaining is only one way SEIU 775 accomplishes its goals and, as shown above, electoral political activity is also a primary means to increase collective bargaining leverage and bargain more effectively. SEIU 775 consistently resorts to the support of and opposition of candidates and/or ballot initiatives to achieve its stated mission, which is to "unite the strength of all working people and our families, to improve our lives and lead the way to a more just and humane world." **Exhibit L.** Further, in its bylaws, SEIU 775 states a goal is to "lift caregivers out of poverty," "build worker organizations that are powerful, sustainable, and scalable," "transform health and long-term care to ensure quality and access for all," and "increase prosperity and reduce any quality for working people." See Art. 1.5 of SEIU 775's Constitution and Bylaws, 3-4 (*Id.*). Two of its primary strategies to achieve the previously stated goals are to "[h]old politicians accountable" and "[a]dvance pro-worker policy through influencing government..." See SEIU 775 Bylaws, Art. 1.6 (*Id.*). Additionally, SEIU 775's bylaws mandate that it is the responsibility of every SEIU member to "help build a political voice for working people..." See SEIU Bylaws, Art. 2.10 (*Id.*). This is an inherently political purpose. Evidence also indicates SEIU 775 engages in electoral political activities for the purpose of establishing leverage in its collective bargaining.

Perhaps the strongest evidence that one of the primary purposes of SEIU 775 is political is the 2013 Collective Bargaining Agreement between SEIU 775 and the SEIU Staff Union. Section 23.2 unabashedly states:

Because state, federal, and local legislative activity affects the wages, benefits, and rights of all workers, and because the long term care industry specifically is funded in principal part by public dollars, the outcome of elections for many public offices is very important to the Employer [SEIU 775]. [SEIU 775] regularly makes endorsements and participates actively in elections. All employees are required to do political work for candidates and member political education as a part of their job with [SEIU 775].

Exhibit AAA.

An organization whose employees are contractually obligated "to do political work for candidates" and conduct "political education" is an organization who has politics as one of its primary purposes. This is not even debatable. Further, SEIU 775's own statement that "[b]ecause state, federal, and local legislative activity affects the wages, benefits, and rights of all workers and because the long term care industry specifically is funded in principal part by public dollars, the outcome of elections for many public offices is very



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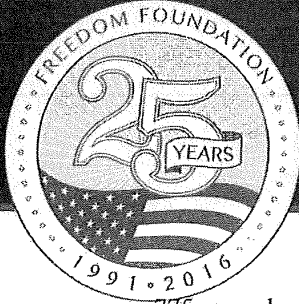
important to [SEIU 775]" blatantly admits that electoral political activity is a, if not the, primary way it accomplishes its goals not only for the labor movement in general, *but also for collective bargaining itself*. Obviously, SEIU 775's actions further its mission, which would be substantially achieved by favorable election outcomes. Electoral political activity is obviously, blatantly, and pervasively one of SEIU 775's primary purposes. No reasonable person could conclude otherwise.

As mentioned above, SEIU 775's "Join SEIU 775 Today" page reflects that its political influence does in fact achieve its goals. Speaking to its members, SEIU 775 states, "As an SEIU 775 member, you're part of one of the most influential organizations lobbying in Olympia today. By standing together, we've gone from a minimum wage workforce with no benefits to one with a wage scale to \$15/hour, health insurance and paid time off." See **Exhibit BBB**. SEIU further touts its accomplishments by claiming to be "one of the most powerful advocacy organizations in the region." See **Exhibit CCC**.

In addition to clearly stating its organizational purpose to be a politically powerful organization so as to achieve desired outcomes in elections, SEIU 775 has as part of its canvassing requirements to increase awareness among union members of the importance of giving to SEIU 775's Political Accountability Fund. On its website, SEIU 775 advertises for a Mobilization Canvass Organizing Internship. In the job description, it states one of the goals is to "Engage members to be part of the movement. Increase membership participation by [Individual Provider] and [other union-member] homecare workers. Expand Political Accountability Fund Membership." See **Exhibit DDD**. It later states, "For house visits you will be provided with all materials which will allow you to locate their homes easily. You will share your story and listen to members' stories, encourage them to get involved, and to join the Political Accountability Fund." *Id.*

In a letter sent to SEIU 775 members dated June 29, 2015, Adam Glickman, SEIU 775 Secretary-Treasurer, states:

Make no mistake about it: *our political action* combined with the contributions we make to [SEIU] COPE – our political accountability fund – *are the keys to our success*. By uniting and *flexing our political muscle*, we hold politicians accountable for our clients and for ourselves. Every year, thousands of caregivers join together, knock on doors, pass petitions, make phone calls, send letters and emails, and donate money to elect politicians who support the work we do and the clients we serve. And to un-elect politicians who don't. We've come a long way, but there's so much more to do – including creating a pathway to \$15 for all long-term caregivers, securing a meaningful retirement and expanding access to quality, affordable healthcare. This doesn't come cheap. Every year thousands of members volunteer to lobby their legislators, make weekly trips to Olympia during legislative sessions and to work on political campaigns. And every year thousands of SEIU



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775 members like you and me donate to [SEIU] COPE – our Political Accountability Fund – because your contribution helps us win elections and be a strong lobbying force. Your contribution to our Political Accountability Fund went a long way toward convincing politicians that they need to improve our wages and benefits, fund our training, and improve nursing home staffing. This is all possible because caregivers like you contribute to [SEIU] COPE.

Exhibit EEE (emphasis added).

Another letter to members dated August 4, 2015 states:

Unlike wealthy corporations and CEOs, home care workers can't write big checks to buy politicians. But when hundreds of thousands of us join *together we can have the resources to win and hold politicians accountable* to working families, not just the wealthy. Member participation in our union's political action program is what makes this work possible. *Because of our union's political strength, we've been successful at stopping or delaying proposals to cut funding for home care and nursing homes in the past.* Our clients and residents are counting on us, and that's why we've needed every member to do their part. If we want to have elected leaders who prioritize quality care for seniors and people with disabilities, we need to make our voices heard – and that's what your contribution helped do.

Exhibit FFF (emphasis added).

In an e-mail sent to members on January 4, 2016, SEIU 775 encourages caregivers to participate in political activities, noting, "Legislators need to hear our stories and our clients' stories...Every raise we have ever received, our new retirement plan, and restoration of hours that were cut...those all happened because caregivers like you and me went to Olympia and made it happen." **Exhibit GGG.**

Another e-mail sent by SEIU 775 states:

We need to keep up the pressure on our legislators! These negotiations take a long time, and we cannot let ourselves become invisible. Don't let Senate Republicans and anti-union extremist groups like the Freedom Foundation take away your right to retire. Even if you've already sent your legislators an email, send another one. Keep it up; we can make a difference together. In solidarity, Adam Glickman.

Exhibit HHH.

Finally, at the 2013 Annual SEIU Healthcare 775NW Convention and Leadership



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Conference, David Rolf, SEIU 775's president, states:

...None of it would've been possible were it not for our biggest victories of last year. Holding politicians accountable to caregivers and electing pro-worker governors in Washington State and Montana. ... No other union did as much to help elect Governor Jay Inslee and Governor Steve Bullock as SEIU 775. We made nearly half a million phone calls – half a million volunteer phone calls – knocked on tens of thousands of doors, and delivered hundreds of thousands of votes.¹¹

The above-mentioned examples clearly indicate SEIU 775 achieves its stated missions and goals through electoral political activity, proving that a primary purpose of SEIU 775 is electioneering.¹² SEIU 775's own stated goals and mission is clearly achieved by favorable outcomes in elections, as evidenced by the emphasis it places on encouraging members to give to its Political Accountability Fund and to engage in political activities generally, as well as taking credit for major political victories such as the election of candidates and ballot measures.

Further proof SEIU 775 has as a primary purpose electoral political activity, as mentioned earlier, comes in the form of public endorsements for particular candidates and ballot propositions. SEIU 775 encourages members to vote for particular recommended individuals and ballot propositions and endorses candidates and ballot initiatives publically.

SEIU 775 openly advises its supporters and members how to vote regarding elections for candidates and/or ballot propositions. On its website, SEIU 775 asks members to vote for candidates ranging from Presidential nominees to local Senators. *See Exhibit III.*

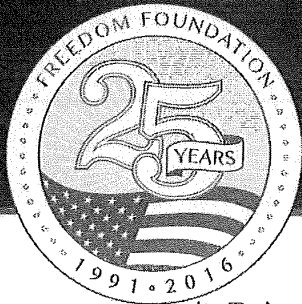
SEIU 775 also writes articles which it posts on its website endorsing candidates in various elections. In a 2012 article, Adam Glickman states Senator Bill Finkbeiner and Greg Nickels, running for Lieutenant Governor and Secretary of State respectively, are "the kinds of leaders we need to fight for the middle class and the 99% in Olympia."¹³ The article goes on to state, "SEIU 775 has also endorsed a bi-partisan slate of legislative candidates..." SEIU 775 also endorsed Ed Murray for Seattle Mayor in 2013.¹⁴

¹¹ Available at <https://www.youtube.com/watch?v=xqqr833PICQ> (last visited October 26, 2016).

¹² Notice that the Foundation states that "a" primary purpose of SEIU 775 is electioneering; we are not claiming the entire purpose of the organization is electioneering (nor do we need prove such a claim).

¹³ Available at <http://seiu775.org/seiu-healthcare-775nw-endorses-nickels-finkbeiner-in-statewide-races/> (last visited October 26, 2016).

¹⁴ Available at <http://seiu775.org/seattles-largest-healthcare-unions-endorse-sen-ed-murray-for-seattle-mayor/> (last visited October 26, 2016).



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On its Twitter account, SEIU 775 voices its excitement for a Kshama Sawant political rally, and encourages members to attend.¹⁵ SEIU also directly solicits support for Initiative 1501, stating, "Initiative 1501 is good for caregivers and great for those we care for. Vote YES when you get your ballot!"¹⁶ In an e-mail sent by SEIU 775 to members, it states, "Vote for our SEIU 775 sister Monique Taylor-Swan for Renton City Council!"¹⁷ In the same e-mail, SEIU 775 further encourages members to vote for Zack Hudgins running for King County Elections Director, and to vote no on I-1366.

SEIU 775's public endorsements for specific candidates and ballot initiatives also makes the news. SEIU 775 was listed as an endorser of Initiative 735.¹⁸ Additionally, SEIU 775 is reported to have given quite an impactful amount of support to the SeaTac minimum wage campaign. Josh Feit of Seattle Met reports:

SEIU 775NW's latest cause has been championing a higher minimum wage; it provided over \$400,000 in cash and support for research and organizing staff for the successful SeaTac minimum wage campaign. The union-backed registration drive netted about 1,000 new voters and is credited with passing the ballot measure by a slim margin of 71 votes out of only around 6,000. ...Kshama Sawant also credits SEIU 775 with playing 'an absolutely spearheading role' in SeaTac, 'getting out on the street and organizing.'¹⁹

Additionally, candidates such as Burgess,²⁰ Hill,²¹ and Habib²² claim endorsements by SEIU 775.

Interestingly, media sources also indicate SEIU 775's support for various candidates has a significant effect on the outcome of certain elections. Josh Feit of the Seattle Met writes:

Murray, who'd pledged to raise the minimum wage to \$15 by the end of his first term, and Sawant, who'd won a surprise victory to the city council thanks to her own fiery stump speech about increasing the minimum wage to \$15, were both

¹⁵ Available at <https://twitter.com/seiu775/status/606579042867912704?lang=en> (last visited October 26, 2016).

¹⁶ Available at <https://mobile.twitter.com/seiu775/status/786242031970496513> (last visited October 26, 2016).

¹⁷ Available at <http://hub.seiu775.org/webmail/71442/77317379/13c238aab02d0ac7113be13ca9a46f5c> (last visited October 26, 2016).

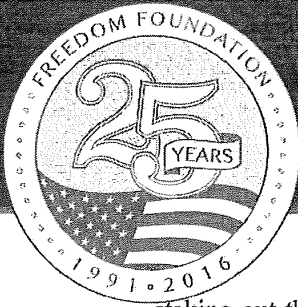
¹⁸ Available at http://www.wamend.org/endorsements_by_organizations (last visited October 26, 2016).

¹⁹ Available at <http://www.seattlemet.com/articles/2014/2/1/david-rolf-man-in-the-middle-february-2014> (last visited October 26, 2016).

²⁰ Available at <http://electimburgess.com/news.html> (last visited October 26, 2016).

²¹ Available at <http://hillyes.com/news/2014/7/25/andy-hill-secures-endorsement-of-home-healthcare-workers> (last visited October 26, 2016).

²² Available at <https://shiftwa.org/fairness-isnt-enough-for-democrat-running-for-lt-gov-wants-to-be-force-for-progressive-change/> (last visited October 26, 2016).



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staking out their ground. And they were also, evidently, both counting on [SEIU 775's David] Rolf, whose support they each needed to make good on their agendas. ...And just like Mayor Murray's team, which was eager to keep Rolf in its camp during the dueling minimum wage press conferences last December, Sawant also needs Rolf's support. Without SEIU [775]'s backing, her threat of introducing a populist ballot measure if city hall negotiations fail to meet her bottom line, lacks teeth. To successfully go forward with a ballot initiative, she'll need SEIU [775]'s dollars and doorbelling troops.²³

Another article by Harold Meyerson of the American Prospect, dated October 30, 2014, shares David Rolf's own take on the 2013 minimum wage campaign in SeaTac:

The leader of the largest local union in Washington state—SEIU Local 775, which represents home care and nursing home workers—had not planned to wage a campaign last year to raise the minimum wage in SeaTac. But when the Port of Seattle, which runs the airport, and Alaska Airlines, the airport's dominant airline, spurned the efforts of SEIU [775]'s organizers to unionize the baggage handlers and fry cooks who worked at the airport at or near minimum wage, 'we needed a big piece of leverage to bring them to the table,' Rolf says.

The leverage was an initiative the unions said they'd place on SeaTac's November 2013 ballot—an initiative so radical it would surely push Alaska Airlines and the Port to the table. The initiative would increase the local minimum wage from Washington state's minimum of \$9.32 to \$15.00 at both the airport and its surrounding hotels. The phase-in period between election and implementation would be a mere seven weeks.

Still, Alaska Airlines and the Port refused to bargain. SeaTac voters would never approve such a measure, they believed; SeaTac wasn't that kind of town.

Seated in his neat, sparsely decorated corner office in the downtown Seattle headquarters of Local 775, Rolf recounts how his union, the fast-food organizing campaign it guided, and the coalition it assembled proved them wrong.

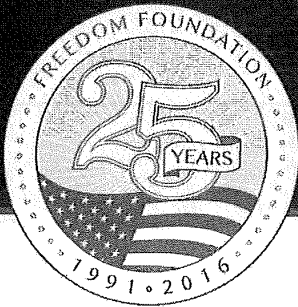
...

'There were 11,000 registered voters in SeaTac, and we figured the only way we could win was to expand the electorate.' The coalition's canvassers registered 1,000 new voters, mainly immigrants.

...

Speaking rapidly, warming to the topic, Rolf continues: 'In the normal Washington-

²³ Available at <http://www.seattletimes.com/articles/2014/2/1/david-rolf-man-in-the-middle-february-2014> (last visited October 26, 2016).



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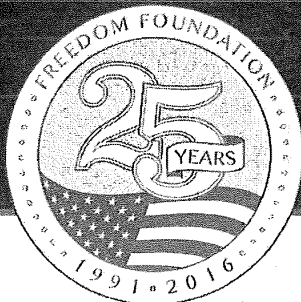
state model, your peak communication with voters is the Friday before election day. But we peaked when the ballot hit, well before the final weekend. [All voting in Washington is done by mail ballot.] We put 400 professional union organizers on the doorsteps that day and for the next five days—eight-hour shifts. We targeted people who never voted or only voted in presidential elections, but who had family, friends, someone they knew who worked at the airport. The organizers each had a list of 25 voters; they went back to each initiative supporter's house repeatedly until they saw they actually mailed the ballot.' The initiative passed by 77 votes.

... he [Rolf] made SEIU [775] instrumental in the election of friendly legislators; he had the union inspect and rehabilitate 723 ballots during the protracted recounts in the 2004 governor's race (Democrat Christine Gregoire ultimately won by 130 votes.)²⁴

As previously mentioned, SEIU 775 also spends a significant amount of money to influence elections and support/oppose candidates and ballot propositions, giving further support to the argument that electoral political activities is a primary purpose of SEIU. In 2016 alone, SEIU 775 gave approximately \$1,750,000 to Initiative 1501. See **Exhibit JJJ**.

SEIU 775 also spends a significant amount of time and money (which is collected through an exorbitant union dues charge of 3.2% of wages of its members) on non-representational activities. Before the U.S. Supreme Court's decision in *Harris v. Quinn*, 134 S.Ct. 2618 (2014), Individual Providers who were nonmembers of SEIU 775 were forced to pay a reduced union fee that contributed only to chargeable/representational services that the union performed. See *Abood v. Detroit Bd. of Ed.*, 431 U.S. 209 (1977). To protect nonmember fee payers' rights, the unions must annually provide them, inter alia, an audited financial report detailing how the union calculated its agency fee. See *Chicago Teachers Union v. Hudson*, 475 U.S. 292 (1986). Essentially, these reports, or *Hudson* reports, explain the percentage of union dues that are chargeable and must be paid by nonmembers in the form of agency fees. SEIU's 2012-2014 *Hudson* reports explain that 40% of the union's activities are non-chargeable. See **Exhibit KKK** at 9., SEIU 775's Secretary-Treasurer and Director of Public Affairs, Adam Glickman, corroborated this in a letter to members. "Forty-one percent of the Union's funds were spent in its most recently-audited accounting year for activities not germane to collective bargaining, and fifty-nine percent were spent for activities germane to collective bargaining." See **Exhibit LLL**. A very large portion of the 40 percent of the union's funds are devoted to election-influencing activities; 40 percent—or even significantly smaller percentages—certainly qualifies as evidence of "a primary purpose" within the meaning of RCW 42.17A.005(37). See *Utter*, 182 Wn.2d at 427. Additionally, much of the 60% allegedly spent on representational activities is also spent to

²⁴ Available at <http://prospect.org/article/labor-crossroads-seeds-new-movement> (last visited October 26, 2016).



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influence elections, which means much more than 40% of the union's activities are election-oriented. That makes electioneering a primary purpose of SEIU 775.

Although not all "nonrepresentational activity" constitutes electoral political activity, much of it does and further inquiry will show SEIU 775 spends much of the other 60% of union dues on electoral political activity as well. Further, according to SEIU 775's LM-2 report from 2014, David Rolf, SEIU 775's president, spent zero percent of his time on representational activities and forty percent of his time on political activities and lobbying. *See Exhibit MMM.* These facts supplement the already convincing evidence cited in this letter.

Finally, all the evidence cited above clearly indicates that SEIU 775's stated goals and mission include electoral political activity, SEIU 775's conduct (and millions of its dollars) further its stated goals and mission, and SEIU 775's stated goals and mission are substantially achieved by favorable outcomes in elections.

Although the aforementioned activities by SEIU 775 are by no means exhaustive, they are informative and prove that SEIU 775 has as a primary purpose electoral political activity. SEIU 775 obviously engages in electoral political activities in order to advance its own agenda, and by SEIU 775's own admission, a substantial way it achieves its stated goals and mission is through favorable outcomes in elections. SEIU 775 also spends a significant amount of money and time supporting and/or opposing candidates and/or ballot initiatives.

A. Conclusion.

The evidence, as well as a great deal more evidence discoverable upon inquiry, supports the fact SEIU 775 is a political committee pursuant to the contributions prong and expenditures prong of RCW 42.17A.005(37). Accordingly, SEIU 775 failed to file a statement of organization with the PDC pursuant to RCW 42.17A.205 and has failed to make the numerous detailed PDC filings required by RCW 42.17A.235 and RCW 42.17A.240, as well as numerous other provisions in RCW 42.17A including, but not limited to, contribution limits and RCW 42.17A's prohibition on deceptive campaign practices. The Attorney General should investigate SEIU 775, and prosecute the union's failure to identify itself as a political committee and fulfill the PDA's obligations.

SEIU 775's conduct constitutes previous, ongoing, and pervasive violations of the PDA. We respectfully request that the Washington Attorney General's Office perform an investigation into these allegations as expeditiously and efficiently as possible. Please do not hesitate to contact me at 360.956.3482 or JAbernathy@freedomfoundation.com if I can be of assistance. Thank you for your time and consideration.



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Sincerely,

A handwritten signature in black ink, appearing to read "James G. Abernathy".

James G. Abernathy
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cc: Tony Golik, Clark County Prosecuting Attorney
Kathryn I. Burke, Ferry County Prosecuting Attorney
Jonathan Meyer, Lewis County Prosecuting Attorney
Jeffrey S. Barkdull, Lincoln County Prosecuting Attorney
Daniel T. Satterberg, King County Prosecuting Attorney
Jon Tunheim, Thurston County Prosecuting Attorney

Executive Summary and Staff Analysis
Service Employees International Union Healthcare 775NW
(45-Day Citizen Action Complaint)
PDC Case No. 15-070

This summary highlights staff's findings, conclusions, and recommendations regarding the allegations contained in PDC Case No. 15-070, a 45-Day Citizen Action Complaint (Complaint) filed on July 22, 2015 by James G. Abernathy and David M.S. Dewhirst of the Freedom Foundation against Service Employees International Union Healthcare 775NW (SEIU 775) and David Rolf, Adam Glickman, and Sterling Harders in their respective capacities as President, Secretary-Treasurer, and Vice President of SEIU 775.

Background

The Citizen Action Complaint was filed with the Washington Attorney General's Office and referred to the PDC for investigation and possible action on August 6, 2015. On August 24, 2015, PDC staff sent a letter to SEIU 775, informing them that staff had opened a formal investigation, and requesting a written response to the allegations and to several staff questions by September 4, 2015.

Allegations

The Citizen Action Complaint included three allegations, with the third allegation containing four components: **(See Exhibit 1 – Complaint)**

First Allegation: That SEIU 775 is a political committee because it has an expectation of receiving contributions and making expenditures in support of, or in opposition to candidates or ballot propositions. The complaint alleged that as a political committee, SEIU 775 has failed to register and report with the PDC.

Second Allegation: That SEIU 775, as a lobbyist employer, has failed to file a special report of contributions (PDC form L-3C) for in-kind contributions aggregating more than \$100 in a calendar month to its continuing political committee, SEIU 775 Quality Care Committee (SEIU 775 PAC).

Third Allegation: That SEIU 775 and its officers sent a political advertising letter on or about August 12, 2014 to Individual Providers (IPs) who were nonmembers of the union, soliciting them to join the union, and as full member to authorize a contribution through a payroll deduction to the international union's political committee, SEIU Committee on Political Education (SEIU COPE), a committee registered with and reporting to the Federal Election Commission. The Complaint alleged that sending this political advertising letter triggered several violations, as follows:

1. That SEIU 775 and its officers, as a political committee, failed to report the receipt of contributions authorized by IPs joining the union in response to the August 12, 2014 letter as contributions earmarked for SEIU COPE. (RCW 42.17A.270)

2. That, in the alternative, if the PDC determines that SEIU 775 is not a political committee, SEIU 775 failed to report the August 12, 2014 letter as an independent expenditure not otherwise required to be reported. (RCW 42.17A.255)
3. That SEIU 775 and its officers failed to report the August 12, 2014 letter as independent expenditure political advertising within 24 hours of mailing the letter, a requirement for political advertising mailed within 21 days of an election with a fair market value of \$1,000 or more. (RCW 42.17A.260)
4. That SEIU 775 and its officers failed to timely report the August 12, 2014 letter as an electioneering communication within 24 hours of mailing the letter, a requirement for an electioneering communication mailed within 60 days of an election that clearly identifies a candidate for a state, local or judicial office either by specifically naming the candidate, or by identifying the candidate without using the candidate's name, with a fair market value of \$1,000 or more. (RCW 42.17A.305)

Investigative Findings (See Exhibit 2 – Response to Complaint and Exhibit 3 – Supplement to Response to Complaint)

First Allegation: The Commission's Interpretation 07-02, "Primary Purpose Test" Guidelines, sets forth two alternative prongs under which an individual or organization may become a political committee and subject to the Act's reporting requirements: (1) a "receiver of contributions" prong; and (2) a "making of expenditures to further electoral political goals" prong. A requirement of the "making of expenditures" prong states that the organization making expenditures must have as its "primary or one of its primary purposes ... to affect, directly or indirectly, governmental decision making by supporting or opposing candidates or ballot propositions ..." (WA Court of Appeals, EFF v. WEA, 2003). In addition, the Interpretation states that an appropriate framework for determining whether electoral political activity is one of the organization's primary purposes should include an examination of the stated goals and mission of the organization and whether electoral political activity is a primary means of achieving the stated goals and mission during the period in question. A nonexclusive list of analytical tools that may be used to evaluate the evidence includes: (1) the content of the stated goals and mission of the organization; (2) whether the organization's actions further its stated goals and mission; (3) whether the stated goals and mission of the organization would be substantially achieved by a favorable outcome in an upcoming election; and (4) whether the organization uses means other than electoral political activity to achieve its stated goals.

Receiver of Contributions Prong: The complaint alleged that SEIU 775 is a political committee because it has an expectation of receiving contributions, and is a receiver of contributions. This argument is based on the fact that in an August 12, 2014 letter, SEIU 775 asked IPs who are nonmembers to join the union as full members, and after

joining, to authorize their employer to withhold an indicated amount per month from their pay and forward it to SEIU 775 as a contribution to be forwarded to SEIU COPE.

SEIU 775's role in these transactions was to ask nonmembers to become full members and to authorize payroll deductions for contributions to SEIU COPE. In soliciting contributions to a federal political committee, SEIU 775 was not a receiver of contributions under RCW 42.17A, nor do these actions demonstrate an expectation of receiving contributions reportable under RCW 42.17A. These activities do not make SEIU 775 a political committee.

Primary Purpose Test Prong: The complaint also alleged that SEIU 775 is a political committee because one of its primary purposes is to support or oppose candidates or ballot propositions. To address this allegation, PDC staff reviewed evidence relevant to the analysis recommended by the EFF v. WEA court.

SEIU 775's stated mission is to "unite the strength of all working people and their families, to improve their lives and lead the way to a more just and humane world." Its stated goals are to:

- Lift caregivers out of poverty.
- Build worker organizations that are powerful, sustainable, and scalable.
- Transform health and long-term care to ensure quality and access for all.
- Increase prosperity and reduce inequality for working people.

SEIU 775 has eight stated strategies to achieve its goals, one of which may include electoral political activity (Strategy 3):

1. Build worker leadership and activism.
2. Help workers form unions and other powerful organizations.
3. Hold politicians accountable.
4. Bargain strong contracts and provide quality services and benefits.
5. Advance pro-worker policy through influencing government, industry, and public opinion.
6. Build strategic partnerships.
7. Govern the Union democratically and use our resources responsibly.
8. Adapt. Innovate. Create.

No evidence was submitted to contradict SEIU 775's public statements concerning the union's mission, goals and strategies to achieve its goals. No evidence was provided demonstrating that SEIU 775 has merely restated its primary political purpose in broad nonpolitical terms. No non-financial evidence was provided showing that supporting candidates or ballot proposition campaigns was a top priority for SEIU 775 during either of the two years subject to the Citizen Action Notice. Staff found that SEIU 775's electoral political activity, described by its strategy to "hold politicians accountable," may have furthered its stated goals and mission. However, no evidence was found that SEIU 775 has substantially achieved its stated goals and mission by a favorable outcome in an election, nor was a specific election campaign cited in the allegations. It is clear that SEIU 775 uses means other than electoral political activity to achieve its stated goals.

Financial Evidence of Expenditure Prong – (See Exhibit 4 - PDC Staff Chart of SEIU Campaign Contributions (7/22/13 – 7/22/15))

SEIU 775 is required to produce audited financial reports detailing its "chargeable" and "nonchargeable" expenditures to show how the union calculates its agency fee that must be paid by nonmembers in lieu of paying full membership dues. Chargeable expenses are for activities supporting its collective bargaining work, while nonchargeable expenditures are those expenditures that do not relate to negotiating and administering a collective agreement and in adjusting grievances and disputes. The agency fee for workers who are not full union members is equal to the full union dues multiplied by the percentage of chargeable expenditures to total expenditures.

To demonstrate that SEIU 775 is a political committee during the two-year period subject to the Citizen Action Notice, the Complaint included a copy of SEIU 775's audited financial reports for the year ending December 31, 2012, which showed total expenditures of \$22,890,782, with 60% of those expenditures being chargeable and 40% being nonchargeable. The Complaint inferred that nonchargeable expenditures during the period covered by the Complaint are similar to the 2012 period (\$9,223,415 in 2012) and also concluded that all nonchargeable expenses are devoted to election-influencing activities, along with much of the 60% chargeable expenses, resulting in electoral political activities being a primary purpose of the union in 2012, and by inference, making SEIU 775 a political committee during the period covered by the Complaint. Of the union's \$9,223,415 in nonchargeable expenditures during 2012, \$1,313,074 were described in Federal labor disclosures as "donations," and that amount was split between political and nonpolitical donations.

SEIU 775 stated that it did not contribute any money to candidates in 2013, 2014 or 2015.

SEIU 775 stated that during 2013, it contributed \$418,821 to ballot measure campaigns and \$307,487 to SEIU 775 PAC for total contributions of \$726,308. Its total expenditures in 2013 from IRS Form 990 were \$22,821,921, resulting in campaign contributions equal to 3.18% of total expenditures.

SEIU 775 stated that during 2014, it contributed \$5,000 to ballot measure campaigns and \$20,000 to SEIU 775 PAC for total contributions of \$25,000. Total expenditures for 2014 is not yet available from IRS Form 990, but the expenditures are expected to be higher than 2014.

SEIU 775 stated that between January 1, 2015 and July 22, 2015, it contributed \$75,950 to SEIU 775 PAC. Total expenditures to date for 2015 were not made available.

A review of the PDC database showed that SEIU 775 made campaign contributions during the two-year period covered by the Citizen Action Complaint totaling \$758,403 (\$630,401 in 2013, \$49,002 in 2014, and \$79,000 in 2015). This is an average of \$379,202 per year resulting in campaign contributions that totaled no more than 1.66% of projected annual expenditures, using 2013 expenditures of \$22,821,921 as a benchmark. This is clearly less than a majority of SEIU 775's expenditure activity, considered an important part of the balancing of factors recommended by the EFF v. WEA court.

SEIU 775 acknowledged that it made expenditures during the period covered by the Complaint to its PAC and/or in support of ballot propositions, but denied that there is evidence that the primary or one of the primary purposes of SEIU 775 is to affect, directly or indirectly, governmental decision making by supporting or opposing candidates or ballot propositions, such that SEIU 775 is a political committee subject to the Public Disclosure Act's disclosure requirements.

Second Allegation: That SEIU 775, as a lobbyist employer, has failed to file a special report of contributions (PDC form L-3C) for in-kind contributions aggregating more than \$100 in a calendar month to its continuing political committee, SEIU 775 Quality Care Committee (SEIU 775 PAC). In responding to the Citizen Action Notice, SEIU 775 denied that any of its staff members performed more than incidental PAC related functions that exceeded \$100 in any month during the period covered by the Complaint. PDC staff asked SEIU 775 to review the services performed by its staff, including Adam Glickman, Campaign Manager and a Committee Officer for SEIU 775 Quality Care Committee, and David Rolf and Sterling Harders, Committee Officers of the PAC, and to file L-3C reports as needed. SEIU 775 has informed PDC staff that the union is reviewing staff's request to review the services performed by SEIU 775 staff members, and to calculate the value of the work performed to operate and manage the PAC, and if the value exceeds \$110 in any month during the period July 22, 2013 through July 22, 2015, to report these in-kind contributions on L-3C reports.

Third Allegation:

- That SEIU 775 and its officers, as a political committee, failed to report the receipt of contributions authorized by IPs joining the union in response to the August 12, 2014 letter as contributions earmarked for SEIU COPE. (RCW 42.17A.270). The requirement to complete a report entitled "Earmarked

contributions," is reserved for a political committee receiving a contribution earmarked for the benefit of a candidate or another political committee under the jurisdiction of the PDC. Neither occurred in this matter. When a member of SEIU 775 authorizes his or her employer to withhold funds from their wages and submit it to the union to be forwarded to SEIU COPE, a federal political committee, it is a direct contribution to SEIU COPE. It is not being contributed to SEIU 775, earmarked for the benefit of SEIU COPE. In addition, a contribution made to a federal committee is outside the jurisdiction of the PDC.

- If the PDC determines that SEIU 775 is not a political committee, the Complaint offered an alternative allegation that at SEIU 775 failed to report the August 12, 2014 letter as an independent expenditure not otherwise required to be reported. (RCW 42.17A.255). PDC staff found that the August 12, 2014 letter was a request that nonunion members join the union by completing an enclosed membership form, and if they join, to authorize voluntary contributions to SEIU COPE, a federal political committee. It was not sent in support of or in opposition to any candidate or ballot proposition. Therefore, it was not an independent expenditure reportable under RCW 42.17A.255.
- That SEIU 775 and its officers failed to report the August 12, 2014 letter as independent expenditure political advertising within 24 hours of mailing the letter, a requirement for political advertising mailed within 21 days of an election with a fair market value of \$1,000 or more. (RCW 42.17A.260). As noted above, the August 12, 2014 letter was a request that nonunion members join the union and authorize voluntary contributions to SEIU COPE. It was not independent expenditure political advertising required to be reported in accordance with RCW 42.17A.260.
- That SEIU 775 and its officers failed to timely report the August 12, 2014 letter as an electioneering communication within 24 hours of mailing the letter, a requirement for an electioneering communication with a fair market value of \$1,000 or more, mailed within 60 days of an election that clearly identified a candidate for a state, local or judicial office either by specifically naming the candidate, or by identifying the candidate without using the candidate's name. (RCW 42.17A.305). As noted above, the August 12, 2014 letter was a request that nonunion members join the union and authorize voluntary contributions to SEIU COPE. It was not an electioneering communication required to be reported in accordance with RCW 42.17A.305.

Conclusion

Based on the factors identified in staff's investigation and described here, staff has concluded that:

First Allegation: SEIU 775 is not a political committee with a requirement to register and report with the PDC, and did not violate RCW 42.17A.205, .235, and .240 because

it is not a "receiver of contributions" in support of, or in opposition to candidates or ballot propositions, and because supporting candidates or ballot propositions is not one of its primary purposes.

Second Allegation: SEIU 775, as a lobbyist employer, may have violated RCW 42.17A.630(2) by failing to report in-kind contributions for the value of staff time to operate and manage its political committee, SEIU 775 Quality Care Committee, on L-3C reports. No definitive evidence was produced to verify the amount and value of staff time dedicated to running the PAC during the Complaint period. However, it is likely that a reportable value for staff time to operate and manage the committee was required to be disclosed.

Third Allegation:

- SEIU 775 and its officers, as a political committee, did not violate RCW 42.17A.270 by failing to report the receipt of contributions authorized by IPs joining the union in response to the August 12, 2014 letter as contributions earmarked for SEIU COPE. The contributions forwarded to SEIU COPE were not earmarked contributions.
- SEIU 775 did not violate RCW 42.17A.255 by failing to report the August 12, 2014 letter as an independent expenditure not otherwise required to be reported. This expenditure was not made in support of or in opposition to any candidate or ballot proposition. The August 12, 2014 letter was a request that nonunion members join the union and authorize voluntary contributions to SEIU COPE.
- SEIU 775 did not violate RCW 42.17A.260 by failing to report the August 12, 2014 letter as independent expenditure political advertising within 24 hours of mailing the letter. The August 12, 2014 letter was a request that nonunion members join the union and authorize voluntary contributions to SEIU COPE. It was not independent expenditure political advertising.
- SEIU 775 did not violate RCW 42.17A.305 by failing to timely report the August 12, 2014 letter as an electioneering communication within 24 hours of mailing the letter. The August 12, 2014 letter was a request that nonunion members join the union and authorize voluntary contributions to SEIU COPE. It was not an electioneering communication.

Recommendation

For the reasons described above, staff recommends that the Commission recommend to the Attorney General that no further action be taken on the Citizen Action Complaint. Staff recommends that the Commission direct staff to continue working with SEIU 775 to determine whether L-3C reports are required for the value of staff time to operate and manage its political committee, SEIU 775 Quality Care Committee.

Applicable Statutes, Rules, and Interpretations

RCW 42.17A.005(26)

"Independent expenditure" means an expenditure that has each of the following elements:

(a) It is made in support of or in opposition to a candidate for office by a person who is not (i) a candidate for that office, (ii) an authorized committee of that candidate for that office, (iii) a person who has received the candidate's encouragement or approval to make the expenditure, if the expenditure pays in whole or in part for political advertising supporting that candidate or promoting the defeat of any other candidate or candidates for that office, or (iv) a person with whom the candidate has collaborated for the purpose of making the expenditure, if the expenditure pays in whole or in part for political advertising supporting that candidate or promoting the defeat of any other candidate or candidates for that office;

(b) The expenditure pays in whole or in part for political advertising that either specifically names the candidate supported or opposed, or clearly and beyond any doubt identifies the candidate without using the candidate's name; and

(c) The expenditure, alone or in conjunction with another expenditure or other expenditures of the same person in support of or opposition to that candidate, has a value of *eight hundred dollars or more. A series of expenditures, each of which is under eight hundred dollars, constitutes one independent expenditure if their cumulative value is eight hundred dollars or more.

RCW 42.17A.005(19)(a)

(19)(a) "Electioneering communication" means any broadcast, cable, or satellite television or radio transmission, United States postal service mailing, billboard, newspaper, or periodical that:

(i) Clearly identifies a candidate for a state, local, or judicial office either by specifically naming the candidate, or identifying the candidate without using the candidate's name;

(ii) Is broadcast, transmitted, mailed, erected, distributed, or otherwise published within sixty days before any election for that office in the jurisdiction in which the candidate is seeking election; and

(iii) Either alone, or in combination with one or more communications identifying the candidate by the same sponsor during the sixty days before an election, has a fair market value of one thousand dollars or more.

RCW 42.17A.005(37)

"Political committee" means any person (except a candidate or an individual dealing with his or her own funds or property) having the expectation of receiving contributions or making expenditures in support of, or opposition to, any candidate or any ballot proposition.

Interpretation 07-02 "Primary Purpose Test" Guidelines

Interpretation 07-02 is a summary of the "primary purpose test" Guidelines that relate to "political committees" under Washington State law. It sets forth two alternative prongs under which an individual or organization may become a political committee and subject to the Act's reporting requirements: (1) a "receiver of contributions" prong; and (2) a "making of expenditures to further electoral political goals" prong. A requirement of the "making expenditures" prong states that the organization making expenditures must have as its "primary or one of its primary or one of its primary purposes ... to affect, directly or indirectly, governmental decision making by supporting or opposing candidates or ballot propositions ..." (WA Court of Appeals, EFF v. WEA, 2003). In addition, the Interpretation states that an appropriate framework for determining whether electoral political activity is one of the organization's primary purposes should include an examination of the stated goals and mission of the organization and whether electoral political activity is a primary means of achieving the stated goals and mission during the period in question. A nonexclusive list of analytical tools that may be used to evaluate the evidence includes: (1) the content of the stated goals and mission of the organization; (2) whether the organization's actions further its stated goals and mission; (3) whether the stated goals and mission of the organization would be substantially achieved by a favorable outcome in an upcoming election; and (4) whether the organization uses means other than electoral political activity to achieve its stated goals.

RCW 42.17A.205

Every political committee shall file a statement of organization with the commission. The statement must be filed within two weeks after organization or within two weeks after the date the committee first has the expectation of receiving contributions or making expenditures in any election campaign, whichever is earlier.

RCW 42.17A.235 and .240

Every political committee is required to file ongoing reports of contributions and expenditures at specified intervals.

RCW 42.17A.255

For the purposes of this section the term "independent expenditure" means any expenditure that is made in support of or in opposition to any candidate or ballot proposition and is not otherwise required to be reported pursuant to RCW

42.17A.220, 42.17A.235, and 42.17A.240. Any person making "independent expenditures" not otherwise required to be reported, shall file a C-6 report within five days after the date of making an independent expenditure of \$100 or more.

RCW 42.17A.260

The sponsor of political advertising who, within twenty-one days of an election, publishes, mails, or otherwise presents to the public political advertising supporting or opposing a candidate or ballot proposition that qualifies as an independent expenditure with a fair market value of one thousand dollars or more shall deliver, either electronically or in written form, a special report to the commission within twenty-four hours of, or on the first working day after, the date the political advertising is first published, mailed, or otherwise presented to the public.

RCW 42.17A.305

A payment for or promise to pay for an electioneering communication shall be reported to the Commission on forms developed by the Commission at specified times in a specified manner.

Exhibits

- | | |
|-----------|--|
| Exhibit 1 | 45-Day Citizen Action Complaint |
| Exhibit 2 | Response to Complaint |
| Exhibit 3 | Supplement to Response to Complaint |
| Exhibit 4 | PDC Staff Chart of SEIU Campaign Contributions (7/22/13 – 7/22/15) |

Schwerin Campbell Barnard Iglitzin & Lavitt LLP

ATTORNEYS AT LAW

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*Original via US First Class mail and
Via email to LindaD@ATG.WA.GOV*

January 6, 2017

Linda A. Dalton
Senior Assistant Attorney General
Office of the Attorney General
P.O. Box 40100
Olympia, WA 98504-0100

RE: Freedom Foundation Citizen Action Notice Against SEIU 775, Et. Al.
SCBIL File No. 3263-248

Dear Ms. Dalton:

We write to you on behalf of our client, SEIU 775, in response to your letter dated December 19, 2016, regarding (and enclosing) a 45-day Citizen Action Letter filed against SEIU 775 and three of its officers by The Freedom Foundation ("FF") with the Washington State Attorney General's office on December 15, 2016 ("the Letter"). The gravamen of the Letter is that SEIU 775 is properly characterized as a "political committee," as defined by RCW 42.17A.005(37), under both the "contributions" and "expenditures" prongs of that definition.

As you know, very similar, if not identical, allegations were lodged by FF against SEIU 775 on July 22, 2015. Those allegations were carefully investigated by the Washington State Public Disclosure Commission ("PDC") in PDC Case No. 15-070, which issued an Executive Summary and Staff Analysis on or about September 22, 2015, which found the charges lacking in merit. On September 24, 2015, the Washington State Attorney General's Office then reached the same conclusion, effectively adopting both the analysis and the conclusions of the Commission.

Given this history, and consistent with the request you made in your letter for us to address "any disclosure requirements SEIU 775 may have had during 2016 and whether [we] believe SEIU 775 complied with those requirements," this response to your letter will be focused almost exclusively on the few new arguments raised by FF, and on the events and actions that have taken place since January 1, 2016. For the reasons set forth below, it is clear that there is still no merit to the claims being made by FF. We therefore ask that the AG again find no basis to take any action against SEIU 775 based on the allegation that SEIU 775 is an unlawfully unregistered political committee.

18 West Mercer St, Ste 400	(206) 285.2828	TEL
Seattle, Washington 98119	(800) 238.4231	TEL
workerlaw.com	(206) 378.4132	FAX

SEIU 775 is not an unregistered political committee under the “contributions” prong.

SEIU 775 is not an unregistered political committee under the “contributions” prong because there is no evidence that it at any time, much less in 2016, had “the expectation of receiving contributions” in support of, or opposition to, any candidate or ballot proposition.

The FF’s first basis for this charge is that SEIU 775 has received money from SEIU International (“SEIU”). There is no evidence, however, that this money was either solicited or used for the purpose of supporting or opposing any candidate or ballot proposition. In fact, the second-hand information relied upon by FF for this assertion, e.g., the assertion in an SEIU LM-2 report, Exhibit A, showing that a sum of money was provided to SEIU 775 by SEIU for “political advocacy,” and the information contained in Exhibit B (an LM-2 filed by SEIU 775) showing more generally that SEIU 775 received money from SEIU, provides no evidence that the money was intended to be used for electoral political activity.¹ Given the absence of any evidence that SEIU 775 in *fact* used any of the money it received from SEIU to support or oppose any candidate or ballot proposition, there is equally no evidence that SEIU 775 had an expectation of receiving money from SEIU to be used for these purposes.

The FF’s second argument relies on the same error or misunderstanding that flawed its 2015 Citizen Action Letter, in that it misunderstands the provision by SEIU 775 of staff time to other entities (or political committees) in exchange for money as evidence that SEIU 775 has received “contributions” from such entities. Regarding Working Washington, for example, cited in the Letter on page 3, and *see* Exhibit I, evidence that money was paid to SEIU 775 as a “cost reimbursement” does not show that a “contribution” was made by Working Washington to SEIU 775, much less that SEIU 775 received that money for the purpose of supporting or opposing any candidate or ballot proposition. Instead, the money was paid to SEIU 775 for services provided by SEIU 775 to Working Washington, and thus was not a contribution to SEIU 775 of any kind. The same flaw attaches to the FF’s contention that money paid to SEIU 775 by SEIU 775 Quality Care PAC to purchase staff time from SEIU 775 (Letter, p. 3; *see also* Exhibits C, J, and K) was a contribution being made to SEIU 775 for electoral political purposes. Transparently, and for the same reason, it was not.

Third, FF’s assertion that SEIU 775’s activities designed to raise money for SEIU COPE render SEIU 775 a political committee under the “contributions” prong was previously investigated and rejected by the PDC in Case No. 15-070, the Executive Summary and Staff Analysis for which noted properly, at pages 2-3:

Receiver of Contributions Prong: The complaint alleged that SEIU 775 is a political committee because it has an expectation of receiving contributions, and

¹ In addition, the contributions from SEIU to SEIU 775 identified in Exhibits A, B, and D took place between January 2010 and December 2011, outside of even the five-year statute of limitations applicable to any action that might be brought under the Fair Campaign Practices Act (“FCPA”) by the State of Washington, much less the two-year statute of limitations applicable to any hypothetical citizen’s suit. (Note that Exhibit D, cited for the same proposition as Exhibit A, is in fact a duplicate of Exhibit A). The contributions identified in Exhibit E and F, while more recent, still fall outside of that two-year period.

is a receiver of contributions. This argument is based on the fact that in an August 12, 2014 letter, SEIU 775 asked IPs who are nonmembers to join the union as full members, and after joining, to authorize their employer to withhold an indicated amount per month from their pay and forward it to SEIU 775 as a contribution to be forwarded to SEIU COPE.

SEIU 775's role in these transactions was to ask nonmembers to become full members and to authorize payroll deductions for contributions to SEIU COPE. In soliciting contributions to a federal political committee, **SEIU 775 was not a receiver of contributions under RCW 42.17A, nor do these actions demonstrate an expectation of receiving contributions reportable under RCW 42.17A. These activities do not make SEIU 775 a political committee.**

(Emphasis added).

Fourth, FF's argument that SEIU 775 is a political committee because it allegedly uses union dues from Individual Providers to fund contributions which SEIU 775 makes to SEIU 775 Quality Care PAC is flatly inconsistent with *State ex rel. Evergreen Freedom Foundation v. Washington Educ. Ass'n*, 140 Wn.2d 615, 639, 999 P.2d 602 (2000), which held that former RCW 42.17.760 (now RCW 42.17A.500) "inferentially allows labor organizations to use dues paid by members for contributions to political committees and candidates.... [T]he Initiative did not alter the ability of labor organizations to use members' dues for contributions under Chapter 42.17 RCW." It is thus beyond dispute under Washington law that labor organizations may make such use of dues paid by members without thereby incurring the obligations and responsibilities inherent in being deemed a political committee.

It is for this reason, presumably, that this same contention by FF was just recently rejected by your office in the December 21, 2016, letter it sent to FF explaining why the Attorney General's Office was going to take no action related to the Citizen Action Notice filed by the FF against Governor Jay Inslee and the Department of Social and Health Services on October 3, 2016, a Notice that similarly claimed that the ultimate use of dues money by SEIU 775 to make donations to a political committee meant that SEIU 775 is a political committee under the contributions prong.

Fifth and finally, contrary to the contention made by FF, the status of SEIU 775 is not dependent upon what SEIU 775's members might know or believe about how SEIU 775 uses their dues. *State ex rel. Evergreen Freedom Foundation v. Washington Educ. Ass'n*, 111 Wn. App. 586, 603, 49 P.3d 894 (2002), relied upon by FF for this proposition, in fact holds precisely the opposite, concluding as a matter of law that where a union's members (like SEIU 775's members here) "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

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political committee as a receiver of contributions.² For this reason, the extensive discussion by FF (pages 4-12) intended to demonstrate that SEIU 775's members have "actual" or "constructive" knowledge that SEIU 775 spends some money derived from union dues on electoral political activity is entirely beside the point. Given that SEIU 775 does not segregate any specific portion or proportion of its members' dues into a political account, SEIU 775 is conducting itself precisely in the manner approved by the Court of Appeals in the case relied upon by FF, and similarly cannot be deemed to be a political committee under the contributions prong.³

SEIU 775 is not an unregistered political committee under the "expenditures" prong.

As was noted above, on September 24, 2015, the Office of the Attorney General, after conducting an exhaustive review of SEIU 775's expenditures, concluded that "[t]he records and the analysis do not support a conclusion that one of the primary purposes of SEIU 775 is campaign activities." See September 24, 2015, letter from Linda Dalton to James Abernathy, et. al., page 2, paragraph 1.

Because the Attorney General's Office has previously examined SEIU 775's expenditures prior to 2016 and found, properly, that such expenditures do not convert SEIU 775 into a political committee, this letter need focus only on SEIU 775's 2016 expenditures, which similarly do not have that result. The 2016 expenditures, including both cash and in-kind contributions, included:

1. \$1,585,000 contributed to the Campaign to Prevent Fraud and Protect Seniors.
2. \$208,236.40 contributed to Raise Up Washington.
3. \$58,763 contributed to the SEIU 775 Quality Care Committee
4. \$2,500 contributed to Washington Won't Discriminate.
5. \$151,249.70 contributed to Yes on I-125

All of these contributions were properly reported by SEIU 775 on Adam Glickman's L2 filings.

SEIU 775 has not yet prepared or filed financial reports with the Internal Revenue Service for calendar year 2016; thus, it is impossible to do a precise analysis of the relationship

² Were the law otherwise, then not only SEIU 775, but every labor organization that, with the knowledge of its members, donates money to its own PAC or separate segregated fund to be used for electoral political activity would be required to register with the PDC as a political committee. It was very clearly not the intent of the FCPA to impose this burden on unions that avail themselves of the right, recognized in *State ex rel. Evergreen Freedom Foundation v. Washington Educ. Ass'n*, 140 Wn.2d 615, discussed above, "to use members' dues for contributions under Chapter 42.17 RCW," and, equally clearly, that is not the law in Washington State.

³ FF's argument, at p. 12-13, that SEIU 775 in fact segregates funds for political purposes in such as way as to justify deeming it a political committee under the contributions prong is not supported by any evidence. An argument based purely on the amount of money spent by SEIU 775 on a broad range of political activities, many of which have no connection to electoral political activity, provides no factual basis for concluding that SEIU 775 apportions some percentage or amount of dues in such as way as might properly be characterized as segregating a portion of member dues for political activity.

between the expenditures for electoral political activity noted above and SEIU 775's 2016 expenditures. However, we have determined that SEIU 775's total expenditures in 2016 will exceed its 2015 expenditures. The IRS Form 990 filed by SEIU 775 for calendar year 2015 reveals that SEIU 775 spent a total of \$25,259,216 in that year. Using that sum as the absolute minimum level of SEIU 775 expenditures in 2016, the amount of money spent by SEIU 775 on electoral political activity in 2016 will be less than 8% of its entire budget. While this is a slightly higher percentage that was the case in prior years, it remains true, as the PDC found in its 2015 Executive Summary and Staff Analysis, at page 5, that this amount "is clearly less than a majority of SEIU 775's expenditure activity, considered an important part of the balancing of factors recommended by the *EFF v. WEA* court."

Moreover, even this 8% figure is historically anomalous for SEIU 775 and therefore has to be looked at in the context of SEIU 775's activities over a longer time period. Looking at the expenditures made by SEIU 775 on electoral political activity during the two-year period covered by the Letter, for example – i.e., combining the amount spent in 2016 with the \$79,000 the PDC determined SEIU 775 spent in 2015 (*see* 2015 Executive Summary and Staff Analysis, page 5, third paragraph), and assuming the same number for overall annual expenditures, \$25,259,216, for each of the two years covered – one can determine that during the relevant time period, SEIU 775 spent slightly less than 4% of its budget on electoral political activity – again, *dramatically* less than a majority of its expenditure activity.⁴

It cannot reasonably be disputed, moreover, that the other nonexclusive analytical factors that are used to answer the question of whether an entity is a political committee under the expenditures prong (i.e., (1) the content of the organization's stated goals and mission; (2) whether the organization's actions further its stated goals and mission; (3) whether the stated goals and mission of the organization would be substantially achieved by a favorable outcome in an upcoming election; and (4) whether the organization uses means other than electoral political activity to achieve its stated goals) continue to require a conclusion regarding SEIU 775's status adverse to FF, the same conclusion that was reached by both the PDC and the Office of the Attorney General at the end of 2015. Significantly, FF has cited no evidence indicating that SEIU 775 took any action, or made any statement, *subsequent to September 24, 2015*, that could lead any decision-maker to reach a different decision than the one previously reached. It remains true, in the words of the PDC Executive Summary and Staff Analysis, at page 4, that:

No evidence was submitted to contradict SEIU 775's public statements concerning the union's mission, goals and strategies to achieve its goals. No evidence was provided demonstrating that SEIU 775 has merely restated its primary political purpose in broad nonpolitical terms. No non-financial evidence was provided showing that supporting candidates or ballot proposition campaigns

⁴ Over the past four years, moreover, using the assumptions noted above about SEIU 775's 2016 total expenditures and expenditures for electoral political activity as well as the PDC's 2015 determination that in each of the years preceding 2016 SEIU 775's campaign contributions did not exceed 1.66% of its annual expenditures (*see* 2015 Executive Summary and Staff Analysis, page 5, third paragraph), SEIU 775 spent only 3.2% of its budget on electoral political activity.

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was a top priority for SEIU 775 during either of the two years subject to the Citizen Action Notice.⁵

In light of the foregoing evidence and information, it is clear that the Attorney General's Office should again conclude, as it did in September of 2015, that SEIU 775 is also not a political committee under the expenditures prong.

Conclusion

SEIU 775 has not violated any of the applicable provisions of RCW 42.17A. We therefore ask that the Complaint be dismissed. While we trust that this is sufficient to overcome the allegations in the Complaint and ensure its dismissal, we would be happy to provide any supporting information you may need.

Please do not hesitate to contact us if you have any questions, or if we can be of further assistance.

Sincerely,



Dmitri Iglitzin
Counsel for SEIU Local 775

cc: Judy Krebs, General Counsel, SEIU 775

⁵ Mr. Glickman's January 4, 2016, e-mail encouraging caregivers to participate in political activity, Exhibit GGG to the Letter, appears to be the only post-September 24, 2015, communication not oriented to one specific candidate or ballot measure relied upon by FF to support its assertion that electoral political activity is one of SEIU 775's primary purposes. This communication, however, is not any different in tone or kind from the extensive communications predating September 24, 2015, previously reviewed by the PDC and the Office of the Attorney General, including those relied upon by FF in its letter at page 15. There is nothing about that e-mail, or about the various other post-September 24, 2015, e-mails, tweets and public announcements referenced by FF in its letter on page 19, that would logically lead the State to reach a different conclusion on this issue than it did previously.