



STATE OF WASHINGTON
PUBLIC DISCLOSURE COMMISSION

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June 7, 2023

Service Employees International Union, Washington State Council PAC
c/o Barnard Iglitzin & Lavitt, LLP, Counsel for SEIU
18 West Mercer Street, Ste. 400
Seattle, WA 98119

ATTN: Derek Schoonmaker,
Schoonmaker@workerlaw.com

RE: The Commission's Written Response to SEIU's Petition for Declaratory Order

Dear Mr. Schoonmaker,

This letter is the Washington State Public Disclosure Commission's response to SEIU's April 12, 2023, petition for a declaratory order. Within thirty days of that request, staff presented the petition to the Commission at its April 27, 2023, regular meeting. At that meeting the Commission set a time to fully consider the request at its May 25, 2023, regular meeting as allowed by RCW 34.05.240(5)(b). At the May meeting the Commission reviewed the petition, petitioner's arguments, written public comments, and PDC staff's independent memo provided pursuant to WAC 390-12-250(2). The petitioner was given timely notice of both meetings and petitioner's counsel attended and offered public comment. Consideration of whether to issue a declaratory order is discretionary on the part of the Commission. RCW 34.05.240(5).

The petition concerns suspension of enforcement of RCW 42.17A.405(12) and .442. These statutes prohibit political committees from making contributions to state office candidate committees or political committees, respectively, unless the contributing committee itself has received contributions of at least \$10 from at least 10 registered Washington voters.¹ The question presented by the petition is whether this prohibition is constitutional in relation to SEIU PACs. After due consideration, the Commission declines to enter a declaratory order for the following reasons.

The petition did not allege the statutory language related to the contributor requirement was ambiguous. Rather, it questioned the constitutionality of the requirement because, in their view, it improperly restricted the union's free speech rights, did not apply to all categories of contributors, required association with certain contributors, and was ineffective in meeting a necessary state interest.

¹ The contribution threshold was raised in 2023 to \$25 by WAC 390-05-400.

The Commission is an administrative body that does not determine the constitutionality of state statutes. Its duty is to enforce the law unless there is a clear and binding order from the court not to do so. Here, the petitioner relies on the Thurston County Superior Court's Order on Motion on the Pleadings in *Washington v. Grocery Mfrs. Ass'n* (GMA), No. 13-2-02156-8, to argue the Commission should not enforce these statutes against SEIU. The Commission has determined that this order is not dispositive of the situation presented in the petition and fails to meet the high standard of allowing a state agency not to enforce the law. Unlike the petitioner's situation, the order was applied to ballot measure committees only, discussed only RCW 42.17A.442 and not .405, and was not binding on the Commission in relation to the PACs in question. The Commission does not have the authority to extend this decision to SEIU and must decline to do so without a court order addressing these discrepancies. The example petitioner gives of earlier declaratory orders of the Commission restricting enforcement for Recall Committees is inapposite.² In that instance, the Ninth Circuit order found application of the law unconstitutional as applied to specific committees and set criteria for the Commission to apply before restricting contribution limits. The Commission has complied with the federal order and suspended enforcement only for the specific situations it applies to. Using the Superior Court's order here would require the Commission to expand the order's findings to situations related to, but outside the scope of the original order. Without reaching the merits of the Petition's arguments or the PDC staff's response, the Commission declines to issue a declaratory order determining the constitutionality of these statutes in this separate context.

While issuance of a declaratory order is not appropriate here, the Commission acknowledges the need for clarity in this area and hopes further discussions between staff and the petitioner can find a mutually agreed upon way to resolve this situation.

The Commission thanks SEIU for highlighting this issue and we look forward to working with you on it and others in the future.

Sincerely,

Signature: 
Fred Jarrett (Jun 5, 2023 21:41 PDT)

Email: fred.jarrett@pdc.wa.gov

Fred Jarrett, Chair
Washington State Public Disclosure Commission

² See Commission Declaratory Orders 17 and 19, as well as *Farris v. Seabrook*, 677 F.3d 858 (9th Cir. 2012).