Schwerin Campbell Barnard Iglitzin & Lavitt LLP
ATTORNEYS AT LAW
Of Counsel Lawrence Schwerin

DANIELLE FRANCO-MALONE
franco@workerlaw.com

Sent via email to lindad@atg.wa.gov

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Linda Dalton
Senior Assistant Attorney General
Washington State Attorney General's Office
1125 Washington Street SE
PO Box 40100
Olympia, WA 98504-0100

RE: Public School Employees of Washington Political Fund
Glen Morgan 10-Day Notice Re: Alleged Violations of RCW 42.17A.235, .240, .205 and .425
SCBIL File No. 3308-011

Dear Ms. Dalton:

On behalf of the Public School Employees of Washington Political Fund ("the Committee"), we are hereby responding to the allegations raised by Mr. Glen Morgan in the above-referenced matter regarding alleged violations of the Fair Campaign Practices Act ("FCPA"). In particular, this letter addresses the following allegations:

- Allegation One: Violation of RCW 42.17A.235 for failure to accurately and timely report contributions and expenditures.
- Allegation Two: Violation of RCW.42.17A.235 and WAC 390-16-037 for failure to provide detailed breakdowns of expenditures.

As discussed in more detail below, the Attorney General should refer this matter to the PDC for enforcement if it deems enforcement to be appropriate. The allegations in Mr. Morgan's complaint are either unfounded or involve *de minimis* and technical violations that do not warrant judicial enforcement. We request that the Attorney General accordingly inform Mr. Morgan that it has determined enforcement action is unwarranted.

We address the specific claims that were made against the Committee by Mr. Morgan in turn, as follows:

1. ***"Failure to file accurate, timely C3 and C4 reports. (Violation of RCW 42.17A.235)"***

Mr. Morgan's complaint is based on a legal fallacy—that merely *amending* a previously filed report renders it late. As detailed in the attached response to Mr. Morgan's allegations, eight of the 39 allegations involve reports that were timely filed, but were later amended in order to correct a

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

single error—the existence of $1350 "previous total cash and in kind contributions" that was first listed on the Committee's January 2016 C4 report and which necessitated amendment of subsequent reports to also include the $1350. The Committee's February through September reports were amended to reflect this contribution. Another three reports were amended to correct other information but were originally timely filed. **These 11 allegedly late reports were not late at all—they were simply revised to provide additional information when the Committee became aware that some information had been inadvertently omitted.** Mr. Morgan relies upon the novel legal theory, unsupported by any law or precedent, that merely *amending* a filing thereby renders it late. There is no part of the statute, or any case law applying RCW 42.17A, that supports this claim. Such an application of the law would lead to an absurd result. In order to effectuate the FCPA's focus on "promot[ing] complete disclosure of all information," RCW 42.17A.001, the ability for a candidate or committee to amend reports without penalty must be preserved. Mr. Morgan's assertion here would create the perverse incentive to *withhold* complete disclosure, if a reporting entity is to be penalized for discovering and appropriately correcting a mistake. Those 11 particular allegations regarding amended reports should therefore be disregarded.

In another instance, a report was amended July 7, 2017 (report number 100805941), amending report number 100690397, originally filed on April 12, 2017. However, an examination of the original and amended reports makes clear that the amended report simply refiled the original report. Accordingly, all of the information contained in the amended report was included in the original timely filed report, undercutting any conceivable argument that an amended report amounts to a late filed report. Thus, the allegation regarding report number 100805941 allegedly being filed late should also be disregarded.

In other instances, the Committee did file reports late, but the late reports were never required to be filed in the first place such that the late reporting does not violate the FCPA. For instance, the Committee filed four late C3 reports that disclosed deposits of contributions totaling less than $200 (*see* report numbers 100749153, 100690396, 100690395, and 100690398). It also filed eight late C4 reports covering periods of time in which no reportable activity occurred because the Committee did not make expenditures exceeding $200 (*see* report numbers 100781632, 100775365, 100760847, 100738602, 100721182, 100768047, 100733615, 100798068). RCW 42.17A.235(2)(c) provides that a Committee is required to file monthly reports *only if* it received contributions or made expenditures exceeding $200. The Committee was never required to report these 12 contribution and expenditure reports in the first place. It should not be penalized for filing late what it was never required to report in the first place.

Another eight reports were filed only five or fewer days late and consequently involve only *de minimis* violations of the Act.

Taking into account the explanations surrounding the above-described allegations, the alleged violations in Mr. Morgan's Exhibit A do not warrant judicial enforcement. The PDC is fully capable of investigating these sorts of *de minimis* violations.

2. "Failure to properly break down expenses. (Violation of RCW 42.17A.235, see WAC 390-16-205)"

Mr. Morgan relies upon one C4 report, which he claims contains two examples in which the Committee failed to properly break down expenses. Specifically, he claims that the Committee failed to list a subvendor or number of items printed for a July 1, 2016, expenditure listed on the report as "prep vouchers, packets and email to council," and failed to list a subvendor for an expenditure listed on the report as "Bipartisan Leadership Fund Check." *See* Report 100733904. First, Mr. Morgan is wrong that these entries represent expenditures. The entries are clearly listed on Schedule B, listing in-kind contributions, not Schedule A, listing expenditures. This allegation fails because the plain language of WAC 390-16-205 applies only to expenditures, not in-kind contributions. Even if WAC 390-16-205 applied to in-kind contributions, there were no subvendors or number of items to report. The in-kind contributions at issue reflected donated PSE staff time to help administer the Committee. The allegations reflected in Exhibit B are therefore unmeritorious and don't warrant any action by the Attorney General.

Conclusion

With respect to Mr. Morgan's utterly unfounded claim that any of the above actions, if found to be violations of the law—which we again assert is not the case—were done with malice as contemplated by RCW 42.17A.750(2)(c): there has been absolutely no malicious action undertaken by the Committee. Alleging "the possibility" that violations have been committed—with the serious multiplier of allegations of malice—does not amount to sufficient grounds for the criminal prosecution that Mr. Morgan is seeking.

If you have any questions, or if there is anything we can do to be of assistance to you, please do not hesitate to contact us.

Sincerely,

Danielle Franco-Malone
Counsel for Public School Employees of Washington Political Fund

cc: Rick Chisa (via email)