

March 20, 2019

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

Re: PDC Case No. 47303

Mr. Ragins,

I have reviewed the Service Employees International Union Political Education and Action Fund's ("SEIU PEAFF") March 13, 2019 response to my citizen action complaint filed February 18, 2019 and would like to address several issues.

SEIU PEAFF does not dispute allegations two through six, except for the claim in bullet point two (not bullet point three as SEIU PEAFF's response indicates) of allegation six that SEIU PEAFF failed to disclose a \$203,499 contribution it received from SEIU International on July 26, 2018. Upon further review, it appears the contribution was, as SEIU PEAFF contends, properly disclosed on its form C5 filed August 13, 2018.

Though admitting most of the remaining allegations, SEIU PEAFF describes the nature of its violations as "regrettable" but "trivial" and requests the complaint be dismissed "as not justifying the imposition of any penalty."

Some of the violations are more "trivial" than others. The failure of a national political fund operated by a large, sophisticated labor union to disclose millions of dollars in contributions it has received over the course of a year can hardly be described as "trivial."

Even the less significant violations occurred repeatedly over the course of the year, demonstrating at least extreme carelessness.

It's also worth pointing out that this is not the first time SEIU PEAFF's compliance with the FCPA has come into question. After filing a citizen action notice with the Attorney General's Office in January 2018, the Freedom Foundation on April 3, 2018, filed a citizen action lawsuit against SEIU PEAFF in Thurston County Superior Court for significant violations of the FCPA occurring prior to 2018. The litigation is ongoing.¹

All or nearly all the violations of the FCPA committed by SEIU PEAFF as alleged in the complaint at hand occurred *after* the Freedom Foundation filed its original citizen action notice

¹ Case No. 18-2-01731-34.

with the Attorney General in January 2018.

As a result of the Freedom Foundation’s citizens action, SEIU PEAFF subsequently filed a series of late forms C3 and C4 with the PDC for contributions and expenditures as a political committee in 2016. This prompted Glen Morgan to file a complaint alleging late reporting by SEIU PEAFF with the PDC, which resolved the complaint with a warning to SEIU PEAFF.²

The fact that SEIU PEAFF continued to violate the FCPA for a year after having its previous violations formally exposed, received an additional warning from the PDC, and failed to correct its reporting errors until yet another complaint was filed documenting its shortcomings should weigh heavily against dismissal of the complaint at hand.

As discussed in the original complaint, nearly all of the factors spelled out in RCW 42.17A.750(1)(d) for courts to consider when assessing civil penalties for violations of the Fair Campaign Practices Act (“FCPA”) work against SEIU PEAFF.

RCW 42.17A.750	Applicability to SEIU PEAFF
(i) The respondent's compliance history, including whether the noncompliance was isolated or limited in nature, indicative of systematic or ongoing problems, or part of a pattern of violations by the respondent, resulted from a knowing or intentional effort to conceal, deceive or mislead, or from collusive behavior, or in the case of a political committee or other entity, part of a pattern of violations by the respondent's officers, staff, principal decision makers, consultants, or sponsoring organization;	Far from being “isolated or limited” in nature, SEIU PEAFF’s violations have spanned the course of several years and election cycles. Its violations continued to occur even as it faced active litigation for its previous violations and warnings from the PDC. It is not currently possible to discern whether SEIU PEAFF’s 2018 violations were intentional, though the consistency of the violations does suggest a pattern.
(ii) The impact on the public, including whether the noncompliance deprived the public of timely or accurate information during a time-sensitive period or otherwise had a significant or material impact on the public;	SEIU PEAFF’s failure to timely file reports and complete failure to disclose certain contributions all occurred over the course of a major election year, depriving the public of both timely and accurate information.
(iii) Experience with campaign finance law and procedures or the financing, staffing, or size of the respondent's campaign or organization;	SEIU PEAFF is a Section 527 “political organization” under federal tax law. Its sole purpose is to engage in political activity at the state and local level. It is operated by professional staff of one of the largest labor unions in the country. The national SEIU had total annual receipts of over \$300 million and a paid staff of nearly 600, according to its form LM-2 filed with the U.S. Department of

² Case No. 42700.

	Labor for calendar year 2017. If SEIU PEAFF does not have the necessary experience, financing, staffing or sophistication to comply with the FCPA, no one does.
(iv) The amount of financial activity by the respondent during the statement period or election cycle;	SEIU PEAFF received \$12.3 million in contributions in 2018 and expended a similar sum. This is an exceptional amount of money by any measurement.
(v) Whether the late or unreported activity was within three times the contribution limit per election, including in proportion to the total amount of expenditures by the respondent in the campaign or statement period;	SEIU PEAFF failed to report receipt of three contributions totaling \$2,770,463 in 2018, a substantial sum by any measurement and well above any contribution limits set in the FCPA.
(vi) Whether the respondent or any person benefitted politically or economically from the noncompliance;	SEIU PEAFF may have benefitted politically from the noncompliance, but probably did not benefit economically.
(vii) Whether there was a personal emergency or illness of the respondent or member of his or her immediate family;	Not applicable to SEIU PEAFF in this instance.
(viii) Whether other emergencies such as fire, flood, or utility failure prevented filing;	Not applicable to SEIU PEAFF in this instance.
(ix) Whether there was commission staff or equipment error, including technical problems at the commission that prevented or delayed electronic filing;	Not applicable to SEIU PEAFF in this instance.
(x) The respondent's demonstrated good-faith uncertainty concerning commission staff guidance or instructions;	Not applicable to SEIU PEAFF in this instance.
(xi) Whether the respondent is a first-time filer;	Not applicable to SEIU PEAFF, which has filed forms C5 with the PDC as an out-of-state political committee since 2010.
(xii) Good faith efforts to comply, including consultation with commission staff prior to initiation of enforcement action and cooperation with commission staff during enforcement action and a demonstrated wish to acknowledge and take responsibility for the violation;	SEIU PEAFF did not file corrected forms C5 until after the Freedom Foundation filed its citizen action complaint with the PDC.
(xiii) Penalties imposed in factually similar cases; and	In PDC Case No. 42719, the PDC imposed a \$40,000 penalty on UFCW Local 21's PAC for failing to report about \$250,000 in contributions and expenditures made over the course of 2017. The Spokane County Democrats faced an

	<p>\$83,000 penalty as a result of litigation brought by the Attorney General for failure to timely disclose \$104,190 in contributions and \$110,554 in expenditures.³</p> <p>The King County Democrats faced a \$36,797 penalty as a result of litigation brought by the Attorney General for failure to timely disclose \$65,442 in expenditures and \$74,261 in contributions in 2016.⁴</p> <p>In the case at hand, SEIU PEAFF completely failed to disclose \$2,770,463 in contributions received over the course of 2018 and committed other violations.</p>
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Additionally, the accompanying factors listed in WAC 390-37-061 for the PDC to consider when determining whether to address the violations through an investigation, adjudicative proceeding, or alternative response to noncompliance strongly suggest investigation and adjudication are appropriate in this case.

An alternative response to noncompliance may be appropriate if ...	An investigation and possible adjudicative hearing may be appropriate if ...	Application to SEIU PEAFF
It appears that noncompliance resulted from a good-faith error, omission, or misunderstanding.	It appears that the noncompliance may have resulted from a knowing or intentional effort to conceal, deceive or mislead, or violate the law or rule, or from collusive behavior.	<p>Far from being “isolated or limited” in nature, SEIU PEAFF’s violations have spanned the course of several years and election cycles. Its violations continued to occur even as it faced active litigation for its previous violations and warnings from the PDC.</p> <p>It is not currently possible to discern whether SEIU PEAFF’s violations were</p>

³ Washington State Office of the Attorney General. “Spokane County Democrats to pay nearly \$50,000 over campaign finance violations.” December 24, 2018. <https://www.atg.wa.gov/news/news-releases/spokane-county-democrats-pay-nearly-50000-over-campaign-finance-violations>

⁴ Washington State Office of the Attorney General. “AGO files campaign finance complaint against King County Democratic Central Committee.” May 12, 2017. <https://www.atg.wa.gov/news/news-releases/ago-files-campaign-finance-complaint-against-king-county-democratic-central>

Washington State Office of the Attorney General. “Enforcement of Campaign Finance Laws.” <https://www.atg.wa.gov/enforcement-campaign-finance-laws>

		intentional, though the consistency of the violations does suggest a pattern.
The respondent is a first-time filer.	The respondent has experience in complying with the applicable requirements.	SEIU PEAFF is not a first-time filer. It has been filing forms C5 with the PDC since at least 2010.
The respondent's compliance history indicates the noncompliance was isolated or limited in nature, and not indicative of systematic or ongoing problems.	The noncompliance is part of a pattern of violations by the respondent, or in the case of a political committee or other entity, part of a pattern of violations by the respondent's officers, staff, principal decision makers, consultants, or sponsoring organization.	SEIU PEAFF's noncompliance has spanned years and continued even in the face of legal actions and warnings from the PDC.
The impact of the noncompliance on the public was minimal.	The noncompliance deprived the public of timely or accurate information during a time-sensitive period in a campaign, legislative session, etc., or otherwise had a significant or material impact on the public.	SEIU PEAFF's failures to timely file reports and complete failure to disclose certain contributions all occurred over the course of a major election year, depriving the public of both timely and accurate information.
The respondent's organization or campaign was relatively unsophisticated or small.	The respondent or the respondent's organization or campaign demonstrated a relatively high level of sophistication, or was well financed and staffed.	SEIU PEAFF is a Section 527 "political organization" under federal tax law. Its sole purpose is to engage in political activity at the state and local level. It is operated by professional staff of one of the largest labor unions in the country. The national SEIU had total annual receipts of over \$300 million and a paid staff of nearly 600, according to its form LM-2 filed with the U.S. Department of Labor for calendar year 2017. If SEIU PEAFF does not have the necessary experience, financing, staffing or sophistication to comply with the FCPA, no one does.
The total expenditures by the respondent in the campaign	The campaign or statement period involved significant	SEIU PEAFF received \$12.3 million in contributions in

or statement period were relatively modest.	expenditures by the respondent.	2018 and expended a similar sum. This is an exceptional amount of money by any measurement.
The amount of late-reported activity, or the duration of the untimely disclosure, was small in proportion to the amount of activity that was timely reported by the respondent.	The late or unreported activity was significant in amount or duration under the circumstances, including in proportion to the total amount of expenditures by the respondent in the campaign or statement period.	SEIU PEAFF failed to report receipt of three contributions totaling \$2,770,463 in 2018, a substantial sum by any measurement and well above any contribution limits set in the FCPA.
There is no evidence that any person, including an entity or organization, benefited politically or economically from the noncompliance.	It appears the respondent or anyone else benefited politically or economically from the noncompliance.	SEIU PEAFF may have benefitted politically from the noncompliance, but probably did not benefit economically.
Personal emergency or illness of the respondent or member of his or her immediate family contributed to the noncompliance.	There are no circumstances that appear to mitigate or appropriately explain the late reporting or other noncompliance.	No mitigating circumstances exist to explain SEIU PEAFF's consistent and significant noncompliance.
Other emergencies such as fire, flood, or utility failure prevented compliance.	There are no circumstances that appear to mitigate or appropriately explain the late reporting or other noncompliance.	No mitigating circumstances exist to explain SEIU PEAFF's consistent and significant noncompliance.
PDC staff or equipment error, including technical problems at the agency prevented or delayed electronic filing.	PDC staff or equipment error did not appear to contribute to the noncompliance.	No mitigating circumstances exist to explain SEIU PEAFF's consistent and significant noncompliance.
The noncompliance resulted from the respondent's demonstrated good-faith uncertainty concerning staff guidance or instructions, a lack of clarity in the rule or statute, or uncertainty concerning the valid application of the commission's rules.	It appears the respondent understood the application of staff's guidance or instructions, and did not dispute the valid application of the commission's rules.	There is no evidence that SEIU PEAFF's noncompliance stemmed from a good-faith misunderstanding of the law. It has not disputed its actions violated the FCPA.
The respondent quickly took corrective action or initiated other remedial measures prior to any complaint, or when noncompliance was brought	The respondent appeared negligent or unwilling to address the noncompliance.	SEIU PEAFF did not file corrected forms C5 until after the Freedom Foundation filed its citizen action complaint with the PDC.

to respondent's attention (e.g., filing missing reports, amending incomplete or inaccurate reports, returning prohibited or over limit contributions).		
The respondent made a good-faith effort to comply, including by consulting with PDC staff following a complaint and cooperating during any preliminary investigation, or demonstrated a wish to acknowledge and take responsibility for the alleged violation.	The respondent failed to provide a timely or adequate response to the complaint, or was otherwise uncooperative.	SEIU PEAFF has filed a response to the Freedom Foundation's citizen action complaint acknowledging the majority of the violations alleged.
The alleged violation was or is being addressed under an analogous local ordinance, regulation, or policy.	The commission has primary jurisdiction over the alleged violation.	The PDC has primary jurisdiction over the alleged violations by SEIU PEAFF.
The alleged violation presents a new question or issue for the commission's interpretation.	The alleged violation does not present a case of first impression.	The allegations are clear and undisputed and do not present a case of first impression.

SEIU PEAFF has made it clear it will only comply with Washington's campaign finance laws if forced to do so and should be penalized accordingly.

Please do not hesitate to let me **know** if you have any questions or if I can be of any further assistance in this matter.

Sincerely,



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 Freedom Foundation
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